

(1981) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2332 and 3736 of 1978, 7127 of 1979 and 5543 of 1980

Mustafa Hussain

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5(2)
Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 — Section 15, 3, 6, 7, 7(1)
Constitution of India, 1950 — Article 133, 14, 19, 19(1), 21
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 11, 13, 3, 4, 5
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1981 AP 283 : (1981) 2 APLJ 233

Hon'ble Judges : Madhava Reddy, J; Jayachandra Reddi, J

Bench : Division Bench

Advocate : B.V. Subbarayudu, V.R. Reddy, G.R. Subbarayan and D. Reddappa Reddy, for the Appellant; K. Subrahmanya Reddy for Central Govt., P. Ramachandra Reddi, General and G.S.R. Anjaneyulu, for the Respondent

Final Decision : Dismissed

Judgement

Jayachandra Reddy, J.—The Parliament, in furtherance of the directive principles enshrined in Article 39(b) of the Constitution of India, enacted the Esso (Acquisition of Undertakings in India) Act, 1974, the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 and the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd.) Act, 1977, hereinafter referred to as the Esso Acquisition Act", "the Burmah Shell Acquisition Act", "The Caltex Acquisition Act", respectively. The main object underlying each of these Acts is to acquire the right, title and interest of the three major oil companies carrying on in India the business of distributing and marketing petroleum products with a view to subserve the common good. As per some of the provisions which are common to each of these Acts, the right, title and interest of each of the oil companies in relation to its undertaking in India

stood transferred and vested in the Central Government. Section 5 of the Esso Acquisition Act deals with leases and right of tenancies of the Esso with third parties in respect of the properties existing on the appointed day, and lays down that they shall be deemed to have been transferred and vested in the Central Government. Section 5(2) of the Esso Acquisition Act provides that on the expiry of the term of any lease or tenancy, referred to in Sub-section (1) such lease or tenancy shall, if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day. In the Burmah Shell Acquisition Act also we find Section 5 in the same language and to the same effect. In the Caltex Acquisition Act Section 7 deals with this aspect, and Section 7(3) lays down that on the expiry of the term of any lease, tenancy or arrangement referred to in Sub-section (1) or Sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into. After the enactments of these three Acts, admittedly the entire undertakings of these three oil companies got vested in the Central Government, which by certain orders, took over and created two major oil corporations, viz., Hindustan Petroleum Corporation and Bharat Petroleum Corporation. The undertakings of the Esso Company and the Caltex Oil Company which were vested in the Central Government were merged into a single Corporation, viz., Hindustan Petroleum Corporation. The Burmah Shell Company was similarly incorporated by the Government as Bharat Petroleum Corporation.

2. The petitioners in all these writ petitions are the owners of some pieces of land which were leased out by them to the three then existing companies. In these writ petitions the petitioners are questioning the Constitutionality of Section 5(2) of the Esso Acquisition Act and the Burmah Shell Acquisition Act, and Section 7(3) of the Caltex Acquisition Act.

3. Before we advert to the main questions involved, it is useful to extract the impugned provisions of law, so that we can have an idea of the nature of the leases with which we are concerned. Section 5 of the Esso Acquisition Act reads as follows:--

"5. Central Government to be lessee or tenant under certain circumstances : (1) Where any property is held in India by Esso under any lease or under any right, of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property has been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.

(2) On the expiry of the term of any lease or tenancy referred to in Sub-section (1), such lease or tenancy, if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by

Esso immediately before the appointed day."

This provision is the same word to word in the Burmah Shell Acquisition Act. Section 7 of the Caltex Acquisition Act reads thus:--

"7. Special provisions as to certain rights and interests held by Caltex (India) before the appointed day:

(1) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed.

(2) If at any time after the 2nd day of February, 1974 (being the date on which the Central Government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the commencement of this Act, Caltex (India) surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purpose), then, for the purposes of this Act, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the Central Govt. shall, on and after the appointed day, be entitled to such right or interest in the same terms and conditions on which Caltex (India) would have been entitled to such right or interest if it has not surrendered or otherwise relinquished such right or interest and this Act had not been passed:

Provided that nothing in this Sub-section shall apply to any right or interest surrendered or otherwise relinquished by Caltex (India) before the commencement of this Act for sufficient monetary consideration.

(3) On the expiry of the term of any lease tenancy or arrangement referred to in Subsection (i) or Sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into."

4. From a perusal of Section 5(1) of the Esso Acquisition Act and the Burmah Shell Acquisition Act, as well Section 7(1) of the Caltex Acquisition Act, it becomes clear that any right under any lease or any right of tenancy in respect of any property held by Esso Company or by Burmah Shell Company or by the Caltex Oil Company on the appointed day, shall be deemed to have been

transferred to and vested in the Central Government. In all these writ petitions the petitioners are the lessors who executed lease-deeds in favour of the private oil companies as they then existed and on the appointed day either the leases or the right of tenancies were held by one or the other of these private oil companies, which by virtue of Section 5(1) of the two former Acts and Section 7(1) of the latter Act, got vested in the Central Government in all these cases neither the Bharat Petroleum nor the Hindustan Petroleum exercised its option for a renewal of the existing lease or right of tenancy u/s 5(2) and Section 7(3) of the respective enactments. A perusal of Section 5(2) of the Esso Acquisition Act and the Burmah Shell Acquisition Act, and Section 7(3) of the Caltex Acquisition Act would show that on the expiry of the term of any such lease or tenancy, such lease or tenancy, shall, if so desired by the Central Govt, be renewed on (he same terms and conditions on which the lease or the tenancy was held by the previous oil company. Under these provisions such a renewal becomes compulsory whenever the Government of India so desires. The petitioners in all these writ petitions have questioned the vires of these provisions of law on the ground that they offend Articles 14, 19(1)(g) and 21 of the Constitution of India.

5. The learned Standing Counsel for the Central] Government and the learned Advocate General appearing for the Hindustan Petroleum Corporation, on the other hand submitted that all these three enactments received the protective umbrella of Article 31-C of the Constitution as it stood prior to Hi amendment by the Constitution (Forty-Second Amendment) Act inasmuch as they have been enacted in furtherance of the directive principles enshrined in Article 39(b) of the Constitution. Before we advert to the several points raised by the learned counsel for too petitioners in support of their plea it becomes necessary to refer to the relevant Articles in the Constitution of India and some of the historical judgments rendered by the Supreme Court while considering the concept of basic structure with reference to Article 31-C and the effect of the Constitution (Forty Second Amendment) Act.

6. Article 31-C as it existed prior to its amendment by the Constitution (Forty Second Amendment) Act is in the following terms:

"Notwithstanding anything contained in Article 14, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy."

Article 31-C unamended was introduced by the Constitution (Twenty-fifth Amendment) Act, 1971 with effect from 20th April, 1972. The last clause of that article which gave conclusiveness to the declaration "no law containing a declaration that it is for giving effect to such policy shall be called in question in

any Court on the ground that it does not give effect to such policy" was struck down as invalid in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . Then by virtue of Section 4 of the Constitution (Forty Second Amendment) Act, which came into force in 1977, in Article 31-C for the words letters and figures "the principles specified in Clause (b) or Clause (c) of Article 39", the words and figures "all or any of the principles laid down in Part IV are substituted. This amendment was challenged in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, on the ground that the said amendment affects the basic structure of the Constitution. Majority of their Lordships held that Section 4 of the Constitution (Forty-Second Amendment) Act is beyond the amending power of the Parliament and is void since it damages the basic or essential features of the Constitution and destroys its basic structure by a total exclusion of challenge to any law on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14(1) Article 19 of the Constitution if the law is for giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV of the Constitution. Bhagwati, J. however in a separate judgment held thus :--

"But so far as Section 4 of the Constitution (Forty Second Amendment) Act, 1976 is concerned, I hold that, on the interpretation placed on the amended Article 31-C by me, it does not damage or destroy the basic structure of the Constitution and is within the amending power of Parliament and I would therefore declare the amended Article 31-C to be constitutional and valid."

In view of the majority judgment the amendment to Article 31-C by Section 4 of the Constitution (Forty-Second Amendment) Act, 1976 has become invalid. In the present case we have to examine whether Sections 5(2) and 7(3) of the respective Acquisition Acts are protected by the unamended Article 31-C. Whenever such protection is claimed, it is necessary for the Court to examine whether the law has been enacted for giving effect to the policy of the State for securing social justice, viz., securing any one or more of the directive principles, and only after being so satisfied after a judicial scrutiny the Court can accord the protection of the umbrella under Article 31-C to any such law. The question that would, therefore, naturally arise is what is the type of judicial scrutiny that a Court can embark. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, it was unanimously held that the only question open, to judicial review under the unamended Article 31-C was whether there is a direct and reasonable nexus between the impugned law and the provisions of Article 39 (b) and (c). In Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , Chandrachud, C. J. speaking for the majority held thus;

"Whether a law is adequate enough to give effect to the policy of the State towards securing a directive principle is always a debatable question and the Courts cannot set aside the law as invalid merely because, in their opinion, the law is not adequate enough to give effect to a certain policy. In fact, though the clear intendment of Article 31-C is to shut out all judicial review, the argument of

the learned Additional Solicitor General calls for a doubly or trebly extensive judicial review than is even normally permissible to the Courts. Be, it be remembered that the power to enquire into the question whether there is a direct and reasonable nexus between the provisions of a law and -a directive principle cannot confer upon the Courts the power to sit in judgment over the policy itself of the State. At the highest, Courts can, under Article 31-C satisfy themselves as to the identity of the law in the sense whether it bears direct and reasonable nexus with a directive principle.

In *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, , Chandrachud, C. J. while disagreeing with Tulzapurkar, J. observed thus :

"The vice from which a provision here or a provision there of, the Act may be shown to suffer will not justify the conclusion that the Act is not intended to or does not by its scheme, in fact implement or achieve the purposes of Clauses (b) and (c) of Article 39-" In *Kesavananda Bharati*'s case (Supra) Ray, J. as he then was observed thus :--

"If a question arises as to whether a piece of legislation with such declaration has a nexus with the Directive Principles in Articles 39 (b) and (c) the Court can go into the question for the purpose of process of identification of the legislative measure on a consideration of the scope and object and pith and substance of the legislation."

6-A. From these authoritative pronouncements of the Supreme Court it can be gathered that in considering the issue, viz., whether the object of these Acquisition Acts is to give effect to a directive principle, what the Court has to see is whether there is a direct and reasonable nexus between the impugned law and the directive principle enshrined in Article 39(b). In arriving at a conclusion whether there is such a reasonable nexus, the Court has to examine the object, the scheme and other provisions which reflect the policy of the State. It is also cautioned that the Court has to see whether in general there is nexus and that it cannot subject every provision to a microscopic examination.

7. We shall now consider the various contentions raised by the learned counsel for the petitioners. Sri V. R. Reddy, the learned counsel for the petitioner in W. P. No. 3736 of 1978 contended that Article 19(b) declares that the State shall direct its policy towards securing that the ownership and control of the material resources are so distributed as best to subserve the common good and by acquiring the undertakings this object is achieved and that any other provision - providing for the distribution of the products has no nexus to this object. Sri G. R. Subba Rayan the learned counsel for the petitioner in W. P. 7127 of 1979 and contended that the object of the present enactments is only acquisition " of the rights and assets of the oil companies and when once that object is achieved, any further right given under the Act to any oil Corporation to exercise its option and get a renewal of the lease compulsorily is beyond the scope and object of the Acts and therefore they cannot be saved by Article 31-C of the Constitution

and the vires of the provisions of Sections 5 (2) and (3) of the respective Acquisition Acts can be questioned as they offend Articles 14 and 19 of the Constitution. Yet another contention which is somewhat to the same effect is that these provisions of law cannot in any manner achieve the object mentioned in Article 39(b) and therefore they do not bear any direct and reasonable nexus to the object and as such they can be questioned on the ground that they offend Articles 14 and 19. Sri D. Reddeppa Reddy, the learned counsel for one of the petitioners, comparing the preamble of the Burmah Shell Acquisition Act with that of the Caltex Acquisition Act, contended that the words "also distributed" occurring in the first part of the preamble of the Caltex Acquisition Act, do not occur in the same manner in the preamble of the other two enactments, and even assuming that the policy of the State is to distribute the petroleum products also since there are no provisions at all in either of these enactments providing for such distribution. Sections 5(2) and 7(3) of the respective enactments cannot be said to bear any reasonable nexus to the object.

8. While considering these submissions we have to see whether these enactments reflect the policy of the State and whether the enactments as a whole satisfy the test, viz., that it is meant to give effect to a directive principle and bears reasonable nexus to that object and the reasonableness is regarding the nexus. In this context it is also useful to bear in mind the observation made by Chandrachud C. J. in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , which is to the following effect:--

"The only question open to judicial review under the unamended Article 31-C was whe-ther there is a direct and reasonable nexus between the impugned law and the provisions of Article 39 (b) and (c). Reasonableness is evidently regarding the nexus and not regarding the law."

The preambles to the Esso Acquisition Act and the Burmah Shell Acquisition Act are in the same words and there is no difference. The preamble under the Esso Acquisition Act reads thus:--

"An Act to provide for the acquisition and transfer of the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India with a view to ensuring coordinated distribution and utilisation of petroleum products distributed and marketed in India by Esso Eastern [nc. and for matters connected therewith or incidental thereto.

Whereas Esso Eastern Inc., a foreign company, is carrying on, in India the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India Limited and "Lube India Limited, and has. for that purpose, established places of business at Bombay and other places in India;

And whereas it is expedient in the public interest that the undertakings, in India, of Esso Eastern Inc. should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by the

said company are vested in the State and thereby so distributed as best to subserve the common good.

The last paragraph of the preamble to which emphasis has been supplied, reflects the policy of the State and also lays down that the acquisition is to ensure that the ownership and control of petroleum products distributed and marketed in India by the said oil company are vested in the State and thereby so distributed as best to subserve the common good. This policy is reflected in the provisions of the Act also. Section 3 lays down that on the appointed day the right, title and interest of Esso in relation to its undertakings in India, shall stand transferred to, and shall vest in the Central Government. Section 4 declares the effect of such vesting. Section 5 which has already been extracted provides that the Central Government shall be deemed to have become the lessee or tenant under certain circumstances. Section 11 lays down that the provisions of the Esso Acquisition Act shall have overriding effect. Section 13 lays down that certain contracts shall continue unless terminated by the Central Government. These provisions are incorporated verbatim in the Burmah Shell Acquisition Act also. In the Caltex Acquisition Act the preamble is a little more elaborate, and the relevant portion reads thus:--

"And whereas such acquisition is for giving effect to the policy of the State towards securing the principle specified in Clause (b) of Article 39 of the Constitution as the ownership and control of the material resources of the community, to wit the petroleum product produced by the said Caltex Oil Refinery (India) Limited and marketed and distributed by the undertakings of the said Caltex (India) Limited, in India, would by reason of such acquisition become vested in the State and thereby so distributed as best to subserve the common good."

Section 3 of the Caltex Acquisition Act deals with the transfer and vesting in the Central Government of shares of the Caltex Oil Refining. Section 5 deals with the transfer and vesting in the Central Government of the undertakings of Caltex (India) in India, Section 6 declares the effect of such vesting. Section 7 which has already been extracted, is a special provision dealing with the rights and interests held by the Caltex before the appointed day and it is analogous to Sec. 5 in the other two enactments. Section 13 lays down that the provisions of Caltex Acquisition Act have overriding effect. Section 15 empowers the Government to continue certain contracts unless terminated. This is analogous to Section 13 in the other two enactments.

9. A careful perusal of these provisions including Sections 5(2) and 7(3) of the respective enactments would show that they are very much necessary to give effect to the object of the Act. There cannot be any doubt that the State Policy in enacting these Acts is only to give effect to the directive principles as enshrined in Article 39(b) of the Constitution. The learned counsel for; the petitioners could not seriously challenge the constitutionality of the Acts in general but they concentrated only on Section 5(2) of the Esso Acquisition Act and of the Burmah

Shell Acquisition Act, and Section 7(3) of the Caltex Acquisition Act, and contended that they do not bear any nexus to the object to be achieved under the Acts and that they are totally unrelated to the object. The preamble to each of these three Acts makes it abundantly clear that the ac-I question is for the purpose of securing ownership and control of the undertakings carrying on the business and distributing and marketing petroleum products so that they I may be so distributed to subserve the common good. But the contention however is that when once the undertakings are acquired, the object is achieved and any provision which gives another right to the Corporation to exercise its option in respect of the leases is, totally unrelated to the object. Sri V. R.Reddy argued that the words "are so distributed" occurring in Article 39(b) of the Constitution and in the preambles to these enactments, only emphasise that the acquisition of ownership is meant for distribution and when once the acquisition is completed the object is achieved. It cannot be gainsaid that the object underlying Article 39(b) of the Constitution is to see that the ownership and control of the material resources of the community are so distributed to subserve the common good and that the operation of the economic system does not result In the concentration of wealth and means of production to the detriment of the community. At the same time it must be remembered that mere acquisition cannot achieve this object. The distribution of such acquisition is very much necessary to achieve the object underlying the directive principle. As pointed out by the Supreme Court in The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another, , the word "distribution" cannot be interpreted in a narrow manner. In the above case their Lordships, of the Supreme Court held thus (at p. 250):--

"The next question is whether nationalisation can have nexus with distribution. Should we assign a narrow or spacious sense to this concept, Doubtless, the latter, for reasons so apparent and eloquent. "To distribute", even in its simple dictionary meaning, is to "allot, to divide into classes or into groups and "distribution" embraces "arrangement, classification, placement, disposition, apportionment, the way in which items, a quantity, or the like, is divided or apportioned; the system of dispersing goods throughout a community" (See Random House Dictionary). To classify and allocate certain industries or services or utilities or articles between the private and the public sectors of the national economy is to distribute those resources. Socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive process for the good of the community."

If we apply this ratio to the facts of the present case, the distribution of petroleum products after acquisition of the undertakings is an integral part of the whole social policy and scheme underlying the enactments which are enacted in pursuance of Article 39(b). In this view of the matter, the provisions providing for a proper distribution arid supply of the petroleum products manufactured and marketed by these undertakings must be held to be very much necessary to achieve the object.

10. The teamed counsel also contended that the expression "material resources in Article 39(b) carries a particular meaning and should be confined only to natural sources and do not include petroleum products (which are only manufactured) and hence the petroleum products cannot come within the meaning of "material resources". In the Chambers Twentieth Century Dictionary the meaning of "material" is given, thus :--

MATERIAL:--relating to matter; consisting of matter; being the substance of the thing; Corporal not spiritual;

The learned counsel sought to contend that the products that are sought to be distributed under Article 39(b) should be "relating to matter*" and not the products manufactured out of such resources. For instance, according to the learned counsel, land, mines, etc., are material resources and not the products that are produced or manufactured out of these matters. We are unable to agree. In the cases before us the petroleum products are the material resources. It is needless to say that they are so essential to the community at large and the State Policy in securing the ownership and control of these undertakings is obviously to distribute them as best to subserve the common good. In Black's Legal Dictionary the meaning of the word "resources" is given as "money or any property that can be converted into supplies; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants; available means or capability of any kind". In *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, their Lordships while considering the scope of Article 39(b) observed;

"And material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs not merely public possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community ... If a car factory is a material resource, why not cars manufactured? "Material" may cover "everything worldly and "resources, according to Random House Dictionary, takes in "the Collective Wealth of a country or its means of " producing wealth A money or any property that can be converted into money; assets"."

Therefore, the petroleum products cannot be separated from the undertakings that are acquired

11. Sri G. R. Subbarayan appearing for one of the petitioners contended that the preamble to the Caltex Acquisition Act itself specifies the requirements of Article 39(b), and that Section 7(3) does not bear any direct nexus to the object. It is also his contention that only such of the provisions which bear nexus to the declaration in the preamble, are saved and not other provisions. Sri V. R. Reddy also contended that some provisions in an enactment which receive the protection of Article 31-C can be questioned on the ground that they are

unrelated to the object. Both the learned counsel referred to certain, observations of Bhagwati J. in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . In paragraph 120 of his judgment the learned Judge observed thus (at p. 1856):--

"Where, therefore, protection is claimed in respect of a statute under the amended Article 31-C, the Court would have first to determine whether there is real and substantial connection between the law and a Directive Principle and the predominant object of the law is to give effect to such Directive Principle and if the answer to this question is in the affirmative, the Court would then have to consider which are the provisions of the law basically and essentially necessary for giving effect to the Directive Principles and give protection of the amended Article 31-C only to those provisions. The question whether any particular provision of the law is basically and essentially necessary for giving effect to the directive principle, would depend to a large extent, on how closely and integrally such provision is connected with the implementation of the Directive Principle. If the Court finds that a particular provision is subsidiary or incidental or not essentially and integrally connected with the implementation of the Directive Principle or is of such a nature that though seemingly a part of the general design of the main provisions of the statute, its dominant object is to achieve an unauthorised purpose, it would not enjoy the protection of the amended Article 31-C and would be liable to be struck down as invalid if it violates Article 14 or 19"

No doubt the view of Bhagwati, J. was a minority view on the main issue but these observations made by the learned Judge are generally accepted to be laying, down the guideline in examining the validity of certain provisions of an enactment receiving protection of Article 31-C. Section 5(2) of the *Esso Acquisition Act* and the *Burmah Shell Acquisition Act* and Section 7(3) of the *Caltex Acquisition Act*, as already extracted, give an option to the Corporations to have the lease renewed on the same terms and conditions on which the lease or tenancy was held before the appointed day. Before we proceed further it must be made clear that these provisions do not give scope for any perpetual lease as apprehended by the learned counsel. The corporations can exercise this option only once on the same terms and conditions on which the lease or tenancy was existing on the appointed day.

12. Now it remains to be seen whether these provisions are so unrelated to the object of the Act or the dominant object of these provisions is to achieve an unauthorised purpose. The Statement of Objects and Reasons of the *Caltex Acquisition Act* shows that in implementation of the policy for progressively securing that the ownership and control of the production of the nation's petroleum resources are vested in the State and thereby so distributed as best to subserve the common good, the Government entered into negotiations with *Caltex* for acquiring hundred per cent of the shares of *Caltex Oil Refining (India) Limited* free of encumbrances and the undertakings in India of *Caltex (India)*

Limited. An Ordinance was promulgated by the President on 30th Dec., 1976 and the same was replaced by the present Act. The Ordinance also provided for the continuance of the contracts entered into by the Caltex for any sale or supply in India. From this it can be seen that the supply of these products is an integral part of the State Policy. A perusal of the preamble as well as the other provisions in the other two enactments would also show that the object behind the State policy was to have the ownership and control over these undertakings dealing in petroleum products which are very essential and to see that the public are supplied with the same. By merely acquiring these undertakings the object cannot be achieved. It is a matter of common knowledge that these undertakings" had entered into leases with numerous individuals in respect of the plots on which the supply pumps etc. were installed. Such pumps are very essential for distribution and supply of the products. All such leases and rights of tenancy were in existence on the appointed day. Unless such leases are continued for reasonable time, the very object of acquisition of these undertakings will get defeated. If on the appointed day or soon after many of the leases were about to expire then the State which has acquired "these, undertaking will be in a difficult position unless the Corporations created by the State are empowered to continue the leases or rights of tenancy for some more time. It is with this object that Section 5(2) and Section 7(3) of the respective Acquisition Acts are incorporated. Therefore, we have no doubt whatsoever in holding that these provisions are basically and essentially necessary for giving effect to the object of the State policy. It can by no stretch of imagination be said that the dominant object of these impugned provisions is only to achieve an unauthorised purpose.

13. Yet another contention put forward by Sri Subbarayan in this context is that these provisions amount to colourable legislation and are meant only to further the interests of the Corporation rather than to achieve the object of the directive principle inasmuch as they deprive the right of the persons to deal with their property as they like. He also placed reliance on a decision of the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, . We are unable to agree with the learned counsel. As already mentioned, the policy of the State cannot be subjected to judicial scrutiny and what we have to see is whether these provisions bear reasonable nexus to the object, and so far as the nature of reasonableness is concerned it has to be viewed not only from the point of view of the person concerned, but also from the point of view of the State policy and the object that is sought to be achieved by the statute. In *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, , Krishna Iyer, J., while disposing of a contention based nit colourable legislation, speaking for the majority observed thus (at p. 2286):--

"If, forgetting comity, the Legislative wing charges the judicative wing with "colourable" judgments, it will be intolerably subversive of the rule of law. Therefore, we too must restrain ourselves from making this charge except in absolutely plain cases and pause to understand the import of the doctrine of

colourable exercise of public power, especially legislative power

A thing is colourable which is, in appearance only and not in reality, what it purports to be. In Indian terms, it is maya. In the jurisprudence of power, colourable exercise of or fraud on legislative power or, more frightfully, fraud on the Constitution are expressions which merely mean that the legislature is incompetent to enact a particular law although the label of competency is stuck on it, and then it is colourable legislation. It is very important to notice that if the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant."

If we examine the impugned provisions from this angle, it cannot be said that they come within the meaning of colourable legislation, inasmuch as they have reasonable nexus to the object to be achieved and also since they are integral part of the scheme of the Act which is enacted in furtherance of the directive principles.

14. Sri V. R. Reddy while substantiating his plea that Section 5(2) has no direct nexus and that it is only subsidiary in its nature, also relied on *Akadasi Padhan Vs. State of Orissa*, and *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, . According to the learned Counsel, Section 5(2) which infringes on the right of the citizens, does not constitute an essential or integral part of the monopoly of the State. A perusal of these decisions would show that their Lordships merely observed that if the law contains certain incidental provisions which are not essential and do not constitute an integral part of the monopoly created by the State then those provisions can be questioned. We have already held that these provisions form an integral part of the main enactments which receive protection of Article 31-C. We accordingly hold that these three enactments receive the protection of Article 31-C of the Constitution and Section 5(2) and Section 7(3) of the respective enactments cannot be challenged.

15. The next contention is that Section 5(2) of the *Esso Acquisition Act* and the *Burmah Shell Acquisition Act*, and Section 7(3) of the *Caltex Acquisition Act*, relating to land come exclusively within the subjects on which the State is competent to legislate and that the Parliament cannot make any law on those subjects. According to the learned counsel Entry 6 of List III, viz., Concurrent List, comprises of transfer of property other than agricultural land; registration of deeds and documents. Entry 7 provides for contracts including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land. Entry 42 enumerates the law relating to Acquisition and requisitioning of property. Referring to these Entries, the learned counsel contends that the leases by the three undertakings do not come within any one of these Entries and on the other hand they come under Entry 18 of List II (State List), viz., Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, etc. and therefore it is only the State Legislature- that can legislate on this subject. We are unable to agree with the learned counsel. Entry 53 of List 1 enumerates regulation and

development of oil fields and mineral oil resources; petroleum and petroleum products etc. Now the leases in question are integrally connected with the regulation of oil resources, petroleum and petroleum products. It is well settled that if a statute is found in substance to relate to a topic within the competence of the Legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. Assuming for argument's sake that these leases come within the State subjects, still if there is some overlapping or encroachment to some extent by the Centre the provision cannot be struck down on that ground unless it is shown that it is a colourable legislation. In *A.S. Krishna Vs. State of Madras*, the Supreme Court observed that the constitutionality of the laws made by the Centre and the State come up for decision time and again, and therefore to decide whether an impugned legislation is intra vires, the doctrine, that regard must be had to its pith and substance, has to be applied. In *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*, their Lordships of the Supreme Court held thus (at p. 428) :--

"In every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act and if the matter comes substantially within an item in the Central List it is not deemed to come within an entry in the Provincial List even though "the classes of subjects looked at singly overlap in many respects". It is within the competence of the Central legislature to provide for matters which may otherwise fall within the competence of the Provincial legislature if they are necessarily incidental to the effective legislation by the Central legislature on a subject of legislation expressly within its power."

We have already examined the scope of the Acts and we have also held that the impugned provisions have a direct nexus and they form integral part of the scheme of the Acts. We, therefore, reject the contention that the Parliament is not competent to legislate these provisions.

16. Another common contention in these writ petitions is that Sections 5(2) and 7(3) of the respective Acts offend Articles 14 and 19 of the Constitution. This argument has been put forward on the assumption that these enactments do not receive the protection of Article 31-C. We have already held that these enactments including these two provisions of law fully receive the protective umbrella of Article 31-C. However, since the learned counsel have taken pains to argue this aspect at length, we shall briefly refer to the same. In considering this question whether these provisions offend Articles 14 and 19 of the Constitution, it is useful to bear in mind the following observations of the Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, of AIR):--

"The directive principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights. By defining the national aims and the

constitutional goals, they set forth the standards or norms of reasonableness which must guide and animate governmental action. Any action taken by the Government with a view to giving effect to any one or more of the directive principles would ordinarily, subject to any constitutional or legal inhibitions or other overriding considerations qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a directive principle would prima facie incur the reproach of being unreasonable."

Their Lordships also observed thus:--

"But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest" It is firstly contended that u/s 5(2) and u/s 7(3) of the respective enactments the leases have to be compulsorily renewed if the Corporations exercise their de-sire to do so, and that there is a discrimination between the leases contemplated under these provisions and the other contracts covered by Section 13 of the Esso Acquisition Act and under the analogous provision, viz., Section 15 of the Caltex Acquisition Act. These two sections lay down that every contract entered into by these undertakings for any service, sale or supply, and in force immediately before the appointed day, shall, unless terminated within certain lime, continue to be in force. Sub-section (2) in each of these provisions lays down that the Central Government may, if it is satisfied that any such contract is onerous or has been entered into in bad faith or is detrimental to the interests of that Govt. or the Government company, terminate the same by order in writing after giving an opportunity to the party of being heard. The learned counsel relying on these provisions contended that the contracts under Sections 13 and 15 of the respective enactments are differentiated from the leases covered by Sections 5 and 7 and therefore there is discrimination. We see no force in this submission. The leases under Sections 5 and 7 of the respective enactments form a separate class based on intelligible differentia. We have already held that these provisions have a reasonable nexus to the object to be achieved. The learned counsel however contends that there is certain amount of arbitrariness involved inasmuch as the Central Government is given an arbitrary power to pick and choose some lessors and require them to renew the leases. In other words, according to the learned counsel there are no guidelines as to how the Central Government should exercise its power under these provisions. Another argument

advanced is that under these provisions persons differently situated also are treated alike. According to the learned counsel the leases may expire on different dates--some may expire immediately after the appointed day and some may subsist for a longer time --and yet all of them can be asked to renew without any differentia and in this view also these provisions offend Article 14. In *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, their Lordships while considering such a contention, observed thus (at p. 1313):--"A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase "similarly situated" mean. The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good."

So, what we have to see is whether a classification is reasonable and meant for achieving the purpose of law. The contention of the learned counsel that the persons differently situated are treated alike cannot be accepted inasmuch as all the leases existing on the appointed day are broadly classified into one category. Therefore, the classification is founded in intelligible differentia. In *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, their Lordships observed as follows (at p. 602):--

"The test of permissible classification under an Act lies in two cumulative conditions (i) classification under the Act must be founded on an intelligible differentia distinguishing persons, transactions or things grouped together from others left out of the group; and (ii) the differentia has a rational relation to the object sought to be achieved by the Act."

Their Lordships also observed that "Provided the classification is based on some intelligible ground, the Courts will not strike down that classification because in the view of the Court it should have proceeded on some other ground or should have included the class selected for special treatment some other persons, objects or transactions which are not included by the Legislature. The Legislature is free to recognise the degree of harm and to restrict the operation of a law only to those cases where the need is the clearest. The Legislature need not extend the regulation of a law to all cases it may possibly reach, and may make a classification founded on practical grounds of convenience. Classification to be valid must, however, disclose a rational nexus with the object sought to be achieved by the law which makes the classification." As regards the contention that there are no guidelines we have to observe that Section 5(1) of the *Esso Acquisition Act* and the *Burmah Shell Acquisition Act*, and Section 7(1) of the *Caltex Acquisition Act* broadly lay down that in respect of all the leases and rights of tenancy held by the companies, the Central Govt. shall, on and from the appointed day, be deemed to have become the lessee or the tenant. It has already been noticed that the object of the Acts itself is to take over these

undertakings in pursuance of a directive principle. When once on the appointed day the Central Government became the lessee or the tenant, then u/s 5(2) or 7(3) of the respective enactments the Central Government on the expiry of the term of any lease, may require the lessor to renew the lease or the right of tenancy. In exercising such option, no doubt the discretion lies with the Corporations, but having regard to the nature of the business and undertakings the officers who have to exercise this option are naturally expected to do the same in a reasonable and proper manner depending upon the exigencies. Having regard to the nature of the discretion that is to be exercised under Sections 5(2) and 7(3) of the respective Acts it is not necessary that there should be further guidelines. Therefore, on this ground the classification cannot be questioned. For these reasons, we cannot accept the contention that Article 14 of the Constitution is offended.

17. "As regards the infringement of Article 19(1)(g) the submission is that Section 5(2) of the Esso Acquisition Act and the Burmah Shell Acquisition Act, and Section 7(3) of the Caltex Acquisition Act impose the restriction on the lessors to carry on trade or business on their plots of land. It is submitted that by making the renewal of the leases compulsory under these provisions, the lessors are deprived of their right guaranteed under Article 19(1)(g). Here again as observed by the Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, the Court has to carefully consider whether the restriction imposed is unreasonable or without public interest. Having regard to the object behind the three Acquisition Acts in the present case, the restriction imposed cannot be said to be unreasonable. We have already held that Sections 5(2) and 7(3) do not create perpetual leases. They only lay down that if the Corporations in certain cases exercise their opinion then the lessor has to renew his lease. To that extent there is some statutory compulsion resulting in the restriction on the rights of the lessors. As observed by the Supreme Court in *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , "The phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public." In the instant case however, it cannot be said that even if there is a restriction it totally takes away the rights guaranteed under Article 19(1)(g) of the Constitution.

18. Sri G. R. Subbarayan also contended that the impugned provisions offend Article 21 of the Constitution inasmuch as these provisions ultimately result in the curtailment of the lessors' personal liberty which includes their right to put these plots of land to what ever use the like. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , Bhagwati J., speaking for the majority held:

"If a law depriving a person of "personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be

applicable in a given situation, ex hypothesi it must also be liable to be tested with reference to Article 14." Relying on the ratio laid down in this case, the learned counsel contended that the restriction, viz., that the lessors have to execute the leases at the option of the lessors, not only affects Articles 14 and 19 but also result in the infringement of Article 21. It is true that the right of personal liberty is a bundle of many other rights like freedom to enter into contract, freedom to move about, freedom of expression, freedom to carry on trade etc. As Blackstone observed personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. The right to personal security and the right to personal liberty have been recognised and termed as natural which no doubt are embodied in Article 21 of the Constitution, but the question is whether every act which is rather peripheral to this fundamental right gets the protection of Article 21. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Bhagwati, I.*, after examining several judgments of the Supreme Court, held thus:

"The law must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of "personal liberty" and there is consequently no infringement of the fundamental right conferred by Article 21, such law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article."

Therefore, there is no escape in the present case from testing this contention of the learned counsel on the anvil of Article 19. We have already held that Article 19 is not infringed for two reasons, viz., that the Acquisition Acts in question received the protective umbrella of Article 31C; and even otherwise, the restrictions made are reasonable and bear reasonable nexus to the object that is sought to be achieved.

19. Sri Subbarayan however relied on two decisions viz., *All India Bank Employees' Association Vs. National Industrial Tribunal and Others*, and *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*. These decisions are distinguishable as they do not have a direct bearing on the question. They mainly deal with inter-relationship of clauses (a) to (g) of Article 19(1). That apart, there cannot be any manner of doubt that Sections 5(2) and 7(3) of the respective enactments have no direct impact on Article 21 of the Constitution. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Bhagwati, J.* has referred to these decisions and also to *A.K. Gopalan Vs. The State of Madras*, and observed thus:

"Since "the direct and immediate effect of the order" would be to restrain a newspaper from publishing any number of pages for carrying its news and views, which it has a fundamental right under Article 19(1)(a) to do, unless it raises the selling price as provided in the schedule to the order, it was held by this Court that the order was violative of the right of newspapers guaranteed by Article

19(1)(a). Here again, the emphasis was on the direct and inevitable effect of the impugned action and form or subject-matter."

If we apply this test to the instant case, it cannot be said that if the lessors are made to enter into fresh leases that directly and inevitably infringes the fundamental right of personal liberty. In *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*, the majority ultimately took the view that the impugned order need not be interfered with having regard to the fact that such an order was made because in the opinion of the Central Government the presence of the petitioner was necessary for giving evidence before the Commission of Inquiry and that if the petitioner was allowed to leave India that might frustrate or impede the progress of the inquiry. In the case before us, the renewal of the leases for one more term is only to achieve the object of the State policy. We have already held that Articles 14 and 19 are not infringed and we are unable to appreciate the argument of the learned counsel that these provisions in any manner affect Article 21 of the Constitution in the manner contended by the learned counsel.

20. It is lastly contended that Section 5(2) of the Esso Acquisition Act and the Burmah Shell Acquisition Act and Section 7(3) of the Caltex Acquisition Act cannot amount to law since they are not in the nature of a mandate. The controversy whether law should essentially follow and not lead, or whether law should be a determined agent in the creation of new norms, is age old. In *Dias Jurisprudence*, Fourth Edition, Austinian theory has been referred to, and the relevant passage reads thus:

"Like Bentham, Austin believed that "law" is only an aggregate of laws, and he defined a law in its most comprehensive signification as "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." He then distinguished between "laws properly so-called" and laws improperly so called. "The former are "general commands" addressed to the community at large and enjoin classes of acts and forbearances, they are also continuing commands."

The learned counsel drawing inspiration from this passage, sought to contend that Sections 5(2) and 7(3) are not in the nature of general commands and that on the other hand they only provide that leases should be executed only when it is desired by the Oil Corporations and therefore they do not tantamount to law. We see no force in this submission. As pronounced by Blackstone, a law and a particular command are distinguished in the following manner; "A law obliges generally the members of a given community, or a law obliges generally person of a given class. A particular command obliges a single person or persons, whom it determines individually. Most general in a twofold manner as enjoining or forbidding community, or, at least, or sorts; and as binding the whole community, or at least, whole classes of its members." In Austin's *Jurisprudence*, (2nd Edition. Vol. I. page 18) we come across a passage wherein an explicit distinction between "laws" and "particular commands" is made. According to the learned

author, where a command obliges generally to acts or forbearances of a class, the command is a law of rule. But where it obliges to a specific act or forbearance, a command is occasional or particular.

21. We have already discussed and held that Sections 5(2) and 7(3) of the respective enactments are integral part of the enactments and they are very much necessary to achieve the object, and they apply in general to all the subsisting leases on the appointed day. They cannot be taken in isolation to examine whether they amount to law or not. Further, it must also be remembered that the whole gamut of the argument has been that these provisions which form part of an enactment are affecting the fundamental rights. That being so, the learned counsel again in the same breath cannot be heard to say that these provisions do not amount to law.

21A. Before parting with the arguments touching on. Articles 31C, 14 and 19 of the Constitution, we may point out that we are supported in our view by an unreported decision of a Division Bench of the Madhya Pradesh High Court in Misc. Petition No. 881 of 1978. D/- 7-10-1980: (Since reported in Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others,) (Manohar Singh v. Caltex Oil Refining (India) Ltd.). Before the learned Judges the provisions of the Caltex Acquisition Act were questioned. There also the petitioners were owners of plots of land leased out; and one of the contentions was that Section 7(3) of the Caltex Acquisition Act is unconstitutional being violative of Articles 19(1)(f) and 14 of the Constitution. The Division Bench held that the said Act in general is protected by Article 31C of the Constitution and that the provisions of the Act cannot be deemed to be void on the ground that they take away or abridge any of the rights conferred under Articles 14 and 19.

22. We, therefore, observe that this judgment of the Division Bench of the Madhya Pradesh is directly on the point. W. P. No. 2332 of 1978

23. In this Writ petition the facts are slightly different and the main contention is that the lease in question expired before the appointed day and therefore the petitioner cannot be compelled to renew the lease u/s 5(2) of the Esso Acquisition Act.

24. To appreciate this contention it is necessary to note some more facts. The petitioner is the owner of premises bearing CIB Plot No. 88 situated at Pheel-Khana in Hyderabad, measuring 371 square yards. His father leased out the said plot to Standard Vacuum Oil Company under a lease deed D/- 8-4-1958 for a period of ten years, on a monthly rent of Rs. 125/-. There was a clause in the lease-deed providing for renewal of the lease for a further period of ten years by the landlord at the request of the tenant, but at an increased monthly rent of Rs. 150/-. During the subsistence of the lease, the petitioner's father died in 1961 and the petitioner became the owner and has been the lessor, [In 1963 the Standard Vacuum Oil Company was converted into Esso Standard Eastern Incorporation and the lease however continued and the same expired on

31-12-1967. The Esso Company desired a renewal but the petitioner was not willing. There was protracted correspondence and the advocate for the lessee-company persuaded the petitioner by his letter dated 31-5-1969 to accept the renewal of the lease for a further period of ten years and it was agreed that the clause for further renewal should be deleted. The petitioner however gave a reply dated 9-6-1969 through his advocate stating that there should be a further clause that the petroleum company would deliver vacant possession of the site after the expiry of the term. The lessee agreed to the same, but the formalities were not complied with and the lease was not renewed. While matters stood thus, the Esso Acquisition Act was passed and it came into force on 14-3-1974. In the year 1976 the Esso Oil Company became a Corporation under the style of "Hindustan Petroleum Corporation" and has been carrying on business activity. The petitioner however got a notice issued through his advocate stating that the 2nd respondent should vacate the premises by 31-12-1977 as agreed upon in the correspondence. The 2nd respondent, however, purporting to exercise its option u/s 5(2) of the Esso Acquisition Act. issued a notice that the petitioner should renew the lease for a further period of ten years commencing from January, 1978. Under these circumstances the petitioner has filed this Writ Petition.

25. From the above facts it can be seen that the lease expired on 31-12-1967. Though there was some correspondence about the renewal of the lease, the same was not renewed. But admittedly the 2nd respondent has been paying the monthly rentals and the petitioner has been receiving the same. The contention of the petitioner is that on the appointed day, viz., 14-3-1974 there was no subsisting lease and therefore the question of the 2nd respondent exercising its option u/s 5(2) does not arise. The learned counsel for the petitioner also contended that even if it is construed that the 2nd respondent continued to be the tenant, it will be only a tenant holding over and as provided u/s 106 of the Transfer of Property Act such tenancy shall be deemed to be from month to month and is terminable by issuing fifteen-days notice. The learned Advocate General appearing for the 2nd respondent-Corporation however contended that by virtue of Section 11 of the Esso Acquisition Act the other provisions of the said Act shall have overriding effect on other laws. It is also contended that by virtue of Section 5(1) of the Esso Acquisition Act the right of tenancy shall be deemed to have been transferred and the 2nd respondent on expiry of the term of such right to tenancy can exercise its option for a further renewal of the tenancy. We shall presently examine these rival contentions.

26. Section 3 of the Esso Acquisition Act lays down that "on the appointed day, the right, title and interest of Esso shall stand transferred to and shall vest in the Central Government. Section 4, as already mentioned, enumerates the effect of such vesting and makes it clear that all rights and interests arising out of any property in the possession or in the control of the Esso, in relation to its undertakings in India, shall also be deemed to include in the undertakings thus transferred. Section 5, which has already been extracted, shows that the Central

Government shall on and from the appointed day be deemed to have become the lessee or tenant in respect of any lease or under any right of tenancy held by Esso on the appointed day. Therefore, the question that remains to be seen is whether the Esso company has the right of tenancy on the appointed day. Though the original lease expired on 31-12-1967, no fresh lease was executed. The 2nd respondent however continued as a tenant and the rents were duly received by the petitioner from the 2nd respondent. Therefore, there cannot be any doubt that tenant continued. In *Sheth Maneklal Mansukhbhai Vs. Hormusji Jamshedji Ginwalla and Sons*, , their Lordships held that where the terms of a lease agreed to be granted are contained in the correspondence, the same can be looked into for finding whether there was acceptance in writing under which the contract to transfer the land was effected. It is further held: (at P. 4)

"The High Court was in error when it held that the correspondence summarised in Ex. 181 could not be treated as evidence of the contract and that its terms could not be reasonably deduced from this document. It is no doubt true that Ex. 181 is merely secondary evidence of the agreement of lease but it is equally true that it is very reliable piece of secondary evidence coming as it does from Government records. It furnishes proof of the fact that there was an acceptance in writing under which the contract to transfer the survey numbers in suit by way of lease was effected by the Talukdari Settlement Officer in favour of Manilal Maganlal." Their Lordships also observed:

"A formal lease is not necessary to attract the application of Section 53-A, T. P. Act. All that is required is that an agreement in writing signed by the transferor can be gathered from the evidence. The correspondence mentioned in Ex. 181 fully establishes that fact."

From the above decision, it can be seen that under certain circumstances the correspondence also can be looked into. The notice issued by the petitioner through his counsel some time in the year 1977 shows that there was no lease deed as such, but a renewal of the term of the lease was agreed upon. Admittedly the lease expired on 31-12-1967 and there was some correspondence going on. The petitioner has however been receiving the rents. In the abovementioned notice in paragraph 3 it was mentioned thus:--

"But for some reason or the other the renewal of the document could not be executed. The said corporation continued in possession till the end of June, 1974, thereafter your Corporation seems to have taken over business of the said company."

27. In paragraph 4 it is stated as follows:--

"The renewed term of lease would expire on 31-12-1977 and you are not entitled to any further extension of time nor is my client inclined to grant any extension of time." These recitals show that the 2nd respondent was permitted to continue as a tenant. Therefore, such a right of tenancy in favour of the 2nd respondent existed on the appointed day and therefore, if the 2nd respondent exercises its

option u/s 5(2) the right to tenancy has to be renewed on the same terms and conditions and we declare accordingly. But this right is of course subject to the other contention of the petitioner that the tenant continued merely as a tenant holding over for he committed default in complying with the conditions of the lease and was consequently disentitled to the renewal of the lease or right to tenancy.

28. The learned counsel for the petitioner contends that from the correspondence as well as the surrounding circumstances it can be gathered that the conditions in Clause 3 (d) of the original lease deed which expired on 31-12-1967, have not been duly complied with by the 2nd respondent subsequently, and even assuming that there was a right of tenancy, there is no question of implied renewal of the right of tenancy. In Clause 3 (d) of the lease deed dated 31-12-1967 it is mentioned that there can be a further renewal of the lease, provided there was no breach or non-observance of any of the covenants on the part of the tenant. The learned counsel invited our attention to some of the notices issued on behalf of the petitioner stating that there were certain breaches committed by the 2nd respondent-tenant. He further contended that in view of the non-observance of the conditions the 2nd respondent could not have asked for renewal as provided under Clause 3 (d) of the lease deed and if the 2nd respondent was allowed to continue as a tenant it was only as a tenant holding over, and if at all the 2nd respondent claims renewal of the tenancy exercising its option u/s 5(2) of the Esso Acquisition Act, it can only be subject to such terms and conditions and no more. The learned counsel for the 2nd respondent however disputed that the conditions of the lease were not duly observed.

29. From what has been stated above, It can be seen that though the lease deed expired on 31-12-1967 the 2nd respondent continued as a tenant subject to the same term and conditions. The correspondence however shows that there have been disputes about the due observance of the terms of the lease by the lessee including the delay in payment of rentals. Thus, there is a dispute about the due observance of the conditions by the 2nd respondent while it continued as a tenant. If the averments in the correspondence are to be believed, it has to be held that there was such non-observance; and if so, the continuance of the 2nd respondent as a tenant cannot be by virtue of renewal provided for under Clause 3 (d) of the lease deed and at the most it must have been continuing as a tenant holding over and a renewal u/s 5(2) of the Esso Acquisition Act can be only on the same basis. However, this is a disputed question of fact without resolving which we cannot give any relief to the petitioner, and we think these writ proceedings are inappropriate to go into these disputed questions of fact. It is open to him to pursue his remedies in a civil Court.

39. In the result, all the writ petitions are dismissed. No costs. Advocate's fee Rs. 250/-in each. (Order of the Court pronounced by Madhava Reddy, J.)

31. The points arising in this case have been disposed of in view of the dicta laid down by the Supreme Court. No substantial question of law as requires the

consideration of the Supreme Court survives. We are unable to certify that it is otherwise a fit case for grant of leave to appeal to Supreme Court Leave refused.