
(1966) 07 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No"s. 1543 of 1964 and 416 and 1473 of 1965

N. Krishnaraju Reddiar and Others

APPELLANT

Vs

Authorised Officer, Land Reforms, Vellore and Others

RESPONDENT

Date of Decision : 29-07-1966

Acts Referred:

Constitution of India, 1950 — Article 13(1), 13(2), 14, 245, 246

Citation : AIR 1967 Mad 352 : (1967) ILR (Mad) 109 : (1967) 80 LW 175

Hon'ble Judges : Veeraswami, J;Natesan, J

Bench : Division Bench

Judgement

Veeraswami, J.

(1) In a batch of writ petitions, which we have heard, the constitutionality of the Madras Land Reforms (Fixation of Ceiling on Land) Act 1961 is

assailed on certain grounds notwithstanding the fact that it was included in the Ninth Schedule to the Constitution of India by the Seventeenth

Amendment. Further, the scope and effect of some of the provisions of the Act as applicable to particular facts in each case have to be decided.

Though for convenience sake, the batch of petitions was heard together on the validity of the Act, on the second question of interpretation we

propose to deal with these petitions separately in the light of the acts in each of them. We shall at the moment confine ourselves to W. P. 1543 of

1964 and 416 and 1473 of 1965.

The first of them is for mandamus directing the Authorised Officer, Land Reforms, Vellore and the State of Madras, to forbear from taking

proceedings against the petitioner and the lands set out in the schedule attached to his affidavit in support of the petition under the provisions of the

Act. In compliance with a notice served on him, the petitioner filed a return on 25-12-1962, in which he disclosed the members of his family

including his minor sons and unmarried daughters, and extend of 185--47 acres as lands deemed to have been held by him at the date of the

commencement of the Act.

On 6-4-1962 he had executed a settlement deed in favour of his wife making a gift to her of an extend of 78-471/2 acres of Bodinayakanapatti

and on 27-3-1963, there was a family arrangement in respect of all the lands belonging to the family at which 35 acres 58 cents were allotted to

the petitioner's share, 34-31 acres to his minor son Manimalan and 34-32 acres to another minor son of his by name Ravichandran. On 25-3-

1964, the petitioner's wife executed a gift deed settling 39 acres on her three minor daughters. On 9-2-1962, the petitioner had executed a sale in

favour of one Periaswami Gounder conveying 7 acres 25 cents in Namakkal taluk in Salem District. The Authorised Officer after summoning the

evidence from the petitioner, held an enquiry and eventually found, according to the petitioner, that the sale deed dated 9-2-1962 and the

settlement deed dated 6-4-1962, were void.

The petitioner maintains that the Authorised Officer had no jurisdiction to do so and that the Act itself invalid. Though in the affidavit in support of

the petition, various grounds based on fundamental rights have been raised actually at the hearing the attack on the validity of the Act was not

based on violation of the fundamental rights of the petitioner evidently because of the bar under Article 31-B of the Constitution but was confined

to certain other grounds claimed to be still available to the petitioner which we shall refer to presently.

The petitioner says that by reason of the provisions of Act, treating the total extent of the properties covered by various transactions

aforementioned has been owned by a single family the petitioner, his wife, his sons and daughters are required to part with a substantial portion of

their properties. The respondents counter the attack mainly on the basis of the protection afforded to the Act by Article 31-A and 31-B of the

Constitution as amended by the Seventeenth Amendment in 1960. They deny that the Act is open to any challenge on any ground.

The challenge to the validity of the Act is on the following grounds: (1) The Act

having been struck down is invalid by the Supreme Court in A.P.

Krishnasami Naidu etc. Vs. State of Madras, , it is non est and in void initio. Article 31-B does not help to validity it without a separate validating

Act passed the Madras Legislature; and (2) the Act is competent for want of legislative power.

(2) We shall notice the provisions of impugned Act in some detail when we with the second ground. Briefly, the Act a ceiling on agricultural land

holdings in State of Madras and provides for acquisition such land in excess of the ceiling and distribution of the lands so acquired to the landless at

other persons among the rural population Act is pursuant to the directive policy continued in Article 39(a)(b) of the Constitution has been enacted

to do away with the great disparity in the ownership of agricultural lands leading to the concentration of such land in the hands of a few persons and

to distribute the agricultural land in such a way as will best subserve the common goods, increase agricultural production and promote justice,

social and economic.

The Bill, which was published on 6-4-1960 was introduced in the Legislative Assembly of this State on 14-4-1960. After its passage through the

Legislature and the assent of the President, the Act was published in the Fort St. George Gazette. It provided that it was to come into force from

the date of the publication of the Bill. On 2-10-1962, there was a notification u/s 8 of the Act, relating to the furnishing of returns by persons

holding lands in excess of ceiling area. On 9-3-1964, in A.P. Krishnasami Naidu etc. Vs. State of Madras, the Supreme Court struck down the

entire Act because Sections 5 and 50 of the Act violated Article 14 of the Constitution.

On 20-6-1964, the Parliament in exercise of its constituent power passed the Constitution (Seventeenth Amendment) Act 1964, including the Act

in the Ninth Schedule to the Constitution. The validity of this amendment was questioned on certain grounds in Sajjan Singh Vs. State of Rajasthan,

, but the contention was rejected on 30-10-1964. Articles 31-A and 31-B were first inserted in the Constitution by the Constitution (First

Amendment) Act, 1951, the first intended to save shows providing for the acquisition of estates and the other for validation of the Acts and

Regulations specified in the Ninth Schedules to the Constitution notwithstanding

the fact that they were in violation of one or more of the provisions of Part III of the Constitution.

The history and the circumstances in which these two Articles came to be inserted are well known and have been reiterated by courts more than once and it will suffice to refer to *Sajjan Singh Vs. State of Rajasthan*, . The laws giving effect to the policy of agrarian reform and abolition of zamindari were declared to be unconstitutional in some of the States but held valid in others in about 1951 and there were appeals pending in the Supreme Court regarding the latter. The First Amendment to the Constitution was therefore, made inserting the two Articles which afforded protection to certain laws whose main object was to bring about agrarian reforms. But the protection so aforesaid was limited to an attack based on the provisions of Part III of the Constitution.

In 1955 came the Fourth Amendment to Constitution somewhat widening the scope Article 31-A and extending the protection to larger area. In

Karimbil Kunhikoman Vs. State of Kerala, , the Kerala Agrarian Relations Act 1961 was struck down as unconstitutional and, as we mentioned,

the present impugned Act was similarly struck down in *A.P. Krishnasami Naidu etc. Vs. State of Madras*, . Measures providing for agricultural

land ceiling and distribution of access, lands in certain other States were also and challenge. And so by the Seventeenth Amendment, 44

enactments in different States of which the impugned Act is one were inserted in the Ninth Schedule to the Constitution and were placed within the

purview of Art. 31-B. Article 13(1) renders pre-Constitution laws void to the extent of their inconsistency with the provisions of Part III of the

Constitution and Clause (2) of the Article, by using similar phraseology, declares that they shall be invalid to the extent they take away or abridge

the rights conferred by that Part. Article 31-B aims at saving the Acts and Regulations specified in the Ninth Schedule notwithstanding their

violation of the provisions of Part III and thus validating the Acts and Regulations enabling them to continue in force notwithstanding any judgment,

decrees or order of any court or Tribunal to the contrary.

(3) Sri Vedantachari for some of the petitioners whose leading argument has been adopted by the rest of the petitioners contends that the

impugned Act, a post-Constitution law, to which Article 13(2) applies, was void

ab initio and was therefore, still-born because it took away or abridged the rights conferred by Part III, and contravened Article 13(2) and that such an Act is not validated by a subsequent Amendment to the Constitution removing the constitutional limitation. The principle of the argument is undoubtedly correct and is supported by *Deep Chand Vs. The State of Uttar Pradesh and Others*, Where an Act of a Legislature is incompetent either because it violates any of the fundamental rights under Part III of their is lack of power under the relative legislative Entry, the Act is void ab initio and can have no force from the very inception. Such an Act in either case is still born. If, by subsequent amendment of the Constitution, the required legislative power is conferred or the constitutional limitation in relation to the fundamental rights is lifted, that will not ipso jure have the effect of reviving the still born Act. The majority judgment of the Supreme Court in *Deep Chand Vs. The State of Uttar Pradesh and Others*, observed :--

The validity of a statute is to be tested by the constitutional power of a legislature at the time of its enactment by that Legislature, and, if thus tested it is beyond the legislative power, it is not rendered valid without re-enactment if later by constitutional amendment the necessary legislative power is granted. "An after-acquired power cannot ex proprio vigore, validate a statute void when enacted.

For purposes of this text, as held in that case, it makes no difference to the legislative power whether it is in relation to lack of it under the relative legislative list or a limitation upon the legislative power in the form of fundamental rights, since both represent only two aspects of want of legislative power. Though there may be legislative power to enact a particular law still if it is in contravention of the fundamental rights, the effect of Article 13(2) upon such law has been stated thus by the Supreme Court at page 656 :--

A plain reading of the clause indicates without any reasonable doubt that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a still born law.

The earlier decisions were considered and in the light of the discussion with reference to them the Supreme Court summarised the resultant propositions at page 664;--

(i) Whether the Constitution affirmatively confers power on the legislature to

make laws subjectwise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power; (ii) the Constitution in express terms makes the power of a Legislature to make laws in regard to the entries in the List of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitutional, (iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case may be; and (iv) the doctrine of eclipse can be invoked only in the case of law valid when made, but a shadow is cast on it by supervening, constitutional inconsistency or supervening existing statutory inconsistency; when the shadow is removed, the impugned Act is free from all blemish of infirmity.

(4) The last proposition applies to pre-Constitution laws which falls within the purview of Art. 13(1). This view of the Supreme Court that no distinction can be made between a post-Constitution law beyond the legislative competence and a law in violation of fundamental rights for purposes of Article 13(2), that in either case the law will be invalid an initio and that a subsequent Amendment of the Constitution supplying the power or removing the ban cannot automatically revive such law finds affirmance in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and

Others, .

(5) But is it no open to the constituent power which is supreme to expressly validate a law hit by Article 13(2) of the Constitution by removing the prohibition specifically with reference to such law? In our opinion, the answer must be in the affirmative. If a law in the teeth of a constitutional prohibition is invalid from its inception, we can see no valid objection to the constitution power lifting the prohibition retrospectively and providing that the law should not be deemed to be void by reason of that prohibition, thereby reviving and validating the law right though. That is what Article 31-B does. In terms it says that none of the Acts and Regulations specified in the Ninth Schedule shall be deemed to be void or even ever to have become void on the ground that such Acts or Regulations are inconsistent with or take away or abridge any of the rights conferred by any provisions of Part III.

The Article further provides that such Acts and Regulations shall continue in force notwithstanding any judgment, decree or order of a Court of

Tribunal to the contrary subject of course to the power of the competent Legislature to repeal or amend them. Art. 31-B as not, therefore, merely

a subsequent Amendment of the Constitution removing with retrospective effect the ban or prohibition under Article 13(2), but is itself expressly

validating the Acts and Regulations specified in the Ninth Schedules, notwithstanding the prohibition and declaring that they shall continue in force

Deep Chand Vs. The State of Uttar Pradesh and Others, , does not therefore assist the petitioners.

The validity of the Seventeenth Amendment to the Constitution was attacked in the Supreme Court in Sajjan Singh Vs. State of Rajasthan, on the

ground that its true purpose and object was to legislate in respect of land and the subject fell within the jurisdiction of the State Legislature and that

the Parliament had no power to legislate in respect of land. The argument was also presented in another form and in the light of the scheme of

Articles 245 and 246 of the Constitution. In repelling the contention, the Supreme Court held:

What the impugned Act purports to do is not to make any land legislation but to protect and validate the legislative measures in respect of agrarian

reforms passed by the different State Legislatures in the country by granting them immunity from attack based on the plea that they contravene

fundamental rights. Parliament, in enacting the impugned Act, was not making any provisions of land legislation. It was not validating land

legislations already passed by the State Legislatures in that behalf.

Likewise another argument of the petitioners is also met by this decision. It held that the Seventeenth Amendment does not in substance purport to

set aside the decisions of Courts of competent jurisdiction and which some of the Acts added to the Ninth Schedule has been declared to be

invalid and that the constituent power conferred by Article 368 on the Parliament could be exercised both prospectively and retrospectively. The

Seventeenth Amendment is obviously retrospective in its effect and it has that effect notwithstanding the decisions of Courts.

(6) It is next contended that Article 31-B, on a proper interpretation of its terms, does not save the impugned Act. It is stated that the language

employed by the Article is not appropriate to cover Acts and Regulations which were void ab initio and the Article is not retrospective in its

operation so as to validate such Acts and Regulations. Reliance is placed in support of the construction on the words "ever to have become void

and it is contended that they signified Acts and Regulations which were valid at inception but became void at a subsequent stage on the ground that

they were inconsistent with or took away or abridged any of the rights under Part III of the Constitution.

It is further argued that the use of the words "continue in force" in the concluding part of the Article also supports that view. We are unable to

accept the contention. The Article on the fact of it, having regard to its language, the object, and the circumstances in which it was introduced and

the defects it sought to rectify, is clearly, in our opinion, retrospective in its operation. The words "ever to have become void" make it beyond

doubt that this is the effect of the Article. The same effect is conveyed also by the words "none of the Acts and Regulations..... shall be deemed

to be void....." The intention of the Article is to revive and validate both Acts and Regulations which fall within the purview of Clauses (1) and

(2) of Article 13, and in our view, the language of Article 31-B quite clearly and appropriately gives effect to that intention.

Sri Venugopal for some of the petitioners contends that the Article in dealing with the Acts added to the Ninth Schedule makes a difference

between those which violate the provisions of Part III but not struck down by Courts and Acts struck down by the Courts and that in the latter

case it does not give to such Acts life retrospectively. According to learned counsel, this is clear from the phraseology "continue in force" which is

suggestive of only a future effect. This contention also, as it seems to us, is unsound. In our opinion there is no such dichotomy in the Article. and

the Acts and Regulations referred to in the first part of the Article are comprehensive and there is no reason to think that they do not include also

those struck down by Courts.

The first part of the Article saves and validates both pre and post-Constitution Acts and Regulations and the second part of the Article specifically

referring to struck down Acts is only by way of abundant caution and to make it plain that if some of the Acts and Regulations specified in the

Ninth Schedule happened to have been struck down by Courts, they would nevertheless continue in force, but such continuance in force is by

reason of the validation of those Acts and Regulations made by the first part of the Article. The validation of Acts and Regulations is not continued

in our opinion, to those Acts and Regulations, not struck down but extends to all Acts and Regulations specified in the Ninth Schedule.

In any event, says Sri Venugopal inasmuch as the Article validates only the Acts and Regulations specified in the Ninth Schedule, in the absence of

a clause saving actions taken and things done, the rules made under the impugned Act are not saved and validated. We are not impressed by this

argument as well. When the effect of the Article is that the Act and Regulations specified in the Ninth Schedule should be taken to have been

always valid, the natural consequence will be that the rule made thereunder also get automatically validated. We cannot say that when the Acts

were valid from inception they were nevertheless not so when the rules were made thereunder.

It is true that this construction might possibly lead to certain hardships, inconvenience and perhaps even absurdities. The Act creates offence for its

purpose, provides for limitations in certain cases and attaches liabilities. But we dare say that those, who are charged with the duties of

administering the Act, will take due note of the factual position and the circumstances in which the impugned Act was validated and not act

unreasonably in prosecuting for offences supposed to have been committed before the Act was validated by the constitutional amendment or

insisting upon limitation or pursuing liabilities for the period prior to the validation.

No doubt, Courts, if possible, avoid a construction which will lead to such an unenviable position. But it is equally clear that when Article 31-B is

clearly retrospective and validates the impugned Act from its inception, we cannot imagine that it was invalid when rules thereunder were made.

(7) We pass on to a consideration of the question of legislative competency to make the impugned Act. Sri Vedantachari contends that it will fall

neither under Entry 18 of List II nor under Entry 42 of List III of the Seventh Schedule to the Constitution. On the other hand, the learned

Advocate General maintains just to the contrary and says that both the Entries read together provide necessary power for the State Legislature to

enact the impugned Act. Before we deal with this contention, the main provisions of the Act should be noticed. We have already given the outlines

of it. As we said, its primary object is to give effect to the directive principles contained in Article 39(b) and (c) of the Constitution and to do away

with the concentration of agricultural lands in the hands of a few, to fix a ceiling on agricultural holding, to acquire the surplus agricultural land and

distribute the same among the landless and other persons among the rural population.

The concentration of agricultural land cannot be tackled without fixing a ceiling and ceiling necessarily leads to acquisition of the excess over the

ceiling area and distribution of the same. The Act contains fourteen Chapters. Chapter I deals with preliminary including definitions, Chapter II

with fixation of ceiling on land holdings, Chapter III with ceiling on future acquisition and restriction on certain transfers, Chapter VI with

compensation for the excess land acquired, Chapter VIII with cultivating tenant's ceiling area, Chapter IX with exemption and Chapter XIII with

disposal of land acquired. The rest of the Chapters relate to the constitution of the Land Board, Sugar Factory Board and miscellaneous matter

Section 3 defines, among others, ceiling area, cultivating tenant family, owner, person and standard acre.

The definition of "family" is quite artificial and means in relation to a person the wife or husband, as the case may be of such person and also his to

her minor sons, unmarried daughters and minor grandsons and unmarried grand-daughters in the male line, whose father and mother are dead. But

in regard to persons governed by Hindu Law, family will not include "'minor sons'" minor grandsons between whom and the other members of the

family, a partition by means of a registered instrument has taken place or in respect of whose family properties, a preliminary decree for partition

has been passed, before the date of the commencement of the Act. By "'owner'" is meant any person holding land in severalty or jointly or in

common under a ryotwari settlement or in any way subject to the payment of revenue direct to the Government landholder as defined in the

Madras Estates Land Act, 1908, or a riot as defined in that Act or an inamdar not being a landholder as aforesaid and includes fall owner or

limited owner the lessee of any leasehold village or his heirs, assignees, legal representatives or persons deriving rights through him.

Person"" is defined to include any trust, company, family, firm, society or association of individuals, whether incorporated or not. ""Standard acre"" is defined as so much area dependent upon the character of the land and the quantum of land revenue pertaining thereto. ""Surplus land"" means the land held by a person in excess of the ceiling area and declared to be surplus by or under the provisions of the Act. The term ""tenant"" also has been defined. Section 5 fixes the ceiling area for a person or a family. In the case of a person, the ceiling area, subject to the other provisions of the Act, shall be 30 standard acres and in the case of every family consisting of not more than five members, it shall be a similar extent.

If the family consists of more members than five, an additional five standard acres is allowed for every member of the family in excess of five. For the purpose of the section, all lands held individually by the members of the family or jointly by some or by all of the members of such family shall be deemed to be held by the family. In calculating the extent held by a member of a family or by an individual person, the share of the member of the family or of the individual person in the land held by an undivided Hindu family, a Marumakatayam tarward, an Aliyasantana family or a Nambudiri Illom shall be taken into account; in calculating the extent of land held by a family or by an individual, the share of the family or of the individual person in the land held by a firm, society or association of individuals or by a company shall be taken into account. Where the stridhana land held by and female member of a family together with the other land held by all the members of that family, is in excess of 30 standard acres, the female member concerned may hold, in addition to the extent of land which the family is entitled to hold under sub-section (1), stridhana land not exceeding 10 standard acres. There are further provisions in this regard.

Sec. 6 provides for basis of calculation of the extent of land held by a founder of a trust. Section 7 directs that on and from the date of the commencement of the Act, no person shall, except as otherwise provided in the Act, but subject to the provisions of Chapter VII, be entitled to hold in excess of the ceiling area. Section 8 requires furnishing of returns in the prescribed form and containing the particulars on certain specified matters. Section 11 authorises an Authorised Officer to decide questions of title in certain cases and u/s 12, after the disposal of objections, a final

statement is published specifying therein the entire land held by a person, the land to be retained by him with the ceiling area and the land declared

to be surplus land and such other particulars as may be prescribed.

The authorised officer shall serve a copy of the statement on the persons concerned which shall be conclusive of the fact stated therein. Provisions

are made for amendment for the final statement in certain cases and for power to rectify bona fide mistakes and clerical errors. Section 16 deals

with reversion of possession within the limits to the possessory mortgagor in certain cases from the possessory mortgagee for purposes of ceiling.

Section 18 deals with acquisition of surplus land and says that after the publication of the final statement u/s 12 or 14, the Government shall publish

a notification to the effect that the surplus land is required for a public purpose.

Sub-section (3) of the section is to the effect that on the publication of the notification under sub-section (1), the land specified in the notification

together with the trees standing on such land and buildings, machinery plant or apparatus constructed, erected or fixed on such land and used for

agricultural purposes, shall, subject to the provisions of the Act, be deemed to have been acquired for a public purpose and vested in the

Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such land shall,

with effect from the said date, be deemed to have been extinguished.

Sub-section (4) enables the authorised officer to take possession of any land notified in sub-section (1). Sections 19 to 23 contain provisions

regarding ceiling on future acquisition and restriction on certain transfers as well as penalties for contravention. Section 50 is concerned with

determination of compensation for land acquired by the Government Sub-section (1) of that section says that every person whose right, title and

interest in any land is acquired by the Government shall be paid compensation according to the rate specified in Sch. III. The rest of the section

provides for the procedure to be followed in determining compensation. Section 51 deals with claims of mortgagee or chargeholder on surplus land

and Section 52 with claims of limited owner on surplus land. Sections 53 and 54 deal with claims of maintenance-holder on surplus land and

compensation to certain tenants.

Section 55 deals with mode of payment of compensation. Under the Chapter

relating to the cultivating tenant's ceiling area, the principle of ceiling is applied to cultivating tenants as defined in the Act. Section 61 provides that every cultivating tenant who holds on the notified date land in excess of the cultivating tenant's ceiling area should within 90 days from the said date of notification furnish a return containing the required particulars; and the ceiling area for a cultivating tenant is fixed at five standard acres held by his partly as a cultivating tenant and partly as owner or wholly as cultivating tenant. The excess of the ceiling area is taken by the authorised officer who is required to distribute possession of such land to the landless persons or to persons holding land below the cultivating tenant's ceiling area. Compensation is also provided by Section 66 to tenants in certain cases.

Under Section 94, the Government is empowered to make rules after taking into consideration the objects specified in the preamble to the Act providing for the manner in which the lands acquired by the Government under the Act should be disposed of. The rules so made are required to be placed before the Legislature for its approval. Subsection (2) of S. 94 contains certain principles for preference in certain cases in the matter of distribution of the land acquired by the Government. Sec. 110 contains the power for the Government to make rules and regulations specifically in the specified manner. Sch. III to the Act provides for payment of compensation for land acquired by the Government under the Act and the form of compensation will be multiples of the net annual income on slab basis. Rules made by the Government for disposal of lands contain certain guiding principles in the matter.

(8) The argument of Sri Vedantachari is that the Act is not a legislation on land or rights in or over land. He says that Entry 18 in list II is of a limited scope and the essence of it is contravention of property. Learned counsel argues that under the Entry you can limit and not destroy rights.

According to him, ceiling necessarily implies distribution involving destruction of rights. His contention is that you can legislate over one or more components of rights but not dispose of the entirety of the rights under the guise of land ceiling. The substance of the power under Entry 18, says Sri Vendantachari, is related to the relationship of landlord and tenant and the adjustment thereof.

He concedes that there may be ceiling but he would say that it should be short of deprivation and should be only in the course of adjustments of rights and liabilities as between landlord and tenant. He adds that thought "land" by itself is very comprehensive and very wide by itself, the words that is to say" limit the scope of land to what is enumerated following the words "that is to say." "Rights in or over land", according to learned counsel, should be understood as relatable to those that go with the relationship of landlord and tenant and land tenures.

(9) In deciding whether an Act is within the ambit of a legislative Entry, we have first to see what the pith and substance of that Act are and bear in mind the broad principles of construction of heads of power in an organic law. The pith and substance of the impugned Act are to take a further step in the agrarian reform and solve the problem of concentration of agricultural lands. The Act, therefore, provides for ceiling of agricultural holdings and necessarily, therefore, for acquisition of surplus over the ceiling area and for distribution of such surplus to tenants or landless among the agricultural population. That clearly falls within the ambit of land, rights in or over land in Entry 18. The Entry should be read as liberally and as widely as possible and should be taken to include all incidental and ancillary matters. If the Entry merely used the expression "land" it is obvious that it would be impossible to contend that the impugned Act is not within its ambit.

But it is contended that the wide amplitude of the word "land" is narrowed down by the words following "land" and principally by the words "that is to say", the effect of which, according to learned counsel, is to restrict the scope. We are unable to take this view. It is true that Bhagwati J. as he then was, in *Tan Bug Taim Vs. Collector of Bombay*, construing the words "that is to say" was inclined to think that those words were imitative and not merely illustrative. With respect, we do not share that view. The learned Judge himself referred to the following passage in Stroud's

Judicial dictionary:

"That is to say" is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties: (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it

may restrict it".

Taking the last item the learned Judge considered that it would not be possible to read Item 21 in List II of Sch. VII to the Government of India

Act which corresponds to Entry 18 in List II of the Constitution as comprising or comprehending anything beyond what has been described in

particular items following the word "that is to say". We should not forget that we are concerned with the construction of a head of a legislative

power and in such a case unless we are compelled by the language, we ought to put upon the head the widest possible construction. On a

comparative regarding of the relative Entries in the three Lists, we do not see why the expression "land" in Entry 18, List II should not be given its

full amplitude and we do not think that the words "that is to say" justify a different construction. In our opinion, those words are merely illustrative

and not restrictive or limitative. In any case "rights in or over land" are comprehensive enough to include a legislation which fixes a ceiling on

agricultural holding and provides for acquisition of the surplus and distribution of the same to the landless.

(10) In *Atmaram v. State of Punjab*, AIR 1950 SC 519, the Supreme Court held that the Punjab Security of Land Tenures Act 1953 was

competent under Entry 18 in List II of Sch. VII to the Constitution. Among other provisions, this Act provided for ceiling on land holding, a

permissible area in relation to landlord and tenant being restricted to thirty standard, acres, and thereby released a large area for resettlement of

tenants ejected or to the ejected under the provisions of the Act. The Court upheld the validity of the Act under Entry 18 with these observations

at page 522:

It will be noticed that the Entry (Entry 18) read along with Article 246(3) of the Constitution, has vested exclusive power in the State to make

laws with respect to "rights in or over land, land tenures including the relation of landlord and tenant...." The provisions of the Act set out above,

deal with the landlord's rights in land in relation to his tenant, so as to modify the landlord's rights in land and correspondingly, to expand the

tenant's rights therein. Each of the expression "right in or over land" and "land tenures" is comprehensive enough to take in measures of reforms of

land tenure, limiting the extent of land in cultivating possession of the land-

owner, and thus, releasing larger areas of land to be made available for cultivating by tenants".

(11) Similarly in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, the Supreme Court dealt with the validity of the Bombay Tenancy and

Agricultural Lands (Amendment) Act 1956. This Act also fixed a ceiling of agricultural holding, and provided for acquisition of land in excess of if

and distribution of the same with a view to give effect to the directive principles contained in Arts. 38 and 39 of the Constitution and the policy of

establishing a socialistic pattern of society within the meaning of those Articles. On a construction of Entry 18 with reference to the principles of

construction, the Supreme Court said-

having regard to the principle of construction enunciated above it is clear that the impugned Act is covered by Entry 18 in List II of the Seventh

Schedule to the Constitution and is a legislation with reference to "land" and this plea of legislative incompetence of the State Legislature to enact

the impugned Act therefore fails".

(12) In *Karimbil Kunhikoman Vs. State of Kerala*, in which one of the questions was as to the legislative competency to enact the Kerala

Agrarian Relations Act 1962 the Supreme Court was of opinion-

But if one looks at the purpose and object of the Act it will be clear that the main provisions of the Act are clearly within the legislative

competence of the State Legislature under item 18 of List II and Item 42 of list III.

The main purpose of the Kerala Act was to do away with intermediaries, fix a ceiling and give the excess land to the landless and those who hold

lands much below the ceiling. The method employed to carry out the object was first to acquire land and thereafter assign it to the cultivating tenant

and landless and those with small extents of land. The Assam High Court in *Anil Kumar Bhattacharjee and Others Vs. Deputy Commissioner and*

Collector and Others, held that the Assam Fixation of Ceiling on Land Holdings Act, 1957, was competent for the State Legislature to enact under

Entry 18 of List II and Entry 42 of List III.

(13) *Sri Vedantachari* tried to distinguish those decisions and contended that in every one of those cases, while the landlord's right was curtailed,

there was corresponding expansion of the tenant's right. We do not think that the Madras Act which is impugned is substantially different from the

Act dealt with in those decisions from the standpoint of the main purpose and the scheme and method of achieving that purpose, namely destroying

concentration of agricultural holding, acquisition and distribution of the excess over the ceiling area. In any case, we are unable to accept the view

that the legislation to be valid under Entry 18 should do no more than adjustment of rights and liabilities as between landlord and tenant--curtailing

the rights of the landlord and correspondingly increasing the rights of the tenant.

(14) Sri Vendantachari also argues that the acquisition of the surplus land will not fall under Entry 42 of List III particularly in view of the artificial

definition of "family" which applies both for the purpose of computation of the extent of the agricultural holding for fixation of ceiling area and also

for determination of compensation for the excess land acquired any payment thereof. The provisions relating to acquisition clearly lay down that the

excess land acquired will vest in the State on acquisition and we can find no justification for the contention that the Act provides for transfer of land

or title from one person to another for purposes of determination and payment of compensation.

The Act does make provision for enunciating the principles for determination and payment of compensation and this Court cannot go into the

question of adequacy or quantum of compensation. Further, by reason of Art. 31-B the Act is not open to attack on ground of violation of Article

31. We hold, therefore, that the impugned Act is within the legislative competency of the State Legislature under Entry 18 of List II and Entry 42 of

List III in the Seventh Schedule to the Constitution.

(15) Sri Vedantachari contends that the impugned Act in so far as it relates to acquisition and payment of compensation is a colourable exercise of

power under Entry 42 of list III. He says that by an artificial definition of a "family" and by a fiction, we cannot regard properties under different

titles as properties of one person or family, arrive at a surplus and they say that the surplus is acquired. This argument differs only in form from the

attack on the Act on the ground that it lacks legislative competency and offends fundamental rights. We have already repelled that attack and

upheld the validity of the Act.

In our view, the effect of the provisions of the Act in relation to the definition of "family" and the ascertainment of surplus over the ceiling area is

merely for the purpose of applying ceiling and ascertaining the surplus. The provisions of the Act nowhere as already mentioned, provide for power

to compel transfer from one person to another. Nor are titles mixed up for the purpose of payment of compensation. The argument is really not

open in view of the Seventh Amendment to the Constitution relating to the power of acquisition and of the terms of Article 31-B.

(16) There remains the question of construction of the impugned Act. We think this question will have to be decided more conveniently while

disposing of each petition in the light of its facts. The petitioner in W. P. 1543 of 1964 has stated in his affidavit that the Authorised Officer has no

power to decide the validity of the transfers. As already noticed by us, Section 11 provides for it and the Authorised Officer has power to decide

questions of title in certain cases. If the petitioner is aggrieved, the Act provides remedy against the orders of the Authorised Officer. The facts in

W. P. 416 and 1473 of 1965 are of the same pattern and do not require detailed notice. They raise more or less the same questions as W. P.

1543 of 1964.

(17) The petitions are all dismissed with costs; counsel's fee R. 100 in each.

W. P. 416 1965 and 1473 of 1965

(18) These petitions coming on this day for being mentioned, the Court made the following order--Thought we dismissed W. P. 1473 of 1965,

1543 of 1964 and 416 of 1965, since we have made certain observations in W. P. 1474 of 1965 and 242 of 1965 in relation to Sections 22 and

9(2)(b) of the Act and in the circumstances the respondents may we except take these observations into account in dealing with the relative matters

further.

(19) Petitions dismissed.