

(1996) 07 CAL CK 0018

In the Calcutta High Court

Case No : Appeal from Order No. 400 of 1992 arising out of Matter No. 1637 of 1987, F.M.A.T. No's. 2565 of 1995 and 736 of 1996

Paschimbanga Bhumijibi Krishak Samiti and Others

APPELLANT

Vs

State of West Bengal and Others
 Abdul Hai Vs
Revenue Officer
 Tarapada Das Palit Vs Revenue
Officer

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20, 25, 26
West Bengal Estates Acquisition Act, 1953 — Section 4, 5, 6
West Bengal Land Reforms (Amendment) Act, 1981 — Section 26, 4(4), 4(5)
West Bengal Land Reforms (Amendment) Act, 1991 — Section 17(2), 30
West Bengal Land Reforms Act, 1955 — Section 14M(6), 14P, 14P(1), 14Q, 14Q(1)

Citation : (1996) 2 CALLT 183 : 100 CWN 900 : (1997) 2 ILR (Cal) 447

Hon'ble Judges : Satyabrata Sinha, J; Satya Narayan Chakrabarty, J

Bench : Division Bench

Judgement

Satyabrata Sinha, J.—These Appeals principally raising the question of constitutionality of West Bengal Land reforms (Amendment) Act, 1981 (hereinafter referred to as 1981 Amendment Act) and West Bengal Land reforms (Amendment) Act, 1986 (hereinafter referred to as the 1986 Amendment) Act were heard together and are being disposed of by this common judgment.

2. In the main matter namely Appeal from Order No. 400/92 arising out of Matter No. 1367/87 (Paschimbanga Bhumijibi Krishak Samiti and Ors. v. State of West Bengal and Ors.) two applications for amendment have been filed questioning the Constitutional First Amendment Act, 1951 in so far as it purported to insert Article 31B; Sections 6,7,8 and 2 of the Constitution (44th) Amendment Act, 1978 the Constitution (66th) Amendment Act, 1991 in so far as 9th Schedule of the Constitution was amended by inserting West Bengal Act No. 1980 Item No. 251 therein and the Constitution (78th) Amendment Act, 1995 in so far as the West Bengal Land Reforms Act, 1981 and 1986 were included therein as Items No. 278 to 280 in the 9th Schedule. The said applications for

amendment were allowed and the Union of India was added as a party. Notices have been served upon the Union of India as well as the Attorney General of India.

3. The challenge to Constitution First Amendment Act, 1951 was not pressed as the validity thereof had been upheld by the Supreme Court of India. Similarly the validity of the 44th Amendment of the Constitution deleting Article 31 and 19(1) (f) form Part-III of the Constitution was not pressed in view of the decisions of the Supreme Court of India covering the said question. However, according to the learned Counsel for the petitioners the said challenges are not given up.

4. The questions which, therefore, arise for consideration in these appeals are : (1) whether the 1981 and 1986 Amendment of the West Bengal Land Reforms Act (hereinafter called and referred to for the sake brevity as the said Act) are ultra vires the Constitution of India : (2) whether, the Constitution 66th Amendment Act, 1991 and the 78th Constitution Amendment Act, 1995 are ultra vires being destructive of the basic structure and/or basic feature of the Constitution of India.

5. Several writ applications had been filed in this court questioning the vires of 1981 Amendment Act and 1986 Amendment Act. The learned trial Judge by reason of the impugned judgment dated 7th May, 1992 up held the vires of the said Amendment Act but Sub-section (4) of Section 4 incorporate by Section 8 of 1981 Act as well as Sub-section(5) thereof being consequential to Sub-section (4), Sub-section (5) of 14T of the Principal Act as amended by Section 26 of the 1981 Amending Act, Section 14SS of Principal Act inserted by Section 1991 Amending Act and Section 17(2) of the Principal Act amended by Section 30 of the Amending Act which provisions had been declared as ultra vires the Constitution of India. However, now it appears that Section 14-T(5) of the Act has been held to be intra vires by a division bench of this Court. But according to the learned Counsel, the said decision is an obiter and does not, thus, decide the questions finally between the parties.

6. Before us the main argument of behalf of the petitioners had been advanced by Sri S. Pal senior counsel and the same had been supplemented by Sri Manna, Sri Saradindu Samata and Sri Bhuyan. The State has been represented by Mr. Sadhan Gupta senior Counsel. Mr. Soumen Bose, senior Counsel, appeared for Attorney General of India. The submission of Mr. Soumen Bose, learned Counsel, has been adopted by Mr. learned Counsel, appearing on behalf of the Union of India.

7. The learned Counsel appearing on behalf of the writ petitioners appellant principally questioned the vires of the provisions of Section 2(7) inserted by Section 5, Section 3A inserted by Section 7, Section 14-T(5) & (6) inserted by Section 26, Section 14M inserted by Section 20, Section 14Q inserted by Section 22, Section 14T(5) and 14T(6) and 14J inserted by Section 20 and Section 14V of the 1981 Amendment Act and Section 3A inserted by Section 2A and Section

4D inserted by Section 3 of 1986 Amendment Act and some other provisions which would be considered at a later stage.

8. Admittedly when the matter was argued before the learned Trial Judge, the Amendment Acts were not brought under the protective umbrella of Article 31B of the Constitution which has been done in terms of Constitution 66th Amendment Act 1991 and Constitution 78th Amendment Act, 1985. By reason of the 1981 Amendment Act section 1A was also inserted in terms whereof a declaration has been made by 1981 Amendment Act to the effect that the said Act had been made with a view to giving effect to the policy of the State towards securing principles specified in Clauses (b) and (c) of Article 39 of the Constitution of India.

(1) The learned Counsels for the appellants, Inter alia, submitted that inclusion of non-agricultural lands within the purview of definition of land in Section 2(7) of the Act does not advance the cause of agrarian reforms and, therefore, they are not protected under Article 31A, 31B and 31C of the Constitution of India. {

(2) Despite the protective umbrella of Article 31A, 31B and 31C, the Act is open to challenge on the following grounds :-

(a) Article 31A is not available as 1981 Act does not advance the cause of agrarian reform. Reliance in this connection has been placed on Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, and Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu,

(b) Protection under Article 31B is not available as the Constitution Amendment Act is destructive of basic feature of the Constitution of India and in particular Article 14 thereof. Reliance in this connection has been placed on Waman Rao and Others Vs. Union of India (UOI) and Others, : Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, and Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another,

(c) The Act is also not protected under Article 31C of the Constitution of India inasmuch as in terms of the provisions of this Act nonagricultural tenancies including buildings, factories and everything fastened to the earth had been taken over.

(3) In any event, the said amendments having been made after the pronouncement of the Judgment on 24th April, 1973 are open to challenge on the ground that the said amendments destroy the basic structure of the Constitution in view of the decision of Supreme Court on India in Waman Rao and Others Vs. Union of India (UOI) and Others, .

(4) Assuming that the Acts are protected under Article 31A, 31B and 31C, said amending Acts are ultra vires Sections 3A(3) and Section 14V as also Article 300A of the Constitution in so far as thereby an illusory compensation of Rs. 135/-per acre is payable for which no basis for arriving at the amount of compensation has been laid down. In support of the said submission reliance has been placed on The State of West Bengal Vs. Bela Banerjee and Others, ; P.

Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, and Chanan Mal Vs. The State of Haryana and Another, and several Articles on the said question by Professor T.K. Tripathi, Justice A.M. Bhattacharjee and views of H.M. Seerral in his book Constitutional Law of India as also a recent decision of the Supreme Court of India in Jilubhai Nanbhat Khachar and Ors. v. State of Guajrat and Anr. reported in 1995 Supp(I) SCC 596. It was urged that Raiyats are entitled to compensalton in terms of the doctrine of eminent domain.

(5) Sections 14T(6), (8) & (9) are ultra vires Article 245 and 246 of the Constitution of India in so far as thereby a blatant encroachment on judicial powar has been made in terms whereof the decrees. Judgments, decisions or awards of any court or Tribunal have been done away with retrospective effect from 5th May. 1953. Reference in this connection has been made in In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, , Indian Aluminium Co. etc. etc. Vs. State of Kerala and others, and State of Haryana and others Vs. The Karnal Co-op. Farmers" Society Limited, etc. etc. and others, .

(6) Section 49(5) read with Rule 20A of the rules occurring in ChapterVI having not laid down any principles for distribution nor containing any compulsive provision do not advance the cause of agrarian reform and thus, unguided and uncontrolled power having been conferred, the Act is violative of Article 245 and 246 of the Constitution. Moreover, the right of the trust having been taken away by the said provision, the same is ultra vires Article 25 and 26 of the Constitution of India.

(7) Section 3A(3) and Section 14V are ultra vires Article 14 of the Constitution of India in so far as thereby unequals have been treated as equals. Reliance in" this connection has been placed in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, and the State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others,

(8) Section 14M(5) providing for the land of private trust or endowment as land of the author, thus creation of the trust and of a legal fiction is arbitrary. Moreover the author of the deed includes his successorsin-interest and thus even if the land has been transferred a long time back, it would he treated as the land of the successors-in-interest for fixing the ceiling area and thus, the same is patently arbitrary.

(9) Section 14P is bad in law inasmuch as thereby the transfers mate after 7th August, 1969 but before 9th September, 1980 are sought to be annulled and such transferred lands would also be treated as lands available at the hands of the transferors. The retrospective cut off date 7th August, 1969 having no nexus must be held to be violative of Article 14 of the Constitution of India.

(10) Deletion of Section 14Q(2A) in terms whereof the raiyatwas entitled to 2 hectares of orchard having found to be reasonable by the Supreme Court in Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, , the raiyats had unreasonably been deprived of such lands.

(11) Section 14U(1) is violative of Article 20 of the Constitution of India.

(12) Section 14Z having not granted any exemption for orchard or fisheries is patently arbitrary.

(13) Section 14M(6) is ultra vires Article 25 and 26 of the Constitution of India.

9. Mr. Sadhan Gupta, the learned Senior Counsel, appearing on behalf of the State of West Bengal submitted that the appellants had no locus stand to maintain the writ application and thus, this court should not decide any question in the abstract. In support of the aforementioned condition reliance has been placed on S.P. Gupta Vs. President of India and Others, A. K. Roy v. Union of India and Anr. reported in AIR 1082 SC 710 Dibyasingh Malana Vs. State of Orissa and Others, and Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, . Mr. Gupta would contend that the scope and object of the Act has to be considered keeping in view the preamble of the Constitution as also directive principle. According to Mr. Gupta, therein no conflict between fundamental right and directive principles as both are fundamental to the Constitution. Reliance in this connection has been placed on State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others, , Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others,

10. A presumption of constitutionality arises, contends Mr. Gupta and as in this case the petitioners have failed to rebut the presumption the appeals should be dismissed. It was submitted that the word "agrarian reform" must be viewed with a broad objective and in support of the aforementioned contention reliance has been placed on Madhusudan Singh and Ors. v. Union of India and Ors. reported in AIR 1994 SC 374 .

11. In the instant case the purpose enshrined under Article 31A and 31C are fulfilled inasmuch as orchard, poultry etc. could also be distributed.

12. Mr. Gupta, learned Counsel, would urge that in view of Entry 18, List-II of the 7th Schedule of Constitution of India, the State has power to acquire non-agricultural lands and thus this Court cannot go into the policy decision of the State inasmuch as unless the Legislation is held to be a colourable Legislation and/or fraud on the Constitution, the Court has no power to strike down the same. The purpose of giving retrospective effect to the provisions has been made keeping in view the attempts on the part of raiyat to convert agricultural lands into non-agricultural lands which being a matter of policy is beyond the court's power of judicial review.

13. The doctrine of "eminent domain" has no application in India as it is governed by a written Constitution and in view of the fact that Article 31(2) having been deleted, no citizen has a right to claim compensation for acquisition of land nor the adequacy thereof is justiciable. Reliance in this connection has been placed on B. Shankara Rao Badami and Others Vs. The State of Mysore and Another, and State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan

and Others, .

14. According to the learned Counsel, common law of England has no application in India and in support of his aforementioned contention reliance has been placed on S. Darshan Lal Vs. Dr. R.E.S. Dalliwall and Another, .

15. It was contended that non-agricultural lands would also come within the purview of the meaning of estate. The Amending Acts having got protection under Articles 31A, 31B and 31C of the Constitution of India, the question of the said Acts being violative of the basic structure of the Constitution does not arise.

16. Mr. Soumen Bose, the learned senior Counsel, appearing on behalf of the Attorney General of India submitted that the provision of this Act have been held to be within the protective umbrella of Articles 31A and 31C.

17. The learned Counsel, however, has fairly drawn our attention to the decision of the Supreme Court in Waman Rao and Ors Vs. Union of India (UOI) and Others, and submitted that on analysis of the said Constitution Bench Judgment it would appear that only a part of Article 14 has been held to be the basic structure of the Constitution.

18. Mr. Kundu, learned Counsel appearing on behalf of Union of India adopted the submission of Mr. Bose.

19. Before advertng to the rival contentions of the parties raised in these appeals, the legislative history of the relevant Acts may be noticed. The State enacted West Bengal Estate Acquisition Act, 1953 (being West Bengal Act No. 1 of 1954) to provide for acquisition of Estates, rights of inter-mediaries therein and of certain rights of raiyats and under-ralyats and of the rights of certain other persons in lands comprised in estates. By reason of the said Act, therefore, not only the rights of intermediaries but also certain rights of the raiyats and under raiyat and other persons were also acquired. The said Act made a distinction between an agricultural lands and a non-agricultural land by defining the same in Section 2(b) and 2(j), which read thus:-

"2(b). "agricultural land" means land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow for the time being:

2(j). "non-agricultural land" means land other than agricultural land or other than land comprised in a forest:"

20. The word "non-agricultural tenant" was defined in Section 2(k) to mean a tenant of non-agricultural land who holds under a proprietary a tenure, holder a Service Tenure Holder or an Under Tenure Holder.

21. It is relevant at this stage also to notice the definition of non-agricultural land and non-agricultural tenant as contained in Non~ Agricultural Tenancy Act, 1979, which reads thus:-

"Non-agricultural land" means land which is used for purposes not connected with agriculture or horticulture, and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include-

(a) a homestead to which the provisions of the West Bengal Land Reforms Act, 1955, (West Ben. Act 10 of 1956) apply.

(b) land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years.

(c) land in the districts of Darjeeling or Jalpaiguri which is held for purposes connected with the cultivation or manufacture of tea, and

(d) land vested in, or in possession of the State Government in respect of which any license has been granted by the State Government;

Provided that where an order has been made u/s 72 converting a parcel of land which is non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land."

22. "Non-agricultural Tenant" means a person who holds non-agricultural land under another person and is, or but for a special contract would be, liable to pay rent to such person for that land but does not include a person who holds any premises or part of any premises, situated on non-agricultural land and erected or owned by another person, and who is, or but for a special contract would be, liable to pay rent for such premises or such part of the premises to such person.

23. Explanation-in this clause "premises" means any building, such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud, melal or any other material whatsoever and includes any land appertaining to such building.

24. From what has been noticed before there cannot be any doubt whatsoever that a distinction exists between an Agricultural Tenancy and Non-Agricultural Tenancy and such tenancies were governed by different Acts.

25. In terms of Section 4 of the West Bengal Estates Acquisition Act the State was empowered to issue a notification vesting rights of the intermediaries. Section 5 of the said Act deals with the effect of UV notification issued u/s 4 by reason whereof the rights of the intermediary vest in the State free from all encumbrances including the rights in sub soil, right in hats, bazars, ferries, fisheries, tolls and other sairati as also in interest of forest etc Clause (c) of Sub-section (1) of Section 5 provides that every non-agricultural tenant shall held such tenancy directly under the State as if State had been intermediary and on the same terms and conditions as immediately before the date of vesting.

26. Section 5(1)(d) of West Bengal Estate Acquisition Act reads thus:-

"Every non-agricultural tenant holding under an intermediary and until the provisions of Chapter-VI are given effect to, every raiyat holding under an intermediary," shall be bound to pay to the State his rent and other dues in respect of his land, accruing on and from the date of vesting, and every payment made in contravention of this clause shall be void and of no effect."

27. Chapter-VI of the Act which came into force on 10th April, 1956 deals with acquisition of certain rights of raiyats and under-raiyats. Upon coming into force of the said Act the provisions of Chapter-II, III V and VII shall with such modifications as may be necessary apply mutatis mutandis to raiyats and under raiyats and as if such raiyats and under-raiyats were intermediaries and the land held by them were estates and a person holding under a raiyat and/or an under-raiyal were a raiyat for the purpose of clause (c) & (d) of Section 5.

28. Section 6 of the Act provides for the right of the intermediary to retain certain lands notwithstanding anything contained in Sections 4 and 5 thereof namely, land comprised in homesteads, land comprised in or appertaining to buildings and structures, non-agricultural land in his khas possession including land held under him by any person not being a tenant, by leave or licence, not exceeding 15 acres in areas and excluding any land retained under Clause (a) : agricultural land in his khas possession, not exceeding 25 acres in area, as may be chosen by him, tank fisheries, tea gardens or orchard or lands used for the purpose of live stock, breeding, poultry farming of dairy, lands comprised in mills, factories or workshops.

29. West Bengal Land Reforms Act, 1955 was enacted by the State to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein and also to consolidate the law relating to land reforms in the State. The said Act came into force with effect from 30.3.1956. The said Act, however, is not applicable to the area described in the Schedule-I of the Calcutta Municipal Corporation Act. The State, however, is entitled to bring into force the provision of the said Act to a part or whole of the area included in the said schedule of Calcutta Municipal Corporation Act.

30. Both the Estates Acquisition Act and the West Bengal Land Reforms Act are, therefore, complementary to each other.

31. It is not disputed that although in terms of the provisions of the Permanent Settlement Regulation, 1793 (Bengal Code No.I of 1793) there existed no distinction between an agricultural land or a non agricultural land, it is beyond any cavil of doubt that agricultural land and nonagricultural land became subject matter of separate laws as the purpose of such tenancies were different. At the relevant time such distinction was Irrelevant as all lands belonged to the Zaminders. However, the nature of tenancy would depend upon the terms of grant by the Zamindars to the tenants. Agricultural lands were governed by the provision of the Bengal Tenancy Act whereas non-agricultural lands were governed by the provision of Transfer of Property Act and the provisions of Non-

Agricultural Tenancy Act, 1949.

32. The submission of Mr. Gupta to the effect that there was no distinction between agricultural tenancy and non-agricultural tenancy, thus cannot be accepted. As noticed hereinbefore even in West Bengal Estate Acquisition Act also a distinction has been made and even the intermediaries became entitled to retain non-agricultural lands to the extent indicated therein apart from their residential buildings and agricultural lands which were in their khas cultivating possession.

33. In the Act I of 1955, the word "land" means agricultural land and including within its ambit homestead lands also. The said definition, however, was amended in the year 1965 by West Bengal Act No. VIII of 1965 to mean agricultural land other than land comprised in a tea garden which is retained under Sub-section (3) of Section 6 of the West Bengal Estate Acquisition Act, 1953 and includes homesteads. The said definition of land had undergone another Amendment in the year 1972.

34. By reason of 1981 Amendment Act, Section 2(7) had undergone a drastic change which brings within its purview, lands of every description in the following terms:-

"2(7) "Land" means land of every description and includes tank, tank-fishery, fishery, homestead, or land used for the purpose of live-stock breeding, poultry farming, dairy or land comprised in tea garden, mil, factory, workshop, orchard, hat, bazar, ferries, tolls or land having any other sairati interests and any other land together with all interests and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth."

35. However, in my opinion, the said question is academic inasmuch as the question which has to be posed and answered in these appeals, pre-dominantly is as to whether the State had the legislative competence to enact the impugned Amending Acts. If they had the legislative competence, the question as to whether non-agricultural land and other lands can be included within the purview of West Bengal Land Reforms Act would be a futile exercise. In terms of Item 18 of the List 2 of the 7th Schedule of the Constitution of India there cannot be any doubt that the State has the legislative competence to make any legislation both in respect of agricultural land as also non-agricultural lands.

36. Section 59 of the said Act, however, without prejudice to the provisions of Clause (b) of Section 2 of the West Bengal Estates Acquisition Act, 1953, inter alia, repeals the Bengal Tenancy Act, 1885, the Cooch Behar Tenancy Act, 1910 and the West Bengal Bargadars Act, 1950.

37. By reason of Section 63 which was inserted by West Bengal Act No. L of 1981 published in the Gazette dated 24.3.86 with retrospective effect from 7.8.69, provision of West Bengal Non-Agricultural Tenancy Act was also made inapplicable. Section 63 reads as follows:-

"(1) With effect from the date of coming into force of the West Bengal Land Reforms (Amendment) Act, 1981 in any district or in any area of Calcutta, such provisions of the West Bengal Non-Agricultural Tenancy Act, 1949 (West Bengal Act XX of 1949) as are repugnant to the provisions of this Act, shall cease to have effect in that district or area.

(2) Notwithstanding the provisions of Sub-section (1) any proceeding pending on the date of such coming into force before any authority appointed under the West Bengal Non-Agricultural Tenancy Act, 1949 or before any court shall be continued or disposed of as if the West Bengal Land Reforms (Amendment) Act, 1981 had not come into force in that district or area."

38. It may also be noticed that as regards Thika Tenancies existing in Calcutta, the same is governed by Calcutta Thika Tenancy Act which has not been repealed by the said Act.

39. At this juncture it is necessary to consider another Act namely Urban Land (Ceiling and regulation) Act, 1976 (hereinafter referred to Urban Ceiling Act) as it is an admitted position that the provision of the said Act would have some repercussion as regards construction of the said Act. Urban Ceiling Act was enacted to provide for exemption of ceiling on vacant land in urban agglomerations, for acquisition of such land in excess of the said limit to construction of building on such land and for matter connected thereunder with a view to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein" and with a view to bringing about an equitable distribution of land in urban agglomerations to sub-serve the common good. The Urban Ceiling Act is also protected under Article 31A, 31B and 31C of the Constitution of India.

40. The said Act was enacted by the Parliament in terms of clause (1) of Article 252 of the Constitution of India. Admittedly the said Act applies to the State of West Bengal.

41. In terms of Section 3 of the Urban Land Ceiling Act, no person shall be entitled to hold vacant land in excess of the ceiling limit in the territories to which the Act applies in terms of Sub-section (2) of Section 1.

42. Vacant land in an urban agglomeration is covered by the provision of" the said Act but vacant land outside urban agglomeration will not come within the purview of Urban Ceiling Act. There lies a distinction between a vacant land and an agricultural land in rural areas and urban areas inasmuch as in view of the definition of the vacant land as contained in Section 2(g) vacant land shall be include: (1) Lands mainly used for transferred as agriculture, (2) Lands on which constructions are not permissible under rules, (3) Lands occupied by building with sanction where such rule exists, (4) Land occupied by building where no such rule exists, and (5) Cotties" space in a village within urban agglomeration.

43. There arises an inconsistency between the aforementioned categories of land

situated within urban agglomeration and beyond the periphery thereof. It is to be noticed that in terms of Section 2(7) of the said Act land includes lands of every description which in turn includes the lands which are saved by reason of the provision of the Urban Ceiling Act. Thus a repugnancy arises as regards general land within urban agglomeration and rural area for which different ceilings are provided for.

44. Apart from the fact that said Act does not apply to any land to which the provision of Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 applies in view of Section 3A(4). in terms of the proviso appended to Section 14J of the said Act, Chapter-IIB has no application in relation to any vacant land an urban agglomeration as defined in the Urban Ceiling Act. Apart from one dichotomy as pointed out hereinbefore, thus another dichotomy is apparent in so far as whereas in terms of the Urban Ceiling Act buildings and other structures are exempted from the purview of Urban Ceiling Act, the same comes within the purview of Section 3A as also Chapter-IIB of the said Act.

45. The provision of the said Act will, therefore, have to be construed keeping in view the said inconsistency. In short, therefore, the said Act has to be construed in the light of West Bengal Estates Acquisition Act as also Urban Land Ceiling Act.

46. It is relevant to mention that Section 2(10) of the said Act defines raiyal to be a person or an institution holding land for any purpose whatsoever.

47. It is now a well known proposition of law that where inconsistencies occur, an attempt to harmonise the provisions of both the Acts should first be made and only in the event such provisions cannot be harmonised, the question of repugnancy would arise. Urban Ceiling Act was enacted in terms of Article 252 of the Constitution. It provides for imposition of ceiling as regards vacant land situated within urban agglomeration. The provisions of Urban ceiling Act taken as a whole read with the preamble thereof leave no manner of doubt that the said Act was to apply within a particular area namely the urban agglomeration.

48. In terms of the said provision, as noticed hereinbefore, the vacant lands only were to vest in the State. The intention of the Legislature, therefore, was not to acquire the structures situated within urban agglomeration. In fact the statements of objects and reasons of the 1986 Amendment also speaks of an attempt to avoid application of more than one Act in respect of the land, the right and interest whereof may vest in the State. The purpose and object of the Land Reforms Act, inter alia, is making agrarian reforms and to improve the rural economy. The object and purport of improving the agrarian reform and rural economy cannot be achieved by acquiring the buildings within urban agglomeration. In almost all the cases, the provisions cannot be given effect to inasmuch as even if a building is taken over, the vacant land surrounding the same including the land required for egress from and ingress to the building shall remain with the owner. The said Act even contains provision for exemption as contained in Section 2. Under the said Act even the person who was granted

such exemption may transfer the lands. See *T.E.Thender v. Union of India* reported in Judgment Today 1996(4) SC 1 1.

49. Moreover, the legislature while enacting a Legislation is presumed to know the existing law. The legislature is expected to avoid making any legislation which is, *inter alia*, covered by another legislation made by it.

50. Mr. Gupta also in his submissions stated that it cannot be disputed that the object of the impugned amendment Act is to nationalise all lands of every description in excess of the ceiling area in West Bengal. As the ceiling area is a minimum of 2.5 standard hectares which is equivalent to 5.175 acres in irrigated area and 7.245 in non-irrigated area and a maximum of 7.50 hectares which is equivalent to 17.30 acres in irrigated areas and 24.22 acres in non-irrigated area there will be practically no holding above the ceiling in urban area to which the Land Reforms Act would apply. (Section 14M of the W.B.L.R. Act). Therefore, the object of the Act is to nationalise all landed property above the ceiling area in rural areas.

51. Having regard to the scope and object of both the Acts, we are of the opinion that on applying the principles of "harmonious construction and with a view to remove the intrinsic inconsistencies, it should be held that the provisions of the West Bengal Land Reforms Act have no application in respect of matters covered by Urban Ceiling Act. However, it is made clear that the said Act will have application to agricultural land situated within the said Area.

52. Any person who was not otherwise a raiyat in terms of the provisions of West Bengal Estates Acquisition, Act and Urban Ceiling Act would be deemed to be raiyat for the purpose of the said Act.

53. Before advertng to the questions as regards the constitutionality of the Constitution Amendment Acts, it is necessary to consider as to whether the said Act is violative of Article 300A of the Constitution or not.

54. Section 14V of the West Bengal Land Reforms Act provides for payment of an amount to the extent of 15 times of the land revenue or where such land revenue has not been assessed or is not. required to be assessed an amount calculated at the rate of Rs. 135/- for an area of 0.4047 hectare = 1 acre of the land which would come to Rs. 2.50 p. per cottah.

55. The learned Counsels had addressed us at great length as to whether the doctrine of eminent domain would be attracted in view of the Constitution 44th Amendment Act or not in terms whereof right to property has been taken out from the purview of part-III of the Constitution of India and Article 300A has been inserted.

56. From time immemorial the status of the person depends upon the property he holds. P.N. Sen in his General Principles of Hindu Jurisprudence has drawn a distinction between "ownership" and "property". The learned author referred with approval the commentry of Sri Krishna Tarkalankar on Dayavaga which says

that according to the old established explanation, it signifies fitness for free disposal as indicated by Shaslras, which provides for the distinct elements viz. (1) that the idea of property is exclusively indicated by the Sastra and (2) that it signifies fitness for free disposal by the person who owns it.

57. Roscoe Pound in his "The Ideal Element in Law" at page 188 referring to Spencer states that the law of property postulates the natural rights, a right of property and a right of incorporeal property, each involving a legal right of possessing, a legal right of excluding others, a liberty of using, a liberty of enjoying the fruits and avails, and a liberty of abusing or destroying and a power of disposing.

58. The learned Counsels for the parties have taken us through the history as regards right of the State of acquire a private property and amendments carried out by different Constitutional Amendment Acts. Before the Constitution of India came into force, the right of the State to acquire the property was governed by Article 299 of the Government of India Act.

59. In The Rajahmundry Electric Supply Corporation Ltd. Vs. The State of Andhra, , the Apex Court held that in absence of a power to acquire a moveable property, the Madras Electric Supply Undertakings (Acquisitions Act) cannot be nationalised u/s 104 and 299(8) of the Government of India Act.

60. In America, however, despite existence of no provision to acquire a property it was held that the acquisition of properties is permissible under the doctrine of "eminent domain" which basically can be invoked if the conditions of public purpose and Just compensation are fulfilled. The said doctrine of eminent domain was applied in England. Payment of compensation, however, stood in the way of acquisition of Zamindars, intermediaries and tenure holder necessitating Constitution First Amendment Act and 4th Amendment Act in terms whereof Article 31A and Article 31B and the new Schedule 9 was enacted. Despite the same, it was held by Supreme Court that the word "compensation" in Clause 2 of Article 31 required to pay the money equivalent of the property acquired. See The State of West Bengal Vs. Bela Banerjee and Others, and P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, . The word "compensation thereafter was substituted by the word "amount". Article 31C also was enacted so as to withdraw protection of Article 13 altogether from such laws as Parliament chose and declared to be directed to secure any of the protective principles laid down in Part-IV.

61. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , it was held that the right to property was a weak right. Entry 42 of list 2 was also suitably amended. Then came the Constitution 44th Amendment Act, in terms whereof right to property as contained in Article 19(1)(f) and Article 31 were deleted from Part-III of the Constitution of India and a new Article being Article. 300A was inserted.

62. The learned Counsels raised rival contentions as to whether in view of the

Constitution 44th Amendment Act, the doctrine of eminent domain could be brought into play for the purpose of payment of compensation.

63. Mr. Gupta submitted that the doctrine of eminent domain cannot be made applicable as English Law had no application in this country except in the shape of justice, equity and good conscience. Reliance in this connection was placed on *S. Darshan Lal Vs. Dr. R.E.S. Dalliwall and Another*, . In the said decision, the court was concerned with the provision of the Bengal, Agra & Assam Civil Courts Act. It was held:-

"The Civil Courts in Bengal, Bihar, U.P and Assam are governed by the Bengal, Agra and Assam Civil Courts Act, 12 of 1887. The Civil Courts in Bengal, U.P and Assam subordinate to the High Court are to decide cases in certain matters according to Mohammadan or Hindu Law if the parties are Mohammadans or Hindus respectively and in other cases by "any other law for the time being in force or if there be no such law according to "justice, equity and good conscience", vide Section 37 Bengal, Agra and Assam Civil Courts Act, 12 of 1887.

64. The High Court is to apply the law that would be applied by the Civil Courts subordinate to it, vide paras 13 and 14 of the Letters Patent.

65. English law has been applied in India as supplying the rule of Justice, equity and good conscience but only if it is found applicable to Indian society and circumstances, *Waghela Ratsanjit v. Sheikh Masludin* 11 Bom. 551 (PC) 561. English law, therefore, does not apply here of its own force."

66. The observations made therein, therefore, did not rule out the applicability of the common law of England. The common law of England was not only made applicable in India but is also expressly saved under our Constitution. However, there cannot be any doubt whatsoever that where a matter is covered by the Constitutional and/or statutory provision, the English Common Law would have no application whatsoever.

67. In *Attorney General v. De Keyser's Royal Hotel, Ltd.* reported in 1920 Appeal Cases, page 508, the House of Lords upon taking into consideration various enactments which were necessary for the purpose of acquisition of the properties held that a property can be acquired by the sovereign in exercise of its right of "Eminent Domain" for public purpose upon payment of just compensation.

68. In *Burma Trading Ltd. v. Lord Advocate*, *Burmah Oil Company* reported in (1963)2 All ER 348, the House of Lords held that compensation is payable even if a property was required to be destroyed during war.

69. The American Courts also took the same view. See for example *Chicago Burlington & Quincy Railroad Company v. City of Chicago* reported in 1896, (166) U.S 979..

70. Mr. Pal, learned Counsel, has referred to various Articles on this point,

whereas Mr. Gupta, as indicated hereinbefore, also relied upon certain judgments to show that the doctrine of "Eminent Domain" has no application in view of the provision contained in Constitution of India.

71. However, it may be noticed that a constitution bench of the Supreme Court in *State of West Bengal Vs. Union of India*, , had applied the doctrine of Eminent Domain" holding that the Central Government has the right to acquire the property belonging to the State. It traced the history of the said doctrine and considered various American, English and Australian decisions in support of its conclusion.

72. The said question, in our opinion, is no longer *res Integra* in view of the recent pronouncement of the Apex Court in *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*, The Apex Court in no uncertain terms held that word "property" used in Article 300A must be understood in the context in which the sovereign power of Eminent Domain is created by the State. However, it was observed that each case must be considered in the light of its own fact and setting. Again in *New Riviera Co-operative Housing Society and Anr. v. Special Land Acquisition Officer and Ors.* reported in 1966(1)SCC 731, the Supreme Court has held that the said power of eminent domain can be exercised even to make a person shelterless in order to serve a larger public purpose. It is not disputed that the object of the Amending Act. of 1981 and 1986 if upheld, would be for public purpose. The only question, therefore, is as to whether Just compensations is required to be paid or not. The Supreme Court in *Jilluhhai* (supra) upon reviewing its earlier decisions including the decisions cited by the learned Counsel for the parties held:-

"However, such law shall not be questioned on the grounds that the amounts so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount. The doctrine of. illusory amount or fixation of the principles to be arbitrary were evolved drawing support from the language originally couched in the unamended Entry 42 of List III which stood amended by the Constitution 7th Amendment Act with the words merely "Acquisition and Requisition of Property". Nevertheless even thereafter this Court reiterated the same principles. Therefore, the amendment to Entry 42 of List III has little bearing; on the validity of those principles. We are conscious that Parliament omitted Article 31(2) altogether. However, when the State exercises its power of eminent domain and acquires the private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination must be in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law."

73. Mr. Gupta, however, had relied upon *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, , *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others*, and a division bench decision of this Court in *Gyan Singh v. State of West Bengal and Ors.* reported in 90 CWN 266. In *Jilubhai's*

case (supra) both Basantibai and Tinsukhta's case had been taken into consideration. However, in Basantibai's case the Supreme Court observed:-

"The High Court does not say that the amount payable under Sub-sections (3) and (4) of Section 44 of the Act for the land situated in Municipal area is illusory."

74. Thus the said decision does not support the contention of Mr. Gupta.

75. The Supreme Court held that the Maharashtra Housing and Development Act is protected under Article 31C of the Constitution of India. At the relevant time, evidently Article 300A did not come into force and in that context it observed:-

"We next proceed to consider a contention lacking in merit which has unfortunately been accepted by the High Court namely that the Act infringes Article 300A of the Constitution. Article 300A was not in force when the Act was enacted. Article 31(1) of the Constitution which was couched in the same language was however in force. Article 31C gave protection to the Act even if it infringed Article 31."

76. In Tinsukhla Electric Supply Co.'s case (supra) the Supreme Court was considering a question of nationalisation. The said provision was also held to be covered under Article 31C of the Constitution of India holding that nationalisation of an undertaking may also come within the purview of Article 39B and 39C of the Constitution. The said Act thus was also considering a case when Article 31(2) was in existence.

77. The submission of Mr. Gupta to the effect that Jillubhai's case (supra) on the face of Tinsukhla Electric Supply (supra) should be held to be an obiter and/or not a good law cannot be accepted. It is true that in Jillubhai (supra) the Supreme Court held that the compensation paid for acquisition of property was not illusory. But it has to answer the questions raised before it as regards the scope, effect and purport of Article 300A of the Constitution of India. It has laid down a law upon taking into consideration all the decisions including Tinsukhla (supra). It may be noticed that in Tinsukhta, no occasion arose before the Apex Court to consider the effect of Article 300A. It is now well known that a decision is an authority for what it decided and not what logically can be deduced therefrom. It is also well known that a judgment should not be read as a statute and should be considered on the facts of the case. Moreover as the division bench in Jillubhai has taken into consideration its earlier decision in Tinsukhia, this court is bound thereby. We are unable to find any conflict in the observations made in Jillubhai and in Tinsukhia Electric Supply inasmuch as both decisions were rendered in different circumstances.

78. In Gyan Singh's case (supra) the learned trial Judge was a party. In that case the division bench was considering the provisions of West Bengal Government Premises (Regulation and Occupancy) Act, 1984. The division bench observed:-

"The petitioners have not challenged before us the validity of the 44th

Constitution Amendment Act and they have not raised the question whether the right to property previously guaranteed by Part-III of the Constitution formed part of the basic structure. Therefore, we need not advert to the said aspect of the matter."

79. It held that the decision of the Bombay High Court in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, which was reversed by the Supreme Court in *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, as obiter.

80. The learned Judges thus proceeded on the basis that the validity of the 44th Constitution Amendment need not be considered. In any event, in view of the recent decision of the Supreme Court in *Jillubhai's case (supra)* the said question is no longer *res Integra*. The judgment of the learned trial Judge, therefore, on the question that the petitioners are debarred from questioning as to whether the amount of compensation is illusory or not and the same is beyond the scope of judicial review, thus cannot be sustained.

81. In *Jillubhai's case (supra)* the law has been declared in the following terms:-

(1) Payment of just compensation or Indemnification has been held by the Supreme Court in *The State of West Bengal Vs. Bela Banerjee and Others*, is not required,

(ii) Payment of market value in lieu of acquired property is not *sine qua non* for acquisition;

(iii) Acquisition and payment of amount are part of the scheme and they cannot be dissected;

(iv) However, fixation of the amount or specification of the principles and the manner in which the amount is to be determined must be relevant to the fixation of the amount;

(v) The amount determined cannot be illusory; and

(vi) The validity of irrelevant principles are amendable to judicial scrutiny.

82. Let us now consider as to whether the compensation sought to be paid for acquisition of land is illusory or not.

83. Although there cannot be any doubt in view of *Jillubhai's case (supra)* that doctrine of eminent domain has application in the matter of payment of compensation subject to the para-meters of justiciability as laid down therein, it cannot be lost sight of the fact that property is not a dirty word in the Constitution. The Constitution has to be interpreted upon taking into consideration the role played by property in a man's life and his status in society. In a recent Article entitled *Compensation : Down but not out*, appearing the 100 CWN 17 at page 24, K.N. Goyel, a retired Judge of the Allahabad High Court pointed out:-

"Property, it has been said, was, "man's first social security system, a hedge against hazards of life, such as sickness, old age, widowhood and orphanage" (Wallace Mendelson: Supreme Court Statecraft 1987, Asian Books, P. 230). For Thomas Jefferson, property was indispensable to liberty. As he saw it, the widespread ownership of farms saved Americans from the misery and bitter class conflicts of the Old World. The urban mobs of Paris, he thought were in effect slaves because being propertyless they were dependent upon their "betters" (p. 95, op. cit). As Justice Brandies would say later, "the necessitous man is not free" (ibid). Justice Jaaganmohan Reddy in his Asutosh lecture (1978) on liberty Equality, Property and the Constitution has observed : "Take away the right (to property): All other rights will collapse and after that it is as good as writing off Part III from the Constitution and effacing Kesavananda Bharali's case qua part III". He has argued for its recognition as a natural right even after the deletion of Articles 19(1)(f) and 31. In Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, even progressive judges were obliged to resort to the right to property for protecting the trade unions' claim against the employer (L.I.C.)."

84. Property is considered to be a right whether constitutional or legal. If no compensation at all was required to be paid, a clear provision to that effect in the constitution was necessary.

85. Mr. Bose despite repeated query did not answer as to whether any property can be acquired without payment of compensation.

86. Furthermore, if submission of Mr. Gupta to the effect that in view of the Constitutional Amendments no amount at all is required to be paid for is accepted, the same would amount to confiscation and not acquisition. Indian Constitution postulates a civilised society. The founding fathers were aware of the distinction between the power to acquire under the constitutional provisions as contained in Entry 42 and the Police powers. A property can be acquired by way of confiscation only under the Police powers and not under its power to acquire for public or for the purpose of giving effect to the Article 39(a) and (b) of the Constitution.

87. Furthermore, no attempt has yet been made by the Parliament or any State Legislature to acquire any property without compensation. The Parliament and the Legislature must be held to be aware of the law laid down by the Supreme Court of India. As indicated hereinbefore, the Apex Court had all along maintained even after the Constitutional Amendments, that although adequacy of compensation cannot be a justiciable, such amount cannot be illusory. The State may be in a position to pay the full market value to the owner of the property sought to be acquired by reason of a Legislation but it never denied the right to receive some amount for such acquisition. Jullu Bhat's case, in our opinion, should be understood from the aforementioned concept of payment of amount for acquisition or requisition of property of a citizen. Even requisition of a movable or immovable property which caused temporary deprivation requires

payment of compensation.

88. Although there exists a presumption that an Act is constitutional and that legislature understands and appreciates needs of the people, but when the law is exfacie discriminatory or arbitrary or violative of any other provisions of the Constitution or a law laid down by the Supreme Court, such presumption cannot stand and/or would be deemed to be rebutted, in which event the burden will shift to the State. But to me, it appears when the matter is thrashed out threadbare, the issue in most of the cases became academic as an unconstitutional statute cannot be held constitutional by taking recourse to the presumption. Only in a marginal cases, the said presumption may be of some value; but the same may have a great role to play at the time of passing interim orders.

89. Section 14V of the said Act provides for the basis, the principles of computing the compensation as being 15 times the land revenue or at the rate of Rs. 135/- per acre of land. The liability to pay land revenue was introduced by way of Sections 22 and 23 of the said Act which were quoted by Section 10 of the West Bengal Land Reforms (Amendment) Act, 1965 which read thus:-

"22. Liability to pay revenue-(1) A raiyat shall be liable to pay revenue for his holding.

(2) Revenue shall be a first charge on the holding.

23. Determination of revenue. (1) A raiyat shall pay as revenue for his holding the same amount which was payable by him as rent for the lands comprised in such holding immediately before the coming into force of the provisions of this Chapter.

(2) Where no rent was payable in respect of the lands comprised in such holding immediately before the coming into force of the provisions of this Chapter the raiyat shall pay revenue at such rate as the Revenue Officer may determine in the prescribed manner, having regard to the rent that was generally being paid immediately before the coming into force of the provisions of this chapter for lands of similar description and with similar advantages in the vicinity".

90. The said provision came into force -with effect from 25th September, 1965. Prior thereto, in terms of Sections 40 and 41 of the West Bengal Estates Acquisition Act, land revenue was payable at Rs. 9/- per acre. Thus, Rs. 135/- was fixed as a compensation being 15 times of the land revenue i.e. Rs. 9/- per acre payable under the West Bengal Estates Acquisition Act.

91. Sub-section (3) of Section 3A of the said Act provides for entitlement on the part of the Intermediaries to receive an amount to be determined in accordance with the provision of Section 14V. In view of the definition of land as contained in Section 2(7) of the Act, therefore, compensation at the same rate would be payable for all types of land. It may be noticed that there was no provision for payment of land revenue in respect of non-agricultural lands and rent used to be

paid in terms of the agreement.

92. Land revenue *ex facie*, therefore, cannot be the basis for computing the amount of compensation for acquisition and the lands falling under the non-agricultural tenancies, buildings, factories etc., land revenue was payable by an estate and in terms of the provision of West Bengal Estates Acquisition land vis-a-vis the said Act, land revenue was to be paid in respect of the agricultural lands only. There cannot, therefore, be any doubt whatsoever that in case of non-agricultural land or a building or a factory adoption of land revenue as computing the amount payable by way of compensation is not a relevant criteria and, thus, must be held to be illegal.

93. Even in relation to agricultural lands, we have despite queries have not been shown any authority that for the purpose of valuing the land, land revenue is considered to be a relevant or known principle. Mr. Pal on the other hand, made a statement at the bar that in none of the treatises on valuation, land revenue has been adopted as a principle therefor. It is pertinent to note that principles for payment of a compensation, *inter alia*, has been dealt in Urban Ceiling Act.

94. Section 11 of the Urban Ceiling Act, lays down the principles for grant of an amount to be calculated in the following manner :-

"(a) in a case where there is any income from such vacant land, an amount equal to eight and one-third times the net average annual income actually derived from such land during the period of five . consecutive years immediately preceding the date of publication of the notification issued under Sub-section (1) of Section 10; or

(b) in a case where no income is derived from such vacant land, an amount calculated at a rate not exceeding-

(i) ten rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category A or category B specified in schedule I; and

(ii) five rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category C or category D specified in that Schedule."

95. Sub-section (2) of Section 11 provides for the principles for the purpose of income calculated net average annual income referred to in Clause (a) of Sub-section (1). Sub-section (3) provides for the principles for the purpose of computing the amount in terms of Clause (b) of Sub-section (1). Sub-section (4) of Section 11 provides that different rates may be fixed under clause (b) of Sub-section (3) for vacant land situated in different zones within each urban agglomeration.

96. Sub-section (5) provides for payment of compensation in case where any vacant land is held by any person under a grant, lease or other tenure from the Central Government or any State Government.

97. However, a ceiling of Rs. 2 lakhs has been provided in terms of Sub-section

(6) of Section 11.

98. No such principle has been laid down in the said Act, We are, therefore, of the view that no relevant principle for computation of compensation having been laid down, the said provision cannot but be held to be unconstitutional.

99. In *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, K. Subba Rao, J while considering the question of principle as regards payment of compensation, observed:-

"To illustrate: a law is made to acquire a house : its value at the time of acquisition has to be fixed : there are many modes of valuation, namely, estimate by an engineer, value reflected by comparable sales, capitalisation of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and (he adoption of another principle may give a lesser value. But none the less they are principles pn which and the manner in which compensation is determined, the court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Article 31(2) of die Constitution. If a law says that though a house is acquired, it shall be valued as a land or that though a house site is acquired, it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given, or though 100 acres are acquired compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired. In such cases the validity of the principles can be scrutinized. The law may also prescribe a compensation which is illusory : it may provide for the acquisition of a property worth lakhs of rupees for a paltry sum of Rs 100/-. The question in that context does not relate to the adequacy of the compensation, for It is no compensation at all. The illustrations given by us are not exhaustive. There may be many others falling on either side of the line. But this much Is clear. If the compensation is illusory or if the principles prescribed are irrelevant to the value of the. property at or about the time of its acquisition, it can be said that the Legislature committed a fraud on power and, therefore, the law is bad. It is a use of the protection of Article 31 in a manner in which the Article hardly Intended." Here printed in italics

100. The illustration given in the aforementioned case, apply on all fours to the present case inasmuch as a building or a factory cannot be acquired for the value of a land nor the property worth lakhs of rupees can be acquired.for a song. In the instant case, the valuation of Rs. 135/- per acre means that a person receives a sum of Rs. 2.50p. per cottah for acquisition of his surplus land. Such valuation applies not only to the agricultural land situated in the remote rural area but, also urban area including industrial areas. The said valuation will be applicable even in the areas in and around Calcutta which are now part of the

Calcutta Municipal Corporation.

101. In Chanan Mal Vs. The State of Haryana and Another, a division bench of Panjab & Haryana High Court held:-

"During the pendency of the writ petition, the entire land has been auctioned for Rupees 5,000/- which means that the petitioners will get only Rupees 500/- for the current year and similar amounts in the next nine years. This amount has no relation with the value of the minerals extracted and to be found in the land and is so grossly low that it is nothing but illusory and arbitrary. It is shocking to the judicial conscience and I am quite sure will shock the conscience of every reasonable human being."

102. The submission of Mr. Gupta to the effect that there cannot be a case where a building or a factory would extend more than 7 hectares of land cannot be accepted inasmuch as the matter relating to payment of compensation has got to be taken into consideration keeping in view the provision thereof. A provision has been made in the said Act by way of Section 3A(3) in respect of non-agricultural tenancies including building etc. by the Legislature obviously with an eye to take over such properties, retention of land under Sub-section (2) of Section 3A. may be of only a part of land and building held by a non-agricultural tenant or even the whole in a given case inasmuch as there may be a case where a person is in possession of a very big building with a vacant land just outside the urban agglomeration or may be in possession of several buildings in a town. It may be that in a given case, the question as to whether a person would retain the building, the vacant land or agricultural land would depend upon the final outcome and final choice but while considering the question as to whether the compensation sought to be paid is illusory or not the court has no other option but to take into consideration the principles of compensation which may apply in all cases.

103. Having not laid down different principles for payment of compensation on different types of lands and keeping in view the definition of land, encompassing land of every description and keeping in view the patent absurdity in computation of the valuation the onus shifts to the State to show that the valuation is reasonable. In any event the said submission of Mr. Gupta is contrary to and inconsistent with the statements and objects of the said Act which would be noticed hereafter.

104. Mr. Gupta has not even urged that the valuation at Rs. 2.50P. per cottah was the price of land at any point of time in recent history. It is a pittance. It virtually amounts to acquire a land without payment of compensation. It is a notorious fact and the court can take judicial notice that in some big towns, the rent per month of a house situated in a good locality would be Rs. 2.50 per sq.ft. It has also not been suggested nor argued that an adoption of land revenue as a principle is a correct or known method of valuation.

105. In Vairbhelu (supra) it is clearly stated that the value of the land may be he

based on market value of capitalisation, capitalisation of rent or net income which are some of the rent bases for valuation of the surplus vacant lands under the Ceiling law. The question can be viewed from another angle. A person holding vacant land in an urban agglomeration will get compensation in terms of Section 11 of the Urban Ceiling Act whereas persons holding similar types of land just beyond the periphery of urban agglomeration will not get even a fraction of such compensation.

106. The petitioners have provided certain materials at page 287 to 289 of the brief, which are as follows:-

"1985 Standard

1. Yield of rice/hectare 1557 kg. for 7 hectares $1557 \times 7 = 10,899$. kg. (family for 5 in non irrigated area) Total Gross Income $10,899 \times 2.34 = \text{Rs. } 25,503.66$
Net Income:-Rs. 12,751.83.

(Deduction of land revenue, Agricultural Income Tax) Net Income to be made.

"Moreover area comprising of homestead land, and sometimes a pond used for agricultural purpose and house hold purpose will have to be deducted from total land and as such Net Income will be further reduced, and will be about Rs. 12,000/-.

2. A Bargadar can retain 4 hectares of land. Gross Income of a raiyat from 4 hectares: $1557 \times 4 \times 2.34 = \text{Rs. } 14,573.52$. Net Income will be Rs. 7286.76. Income of a bargadar Rs. 2642.38. However, there may be 2 or more bargadars in a family. Assuming there are 2 bargadars then income of the bargadars family will be at least Rs. 7286,76.

3. A daily agricultural labour today gets Rs. 21/- per day. If he works 20 days per month and works for 8 months his income will be $21/20 \times 8 = 3360/-$. if there are 2 labours in a family the family income will be Rs. 6720/-.

(In 1985, the daily rate was about Rs. 17 per day then income $17 \times 20 \times 8 = \text{Rs. } 2720$. Income will be Rs. 5440/-.)"

107. It may be noticed that taking into consideration the principles laid down under the Urban Ceiling Act, the Supreme Court upheld the validity thereof in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, .

108. Moreover even on principles, unequals cannot be treated as equals, which the said Act seeks to do. Law must be just, reasonable and not arbitrary. The Court by interpretation adopt law to suit the needs of the society. See 1996 Labour & Industrial Cases, page 629.

109. There cannot be any doubt whatsoever that in terms of Entry 18 List 2 of the 7th Schedule of the Constitution of India, the State legislature has the power to make any legislation on land but such power is subject to constitution.

110. So far as the argument of Mr. Gupta to the effect that in the matter of

payment of compensation, absence of classification between agricultural lands and non-agricultural lands is not unconstitutional, cannot be sustained. There had been differences in character of lands i.e. between agricultural land and non-agricultural. Even amongst non-agricultural tenants a distinction exists between those having buildings thereon and fallow land. The submission of Mr. Gupta to the effect that a tendency had grown amongst the raiyats to convert agricultural lands into non-agricultural lands is stated to be rejected. The intermediaries and raiyats prior to coming into force to the impugned Acts were subject to the law of ceiling. For the purpose of converting an agricultural land into a non-agricultural land, permission is required to be obtained. If somebody violates the law, the law may take its own course. In any event, a person to whom the land is distributed also violates such law and thus, in our opinion, the same by itself cannot be said to be a good ground for payment of same compensation to the holders of the non-agricultural land inasmuch as in the revenue records, the nature of different holding is clearly stated.

111. It is relevant in this connection to note that the learned trial Judge in his Judgment observed:-

"As a result, attempts were being made to convert land into non-agricultural land or putting the same land to use in such a manner that it can be termed as non-agricultural land as well. In the district of 24-Parganas, the farmers used to let in brackish water in the agricultural field and use the same as fishery but at the same time it is also used to grow paddy in such field."

112. It does not appear that there existed any material for the said presumption. The said conclusion, thus, must be held to have been arrived at without any basis whatsoever.

113. It is true that normally in exercise of its jurisdiction under Article 226 of the Constitution of India the court may be circumspect in examining a policy decision but in view of *Jillubhai's* case (supra) that there cannot be any doubt whatsoever that a policy emanating from a legislation can be subjected to a judicial scrutiny and the same can be tested in the light of the provision of the Constitution. We are, therefore, of the opinion that the amount payable for acquisition of surplus land as defined u/s 2(7) of the Act is without any just principle as also illusory.

114. For the reason aforementioned, we have no other option but to hold that provision of Section 14V vts-a-vis the definition of land as contained in Section 2(7) and Section 3A(3) of the said Act is ultra vires Article 300A of the Constitution of India.

115. The next question which falls for our consideration is as to whether Section 14T(6), (8) and (9) are violative of Articles 245 and 246 of the Constitution.

116. Section 14T(6), (8) and (9) read thus:-

"14T(6). The Revenue Officer, on his own motion or upon any information, may, after giving the persons interested an opportunity of being heard, enquire and

decide any question as to whether any trust, endowment or institution is of public or private nature or of exclusively religious or charitable in character, or both, and any question of title incidental thereto as may be necessary to determine the extent of land which is to vest in the State u/s 14S, by examining the documents, if any, or by taking into account the following, among others-

- (i) actual user of Income or usufructs of the land,
- (ii) mode or cultivation,
- (iii) pattern of utilisation of the land, and
- (iv) share of income of usufructs of the land appropriated or enjoyed, or the area of such land occupied or enjoyed, by or on behalf of the Manager, Shebait, Mutwalti, or any other person managing the trust, endowment or institution.

14T(8). Notwithstanding anything contained in this Act or in the West Bengal Estates Acquisition Act, 1953 (West Ben. Act I of 1954) or in any other law for the time being in force or in any agreement, custom or usage or in any decree, judgment, decision or award of any court, tribunal or authority, the provisions of Sub-sections (5), (6) and (7) shall operate with retrospective effect from the 5th day of May, 1953.

14T(8). Sub-sections (5), (6), (7) and (8) of this section shall be deemed to have always been inserted in the West Bengal Estates Acquisition Act, 1953 {West Ben. Act I of 1954}. Any officer specially empowered in this behalf under the provision of the West Bengal Estates Acquisition Act, 1953 or under the provision of this Act, may, in exercise of the powers conferred by Sub-sections (5) to (8), re-open and decide afresh any proceeding, case or dispute in relation to determining of total land held by an intermediary or a raiyat or an under raiyat at any point of time or may determine the quantum of land such intermediary, raiyat or under raiyat was or is entitled to retain and also may determine the extent of land which is to vest in the State or which shall remain vested in the State and shall take possession of such land in accordance with the provisions of section 14SS. Notwithstanding any judgment, decision or award of any court, tribunal or authority to the contrary the rule of *res judicata* shall now apply to such cases of reopening and fresh determination."

117. Section 14T confers a duty upon raiyat to furnish returns. In terms of Sub-section (2), such a return has to be filed by the head of the family or any other raiyat where there are more raiyats than one in a family.

118. Sub-section (3) of Section 14T provides power to the revenue officer to determine the extent of land which is to vest in the State u/s 14S. Sub-section (3A) empowers the revenue officer to revise an order made under Sub-section (3) on his own motion after giving the raiyat an opportunity of being heard.

119. Sub-section (4) of Section 14T provides for consequences of failure to file a return in terms whereof he makes himself liable for punishment with

imprisonment which may extend to two years or with fine which may extend to five thousand rupees or both.

120. Sub-section (5) empowers the revenue officer to determine the question of benami. The said provision has been declared ultra vires by the learned trial Judge on the ground that the same is in conflict with Benami Transaction Prohibition Act, which has been enacted by the Parliament. But the said question has otherwise been decided by the Division Bench in *Bibhuti Bhusan Bankura v. State of W.B.* reported in 1994(1) Calcutta Law Journal, 353. The question as to the vires Section 14T(5) would be consider later on.

121. Sub-section (6) of Section 14T empowers the revenue officer to consider the question as to whether any trust, endowment or institution is of public or private nature or of exclusively religious or charitable in character, or both, and any question of title incidental thereto as may be necessary to determine the extent of land which is to vest in the State u/s 14S, by examining the documents, if any, or by taking into account the factors enumerated therein.

122. Sub-section (7) provides for an appeal by a person who is aggrieved by any order made under sections (3), (3A), (5) or (6) in terms of Section 54 of the said Act.

123. So far as Sub-section (6) of Section 14T is concerned, the only submission made before the learned trial Judge was that the revenue officers are not competent to deal with complicated questions of law. However, such a question has not been raised before this bench. The learned trial Judge proceeded on the basis that as Sub-section (5) was ultra vires, Sub-section (6) cannot operate as in fact the same would be futile exercise as ultimately ceiling limit has to be determined under the West Bengal Land Reforms Act.

124. There is no law which disentitles an executive officer to determine a question which falls for consideration for the purpose of determination of a ceiling area. However, complicated the question may be, for such limited purposes, the competent authority, in our opinion, can exercise jurisdiction subject to the right of appeal, revision or judicial review. In a given case, even a civil suit may be maintainable where a question of pure title may arise or in a case where an order has been passed wholly without jurisdiction.

125. Unless such a view is taken, it may be argued that unless judicially trained independent persons of proven integrity are appointed to adjudicate and judicial review is left untravelled, the litigant public would carry a feeling that the decision making process might be affected by reason of dependence upon the executive.

126. In the said Act, there is no provision that the Revenue Officer or the Appellate would be deemed to be courts or the proceedings would be deemed to be judicial proceedings. Revenue Officers are, therefore, merely statutory tribunals and its decision on pure question of title, despite bar of jurisdiction of

the Civil Courts must be strictly construed in the light of various decisions of Supreme Court of India, this court and the other courts. An examination of the scheme of the law in the Act clearly shows that the Revenue Authorities have not been vested with the power to determine finally the preliminary facts on which further exercise of their jurisdiction depends. Yet it is a law under which the authorities may be required to take notice of such collateral facts and decide, whether to enter into such questions which are unconnected with the matter or are collateral to the matter as to the rights and interests in the land, and their jurisdiction will depend not on a wrong decision with regard to a collateral fact but a right decision. Once it is shown that a wrong decision has been taken as to such collateral facts by them and by so wrongly deciding the jurisdictional fact they have assumed jurisdiction, the adjudication on the issues falling within their jurisdiction, shall also become without jurisdiction.

127. The said question has been considered by a Special Bench of this Court in *Sm. Krishnamoni Dasi Vs. Baser Mondal and Others*, wherein Laik, J. (as His Lordship then was) laid down 11 tests or fundamental principles which should be borne in mind in decision cases where the question of exclusive jurisdiction of a tribunal is raised.

128. In *Kalika Kaur v. State of Bihar* reported in 1989 PLJR 1203 of which I was a member, a full bench of the Patna High Court having regard to the various decisions came to the conclusion that despite adjudication by the Consolidation authorities which is a statutory tribunal, the civil court will have jurisdiction to decide a pure question of title.

129. Sub-section (6) provides for sufficient guidelines as regards the manner in which the enquiry has to be held.

130. The provision of Sub-section (8) and (9) have to be considered in the light of the amendments made by the impugned Acts. By reason of the impugned Act, the ceiling area has been reduce and the nonagricultural tenancies and other lands have also been included. Thus, it is open to the competent authority to consider the matter afresh in the light of the said provisions despite a judgment, decree or award, but that does not mean that the judgments and decrees which have no hearing with the said question can be reopened. It has to be home in mind that right derived under a decree can only be taken away by a legislation which fulfills the requisite requirements therefor. Judicial review is a basic structure of the Constitution.

131. The Parliament or the Legislature undoubtedly has the power to enact a law with retrospective effect. While judging the question in relation to the provisions impugned, it is not necessary to consider as to whether such a retrospective effect would be arbitrary and violative of Article 14 of the Constitution of India.

132. There cannot be any doubt whatsoever that the legislature has the power to validate a legislation and give effect thereto with retrospective effect. But the said power has some limitations inasmuch as while doing so the legislature

cannot just set aside a judgment as thereby it would usurp the judicial function. A judgment can be invalidated by a Legislative Act only when the lacunas in the Act pointed out in a judgment are rectified. In the matter of In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, it was held:-

"The legislatures under the Constitution have, within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of a decision rendered by a competent court thereby rendering the decision ineffective. But no legislature in the country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts."

133. The Apex Court after referring to various decisions held:-

"The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or Tribunal."

134. In Indian Aluminium Co. v. State of Kerala and Ors." reported in Judgment Today 1996(2) SC 85, the apex court upon consideration of various decisions including Re : In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, and S.P Bhagwat and Ors. v. State of Mysore reported in (1995)4 SCC 16 laid down the principles in respect thereof.

135. Similarly in State of Haryana and others Vs. The Karnal Co-op. Farmers" Society Limited, etc. etc. and others, , it was held:-

"Thus, it becomes clear that a legislature while has the legislative power to render ineffective the earlier Judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a legislature under our Constitution."

136. Reference in this connection may also be made to Shantilal and Brothers Vs. State of Karnataka and Another,

137. The said law is not even a validating Act and thus, by reason thereof the judgments pronounced by competent courts of law cannot be nullified.

138. The submission of Mr. Gupta to the effect that the Revenue Officers have been given power to reopen the cases and not to nullify any judgment is wholly misconceived. Principles of res judicata as admitted by Mr. Gupta is founded on

consideration of high public policy to achieve two objectives, viz. there must be a finality to litigation and that individual should not be harassed twice over the same kind of litigation. See *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, . For a detailed discussion on the subject reference may be made to a recent Judgment of the Supreme Court in the *Church of South India Trust Association v. Telegu Chorch Council* reported in *Judgment Today* 1996(1)SC 277. The instances of successive habeas corpus applications before the English Courts as an example cited by Mr. Gupta cannot have any application inasmuch as now it is well known that in India the principles of resjudicate or constructive resjudicata apply also to writ proceedings. By way of example it may be noticed that if in a civil suit, a trust has been held to be a trust of a public nature, the Revenue Officer in purported exercise of his jurisdiction under Sub-section (6) of Section 14T cannot ignore the said decision and hold the same to be a private trust. Similarly a question of title decided by a Civil Court, cannot be reopened by Revenue Officer on the grounds aforementioned. Moreover, Sub-section (9) cannot be held to have conferred any arbitrary or unguided powers upon the Revenue Officer who is an executive officer to reopen any and every question he likes. Such a power if held to be available at the hands of the executive would be ultra vires Article 246 of the Constitution of India as also its basic structure. In this view of the matter, in our considered opinion, the said provisions cannot also be upheld on the ground of giving effect to the directive principles as thereby the basic feature of the Constitution of India cannot be altered. In this view of matter we are of the opinion, that the said provisions have to be read down so as to confer Jurisdiction upon the Revenue Officer only to the extent that question may be reopened only when it is necessary to give effect to the provisions of 1981 and 1986 Amendment Acts and not otherwise.

139. Evidently thus, the legislature had no jurisdiction to lay down that without anything more Judgment or decision or award of any court, shall not operate as res judicata: more so in a case where the State is a party thereto.

140. Thus, there cannot be any doubt whatsoever that the legislative competence is not sufficient to declare merely that the decision of the Court shall not bind it which would amount to reversing the decision in exercise of judicial power which power the legislature does not possess or exercise. A court's decision binds the parties under the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. The provision of subsection (8) and (9) of Section 14T must held to be valid only to the extent that in order to given effect to the retrospective operation of the amending Acts, the proceedings may be reopened but the decision of competent court of law cannot be ignored as regards the question of title, possession etc.

141. Submission of Mr. Pal to the effect that the impugned Acts are ultra vires Articles 25 and 26 of the Constitution of India as thereby the properties of the religious and charitable institutions are sought to be taken over, in my opinion, is

wholly misconceived. Articles 25 and 26 of the Constitution do not guarantee holding of property by such institution in pursuit of their freedom of conscience and free provision and propagation of religion and freedom to manage religious affairs. The right to own and administer property by the minority community in terms of Article 26 of the Constitution of India can only be exercised in accordance with law.

142. We are also not in a position to accept that Section 49(5) read with Rule 20A(6) do not lay down any provision for distribution of the non-agricultural and other lands. Section 49(5) of the said Act reads thus:-

"Notwithstanding anything contained elsewhere in this Act, where the State Government is satisfied that it is necessary so to do for a public purpose or for establishment, maintenance or preservation of any educational or research institution or industry, settlement for any period of any land may be made with any person or institution on such terms and conditions including periodical payments, with or without any premium being charged therefor, in such manner as may be prescribed.

Explanation-For the purpose of this subsection "person includes an individual, a firm, a company, or an association or body of individuals, whether incorporated or not."

143. For the purpose of finding out the principles of distribution of lands" which is the head of Chapter-VI as also Section 49(1) although do not provide for any compulsive provision, some play in the joint to the conclusive has to be provided for in order to meet the exigencies of a particular situation.

144. It is now well known that legislature cannot anticipate all situations. It, therefore, by necessity has to make enabling provisions so as to confer some discretion upon the concerned authorities which are to be exercised reasonably, fairly and not arbitrarily or whimsically. In any event, such an administrative action may itself be a subject matter of judicial review.

145. Section 49M as noticed hereinbefore, formulates the principles empowering settlement of land at the disposal of the State Government. By reason of Sub-section (4A) of Section 49 it authorises the State Government to transfer or settle lands at its disposal with a local body or a statutory authority for such purpose and on such terms and conditions as may be decided by it. It also authorises settlement of land for any period with any person or institution according to rules if the State is satisfied that it is necessary so to do or a public purpose or for establishment, maintenance or preservation of any educational or research institution or industry. So far as the agricultural land is concerned, the State Government has to further satisfy that the beneficiary intends to bring the land under personal cultivation and in case of homestead land a satisfaction has to be arrived at that Such beneficiary had no homestead of his own and intends to construct a dwelling house thereupon. In substance, therefore, elaborate provisions have been made for distribution of lands which would be beneficial to

the people of the area or for establishment, maintenance and preservation of education or research institution some industry all of which are bound either to benefit the people of the locality or the economic development of the area.

146. It may be true that the restrictions imposed u/s 4B as it existed prior to 1981 Amendment Act might have been taken away but sufficient safeguards have been provided for, particularly in view of the fact that a person cannot change the nature and character of the land without obtaining requisite permission therefor. Such a provision as contained in Section 4C cannot be said to be arbitrary or infringes with the right to enjoy the property.

147. The purpose of distribution of lands can also be achieved by making an enabling provision in order to pass an appropriate order keeping in view the need and purpose thereof. The legislature cannot foresee all situations and thus it is permissible to make enabling provision.

148. Sub-rule (6) of Rule 20A of the West Bengal Land Reforms Rule 1965 also provides that such lands can be distributed by the Collector or the Additional Collector of the District with prior approval of the Board of Revenue. Thus, there exists a sufficient safeguard.

149. For the reasons aforementioned it cannot be said that Section 49(5) is ultra vires in so far as it does not make any provision for distribution of the lands.

150. The question which now arises for consideration is as to whether the said Act comes within the purview of protective umbrella of Article 31A, 31B and 31C of the Constitution of India. It stands admitted that the said Act is protected under Article 31A, 31B and 31C of the Constitution.

151. In *Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others*, , the said Act has been held to be protected under Article 31A and 31C of the Constitution of India. The Apex Court upon taking into consideration a number of decision held that the power to legislate a family ceiling comes within the purview of Article 31A of the Constitution of India. However, submission of the learned Counsel of the petitioners is that by reason of the said Act, mills, factories, workshops building, dairy, orchard, hat, bazars etc. having been included, the same does not come within the purview of agrarian reforms.

152. In *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, the Apex Court observed that as Article 31A deprives citizens of their fundamental rights and such an Article cannot be extended by interpretation to over reach the object implicit therein.

153. It further observed that the object of Article 31A is to bring about the change of the agricultural economy. Article 31A speaks of an estate. The "estate" has been defined in Section 2(0) in the West Bengal Estate Acquisition Act to include a part of an estate. The said definition does not lead us too far inasmuch as in terms of Article 31A of the Constitutions of India the word "estate" shall have the same meaning as that expression of its local equivalent has in the

existing law relating to land tenures in force in that area including any jagir, inam or muafti. and land held under ryetwari settlement and any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans.

154. The word "estate" has been defined in Sub-section (4) of Section 3 of Bengal Tenancy Act, 1885, which reads thus:-

"estate" means land included under one entry in any of the general registers of revenue paying land and revenue free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government Khas Mahals and revenue-free lands not entered in any register."

155. Non-Agricultural lands also are recorded in the register. The definition of "estate", therefore, is of wide amplitude.

156. In *Purshothaman Nambudiri v. State of Kerala* reported in AIR 1962 SC 604, it has been held that basic concept of the word "estate" as used under Article 31A(2)(a) of the Constitution of India is that it is not only an estate but also its local equivalence.

157. Permanent Settlement Act, 1973 read with the Bengal Tenancy Act do not thus leave any room for doubt that non-agricultural lands, buildings and all other lands would come within the purview of word "estate".

158. Although the object and reason may not be taken aid of for the purpose of interpretation of the statute, but it is well known that the same can be looked into for certain purposes. From the statement of object and reason relating to 1981 Amendment Act it appears that the said Act was sought to be used as complementary to West Bengal Estates Acquisition Act as that Act would not impose any ceiling limit for other classes of land although the same applied to all classes of land. The relevant portions of the said statement and object is thus :-

3. Initially the West Bengal Land Reforms Act, 1955, did not provide for any ceiling limit for any class of land. For the first time by President's Act 3 of 1971 ceiling for agricultural land was introduced in this Act. Since then various amendments have taken place in this Act chiefly regarding the ceiling provisions, rights of bargadars and restriction on alienation of land by Schedule Tribes.

4. There was general public demand that the West Bengal Land Reforms Act, 1955 should be streamlined and comprehensively amended so as to advance the cause of land reforms by breaking concentration of land as the material resource of the community and means of production and by distributing the ceiling surplus land among the landless and land-poor rural people of the State to subserve the common good. It was noticed that the ceiling provisions in the West Bengal Land Reforms Act, 1955 being applicable to agricultural land only, unduly discriminated in favour of owners of lands of other classes and descriptions. The bill is intended to do away with such discrimination. All classes of lands are now

intended to be calculated within the same ceiling limit so that ceiling surplus land of all classes can be utilised for the good of the community and can be distributed among the deserving people. Amendment of the Constitution of India by omitting Article 31 and clause (0 of Article 19 has been taken note of. Here printed in italics.

5. The provisions of this Bill are being given retrospective effect from the 7th August, 1969 which from date the ceiling limit for agricultural land was imposed for all purposes by means of section 14P.

6. The undue discrimination enjoyed so far by the families governed by the Mitakshara School of Hindu Law has been intended to be removed. The existing provisions in the Act restricting alienation of land of Schedule Tribes have been found to be inadequate to achieve the object. Hence, measures are being introduced to further restrict such alienation. Certain other major loopholes in the existing Act are being plugged in this Bill. ,

7. A new proposal is introduced for setting up land Corporation to alleviate the difficulties faced by raiyats holding small quantities of land, but failing to sell the same in times of distress by reason of cultivation of such land by bargadar. Such reports were received by the Government. Hence the proposal. A common service cooperative society is proposed in the Bill for catering to the needs of bargadars and pattaholders u/s 49 for aiding them with implements and inputs for improved methods of cultivation. This is intended to free the poorest section of the cultivators from the clutches of usurious money-lenders and other vested interests. There are also some provisions for procedural changes for speedier implementation of the provisions of the Act for achieving the objects of land reforms.

159. The Statement of Objects and Reasons of 1986 Act whereby and whereunder Section 3A was also amended, certain exclusions were contemplated in order to avoid application of land of more than one Act under which the lands may vest in the State.

160. The Act was, therefore, merely enacted for the purpose of providing a ceiling area by bringing all tenants within the ceiling limit. Agrarian reform is wider than land reform. It may provide a ceiling or may not provide therefor. See *The Godavari Sugar Mills Ltd. Vs. S.B. Kamble and Others*, wherein the Supreme Court referred to the decision of *Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu*, , in the following terms :-

"In the case of *Balmadies Ltd. v. State of Tamilnadu* it was held while dealing with the provisions of *Godalur Janman Estates (Abolition and Conversion into Ryotwari) Act* that the object and general scheme of the Act was to abolish intermediaries between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State. The Act, as such, in its broad outlines was held to be a measure of agrarian reform and protected by Article 31A."

161. This aspect of the matter has also been considered by the Supreme Court in Union Territory of Goa, Daman and Diu and another Vs. Lakshmibai Narayan Patil etc. etc., The Supreme Court explained Kochuni's case (supra) stating :-

"The learned counsel for the respondents also placed two cases wherein Article.31A was held to be inapplicable. In Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, the question of Article 31A did arise but in absolutely different context. The immediate predecessor of the petitioner K.K. Kochuni was the sthanee of the properties attached to the various sthanams held by him. On his death in 1925, the petitioner being senior member become the sthanee and the respondents Nos. 2 to 17 being the junior members of the tarwad did not get any interest in the properties, in an earlier litigation which was commenced following the passing of an Act in 1932, the petitioners' exclusive right was established up to the Privy Council stage. It was held that the Members of the tarwad had no interest therein. After the title of the sthanee was thus established, the Madras Legislature passed the impugned Act in 1955, which declared that every sthanam satisfying certain conditions mention in the Act would be deemed and would always be deemed to have properties belonging to the tarwad. The petitioner K.K. Kochuni challenged the Act as ultra vires before this Court by an application under Article 32 of the constitution. Two other petitions were also filed, one by his wife and daughters with respect to certain other properties gifted to them and the other by his son. In support of the constitutional validity of the Act it was argued on behalf of the respondents that the petitioner's sthanam was an estate within the meaning of Article 31A and, therefore, enjoyed the protection under that Article. The argument was that a law relating inter se the rights "of a proprietor in his estate and the junior members of his family was also covered by the wide phraseology used in clause (2)(b) of Article 31A. This Court rejected the plea, holding that, (para 16 of AIR)

"The definition of "estate" refers to an existing law relating to land tenures in a particular area indicating thereby that the Article is concerned only with the land tenure described as an "estate". The inclusive definition of the rights of such an estate also enumerates the right vested in the proprietor and his subordinate tenure-holders. The last Clause in that definition, viz., that those rights also include the rights or privileges in respect of land revenue, emphasizes the fact that the Article is concerned with land tenure. It is, therefore, manifest that the said Article deals with a tenure called "estate" and provides for its acquisition or the extinguishment or modification of the rights of the landholders or the various subordinate tenure-holders in respect of their rights in relation to the estate. The contrary view would enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. It would also enable the State to compel a proprietor to divide his properties, though self-acquired, between himself and other members of his family or create interest therein in favour of persons other than tenants who had none before."

162. The Court thus held that Article 31A(1)(a) will not apply to an Act which

does not contemplate of seek to regulate the rights inter se between the landlords and tenants leaving all their characteristics intact. The Court further considered the judgment in Sri Ram Ram Narain Medhi Vs. The State of Bombay, and distinguished it on the ground that under the Bombay Act certain rights were conferred on the tenants in respect of their tenements which they did not have before."

163. In Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu, upon which strong reliance has been placed by Mr. Pal has also no application in the instant case. As indicated hereinbefore, the said decision has been taken into consideration in the later decisions.

164. Moreover, it is well know that it is permissible for the legislature to reduce the area of ceiling. It can also seek to nullify a transfer with retrospective effect. Reliance in this connection may be made to Pritam Singh Chahil Vs. State of Punjab and Others, . Even in a case only where by reason of a legislation agricultural lands were sought to be taken over, a provision for acquisition of building appertaining to the estate within which they lie has been held to be valid See Gopalji v. State of Orissa reported in 1954 Supreme Court Reporter, page 1. Moreover, it is now well settled that for the purpose of finding out as to whether the Act is for agrarian reforms ,or not, the dominant purpose thereof has to be considered. In Prem Nath Raina and Others Vs. State of Jammu and Kashmir and Others, the Apex Court observed:-

The question as to whether any particular Act is a measure of agrarian reform has to be decided by looking at the dominant purpose of that Act. In Ranjit Singh and Others Vs. State of Punjab and Others, it was held on a review of authorities that a large and liberal meaning must be, given to the several expressions like "estate", "rights in an estate" and "extinguishment and modification" of such rights which occur in Article 31A. the decision in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, to In re which our attention was drawn by Shri Tarkunde, was treated in Ranjit Singh as a special case which cannot apply to cases where the general scheme of legislation is definitely agrarian reform and under its provisions, something ancillary thereto in the interests of rural economy has to be undertaken to give full effect to those reforms. In our case the dominant purpose of the statute is to bring about a just and equitable redistribution of lands, which is achieved buy making the tiller of the soil the owner of land which he cultivates and by imposing a ceiling on the extent of the land which any person, whether landlord or tenant, can hold. Considering the scheme and purpose of the Act, we cannot but hold that the Act is a measure of agrarian reform and is saved by Article 31A from the challenge under Article 14, 19 or 31 of the Constitution. Article 31 has been repealed by the 44th Amendment with effect from June 20, 1979 and for future purposes it ceases to have relevance. Reduced to a constitutional premises, the argument of the petitioners is that the particular provisions of the Act are discriminatory and are therefore, violative of Article 14; that those provisions impose unreasonable

restrictions on their fundamental rights and are therefore violative of Article 19. This argument is not open to them by reason of Article 31A."

Agrarian Reform has been held to include :-

i) Provisions for the development of rural economy, including consolidation of holding.

ii) Increasing agricultural production,

iii) Encouraging self-cultivation.

iv) Equitable distribution of lands and agricultural income between landlord and tenant, in order to prevent concentration of lands in the hands of a few landholders.

v) Provisions ancillary to agrarian reform, e.g. annulment of anticipatory transfers to defeat a law of agrarian reform, transfer of surplus land to the village Panchyat for the use of the general community, such as promotion of agriculture or welfare of the agricultural population, acquisition of private forest lands belonging to a Jagir or inam for such purposes, for settlement of agricultural labour, fixing a ceiling area and providing for distribution of the surplus amongst the tillers of the soil, acquisition of the land together with standing crops and improvements.

vi) Increase in employment opportunities. (See D.D. Basu-shorter Constitution of India, at page 261) 165. However, taking away of non-agricultural lands of industrial or commercial undertaking for distribution among the landless may not be held to be covered under Article 31A(1)(a). See The Malankara Rubber and Produce Co. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc., To the aforementioned extent, therefore, it must be held that in so far as it seeks to take away the non-agrarian land used by industrial or commercial undertaking the Act is not protected under Article 31A(1)(a).

166. In State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., , increasing of agricultural production has been held to be covered by Article 31A. See paragraph 19, 30 & 31.

167. Moreover forest lands are also covered within the terms "estate" occurring in Section 31A(2)(a).

168. The said decision has to be read in the peculiar facts of that case. In the instant case, evidently, the purpose of inclusion of non-agricultural lands for the purpose of ceiling has been made clear that the same is noted for the purpose of agrarian reforms. More so, as indicated hereinbefore, agrarian reforms must be held to have a larger scope than land reforms. Furthermore, the object of Constitution (Fourth Amendment) Act, 1955 was to take out not only laws relating to abolition of Zamindari but also other items of agrarian and social welfare legislation. See State of Haryana and Another Vs. Chanan Mal and Others,

169. In *Madhusudan Singh and Others Vs. Union of India (UOI) and Others*, the Apex Court quoted with approval its earlier decision in *Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others*, the different facets of agrarian reform which is to the following effect :-

"(1) to maximise the agricultural output and productivity, (2) a fair and equitable distribution of agricultural income, (3) increase in employment opportunities, and (4) a social or ethical order. Though the abolition of the Zamindari system in the State of West Bengal was an important step forward, the feudal structure remained so far as the peasants were concerned. The objectives have been achieved through progressive legislation."

170. Thus a social or ethical order as also increase in employment opportunities are also objectives of agrarian reform. Moreover by bringing in the non-agricultural lands within the purview of definition of land, evidently the scope of getting more surplus agricultural lands for the purpose of distribution becomes apparent.

171. In any event, even if the said Act does not come within the purview of Article 31A, the same is protected under Article 31C.

172. Thus, the aforementioned objective can be achieved by including non-agricultural lands also. In any event, by reason of 1981 Amendment Act a declaration has been made that the provision of the said Act has been made for the purpose of giving effect to the policy of the State towards securing the principles specified in Clause (b) and (c) of Article 39 of the Constitution of India. It may be true that such a declaration is not conclusive but it is not possible to agree with the learned Counsel that the provision of Article 31C is not applicable because they do not sub-serve any common good. However, in *Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another*, : Judgment Today 1996(1) SC 173, it has been held that such a declaration is not conclusive. However in that decision the Supreme Court upon considering the provisions of Tamil Nadu House Races(Abolition and Wagering or Betting) Act, 1974 as also Section 2 of the Madras City Police Act, 1888 held that horse racing does not come within the purview of coming or gambling but being a game of mere skill cannot come within the purview of the provision of the said Act and thus the question of its coming under the protective umbrella of 31C does not arise.

173. In *Minerva Mill's case (supra)* upon which strong reliance has been placed by Mr. Pal, the Supreme Court in its majority judgment clearly held that Article 31A and Article 31C as they prior to their amendment are intra vires. The said principle have also been reiterated in *Waman Rao and Others Vs. Union of India (UOI) and Others*,

174. The first part, of the unamended Article 31C is basically of the same genre as Article 31A with only this difference that whereas Article 31A protects laws relating to certain subjects, the first part of the unamended Article 31C deals with laws having certain objectives. There is no qualitative difference between

Article 31A and the first part of unamended Article 31C in so far as the exclusion of Articles 14 and 19 is concerned.

175. In *Assam Sillitnanite Ltd. and Anr. v. Union of India and Ors.* reported in 1992 Supp(1) SCC 692, the provision of Section 18AA as amended was held by the Apex Court to be covered under Article 31C of the Constitution of India, stating:-

" The extent and scope of Judicial review of legislation where there is a declaration under Article 31C of the Constitution which enjoins that no law containing a declaration that it is for giving effect to such a policy shall be called in question in any Court on the plea that it does not give effect to such a policy has been considered in *Kesavananda Bharati*. On an analysis of the majority judgment the rein Sabyasachi Mukherjee, J (as he then was) observed in *Tinsukhia Electric Supply Company* case that the declaration in Article 31C does not exclude the jurisdiction of the Court to determine whether the law is for giving effect to the policy of the State towards securing the principles specified in Articles 39(b) and (c). Mathew, J. had observed in *Kesavanda Bharati* that in order to decide whether a law gives effect to the policy of the State towards securing the directive principles specified in Article 39(b) or (c), a Court will have to examine the pith and substance, the true nature and character of the law as also its design and the subject matter dealt with by it together with its object and scope. If a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil created by the declaration and decide according to the real nature of the law."

176. Having considered the provision of the said Act and various decisions of the Supreme Court of India, the Apex Court held:-

"Therefore, all things which are capable of producing wealth for the community would be material resources. The conservation of the essential ingredients necessary for the crucial iron and steel industry by nationalisation is only in implementation of the policy declared in clause (b) of Article 39.

In the recent decision, of this Court in *Tinsukhia Electric Supply Company*, the *Tinsukhia Electric Supply Undertaking (Acquisition) Act, 1973* was challenged as unconstitutional. The contention that the Act was entitle to the protection under Article 31C was upheld pointing out that electric energy generated by the supplier companies constitute material resources of the community within the scope and meaning of Article 39(b) and having regard to the true nature and purpose of the legislation the objects of the legislation have a direct and reasonable nexus with the objective of distributing the material resources so as to subserve the common good."

177. This aspect of the matter has also been considered in *Jillubhai (supra)* wherein the taking over of mines and minerals under the provisions of *Bombay Land Revenue Code* and *Land Tenure Abolition Laws (Gujarat Amendment Act,*

1982) was held to be protected under Article 31A and 31C of the Constitution of India holding :-

" The Amendment Act received, its protective canopy of Ninth Schedule in Entry 219 thereof through the Constitution 66th Amendment Act, 1990, with effect from 7.6.1990. While dealing with the first contention, we have held that the Amendment Act is part of the scheme of agrarian reform envisaged under the Act falling within Entries 18 and 23 of List II (State List) and Entry 42 of Concurrent List of the Seventh Schedule to the Constitution. So it is saved by Article 31A of the Constitution."

178. Upon taking into consideration the earlier decisions it was held that Indian society is pre-dominantly agrarian and about 3/4th of its population is living in rural areas on agricultural and other ancillary occupations. The Supreme Court traced the history of acquisition and held that those without lands have been suffering not only economic disadvantage but also a concomitant social disadvantage.

The Apex Court further held :-

" In the very nature of things, it is not possible to provide land to all landless persons but that cannot furnish an alibi for not undertaking at all a programme for the redistribution of agricultural of land. Agrarian reforms therefore require, inter alia, the reduction of the larger holdings and distribution of the excess land according to social and economic considerations.....We embarked upon a constitutional are holding forth the promise that we will secure to all citizens justice, social, economic and political, equality of status and of opportunity: and, last but not the least, dignity of the individual. Between these promises and the 1st Amendment there is a discernible nexus, direct and immediate. Indeed, if there is one place in an agriculture dominated society like ours where citizens can hope to have equal justice, it is on the strip of land which they till and love, the land which assures to them dignity to their person by providing to them a near decent means of livelihood. The first Amendment has thus made the constitutional ideal of equal justice a living truth. It is like a mirror that reflects the ideals of the Constitution; it is not the destroyer of its basic structure. The provisions introduced by it and the 4th Amendment for the extinguishment or modification of rights in lands held or let for purposes of agriculture or for purposes ancillary thereto, strengthen rather than weaken the basic structure of the Constitution....."

179. Upon taking into consideration Minerva Mills case and Wamon Rao's case it was observed that each word in Article 39A has a strategic role and the whole article has a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is so to undertake distribution as best subserves the common good. It reorganises, by such distribution, the ownership and control of material resources of the community. "Resources" is a sweeping expression and covers not only cash sources but even

ability to borrow credit resources. Upon taking into consideration the decision of State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others, , it held :-

" The word "distribution" used in Article 39(b) must be broadly construed so that a court may give full and comprehensive effect to the statutory intent contained in Article 39(b). It should not be construed in a purely literal sense so as to mean only division of a particular kind or to particular persons. The word" distribution" will include various facets, aspects, methods and terminology of a broad-based concept of distribution. It does not merely mean that property of one should be taken over and distributed to others like land reforms. It is only one of the modes of distribution but not the only mode. Nationalisation of the transport as also the units, the vehicles would be able to go to the farthest..." as possible and provide better and quicker and more efficacious facilities". Nationalisation of contract carriages were thus upheld." , Here printed in italics.

It also quoted from Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, to the effect :-

"Material resources of the community means all things which are capable of producing wealth for the community. There is no warrant for interpreting the expression in so narrow a fashion and to confine it to public-owned material resources, and exclude private-owned material resources. The expression involves no dichotomy. The words must be understood in the context of the constitutional goal of establishing a sovereign, socialist, secular, democratic republic. Nationalisation of coking units were upheld."

It was further held :-

"It is, therefore, clear and we so hold that the material resources of community is a wide concept and must be broadly interpreted to bring within its sweep all resources, natural or physical, moveable or immovable, corporeal or incorporeal, tangible or intangible properties etc..... Private resources or property are part of material resources. The word distribution" equally must be construed broadly to include not only allotment of resources to public use but also dispensation of largesse to the poor to provide access to equal opportunity. In other words it is a broad-based concept and it should not be confined within narrow confines. Mines minerals and quarries embedded in the land are material resources of the community amenable to public use or for distribution."

180. This aspect of the matter having been dealt with in details while considering the scope of Section 14M need not be considered over again.

181. The question which now arises for consideration is as to whether the fundamental right is a basic structure of the Constitution of India or not.

182. In Minerva Mill's case (supra) as also Indira Nehru Gandhi's case (supra), it has been held that Article 14 is a basic feature of the constitution of India. Article 14 and 19 have been excluded from being considered in respect of cases which are covered by Article 31A and 31C of Constitution of India. However, keeping in

view the preamble of the Constitution of India there cannot be any doubt that Article 14 read with preamble is a part of basic structure i.e. equity in respect of justice, equity, status etc..

183. In *Waman Rao and Others Vs. Union of India (UOI) and Others*, the Apex Court while deprecating the action of the parliament in making an attempt to make the 9th schedule densely populated held :-

"The necessity for pointing out this distinction between Articles 31A and 31B is the difficulty which may apparently arise in the application of the principles of stare decisis in regard to Article 31B read with the Ninth Schedule, since the doctrine has been held by us to apply to Article 31A. The fourth reason given by us for not applying in the rule of stare decisis to Article 31A is that any particular law passed under Clauses (a) to (e) can be accepted as good if it has been treated as valid for a long number of years but the device in the form of the Article cannot be upheld by the application of that rule. We propose to apply to Article 31B read with the Ninth Schedule the self-same test."

184. The Apex Court in view of the decision of *Keshabhananda Bharati (supra)* held that amendment made to the Constitution before 24th April, 1973 inserting an Act in the Ninth Schedule of the Constitution of India may be decided on the touch-stone of the basic feature of the Constitution. It, however, observed:-

" A small, although practically important, clarification seems called for at the end of this discussion of the validity of Articles 31A, 31B and 31C. We have held that laws included in the Ninth Schedule on or after April 24, 1973, will not receive the protection of Article 31B ipso facto. Those laws shall have to be examined individually for determining whether the constitutional amendments by which they were put in the Ninth Schedule, damage or destroy the basic structure of the Constitution" in any manner. The clarification which we desire to make is that such an exercise will become otiose if the laws included in the Ninth Schedule on or after April 24, 1973 fall within the scope and purview of Article 31A or the unamended Article 31C. If those laws are saved by these Articles, It would be unnecessary to determine whether they also receive the protection of Article 31B read with the Ninth Schedule. The fact that Article 31B confers protection on the Schedule-laws against "any provisions" of Part III and the other two Article confer Protection as against Articles 14 and 19 only, will make no real difference to this position since, after the deletion of Article 31, the two provisions of Part III, which would generally come into play on the question of validity of the relevant laws, are Articles 14 and 19."

185. In view of the aforementioned observation and in view of my findings aforementioned it is not necessary to consider as to whether the Constitutional Amendments are valid or not. But in our opinion, it does not mean although an Act may be under the protective umbrella of Article 31C, but a provision thereof may not still be held to be unconstitutional, being destructive of basic structure of the Constitution or other provision of the statute. It has to be borne in mind

that the Constitution operates as a higher law and thus any act transgressing any provisions thereof would be unconstitutional.

186. In this context, however, we must notice the decision of the Supreme Court in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, wherein the Apex Court was considering the constitutionality of Urban Ceiling Act was also within the protective umbrella of Article 31A, 31B and 31C. Despite the same Section 27(1) of the Act was held to be ultra vires. Chandrachud, J, (As His Lordship then was) speaking for himself as also on behalf of Bhagawati, J (As his Lordship then was) did not assign any reason in support of the said finding. Krishna Ayer, J, however, sought to dissed Article 14 of the Constitution of India, stating :-

"Peripheral inequality is inevitable when large-scale equalisation processes are put into action. If all the judges of the Supreme Court in solemn session sit and deliberate for half a year to produce a legislation for reducing glaring economic inequality their genius will let them down if the essay is to avoid even peripheral inequalities. Every large cause claims some martyr, as sociologists will know. Therefore, what is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking, unconscienable or unscrupulous travesty of the quintes-sence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty."

187. Tulzapurkar, J held the entire Act has to be unconstitutional. The learned Judge held that there having not been sufficient guidelines for exercise of power u/s 27(1) of the Act, the same is violative of Article 14 of the Constitution of India and as such the requirement of permission contained therein will have to strike down as being unconstitutional.

188. Sen, J, declared Section 27(1) of the Urban Ceiling Act as unconstitutional on 2 counts i.e. both under Article 14 and 19 holding:-

"In my judgment, there is no justification at all for the freezing of transactions by way of sale, mortgage, gift or lease of vacant land or building for a period exceeding ten years, or otherwise, for a period of ten years from the date of the commencement of the Act, even though such vacant land with or without building thereon falls within the ceiling limits. In *Excel Wear and Others Vs. Union of India (UOI) and Others*, the Court held that the right to carry on a business guaranteed under Article 19(1)(g) carries with it the right not to carry on business. It must logically follow, as a necessary corollary, that the right to acquire, hold and dispose of property guaranteed to a citizen under Article 19(1) (f) carries with it the right not to hold any property. It is difficult to appreciate how could a citizen be compelled to own property against his will."

189. It is, therefore, evident that although the entire Act may not be hold to be ultra vires as destructive of the basic feature of the constitution, having its protection under Article 31A, 31B and 31C of the Constitution but one or more of the provisions may be held to be unconstitutional as violative of basic feature of

the Constitution. In Section 27(1) of the Urban Ceiling Act apparently was declared unconstitutional as the building or structure does not vest in terms of Section 3 thereof but despite the same, restriction on transfer was sought to be imposed thereby. In this view of the matter, the said Act may not be declared unconstitutional.

190. However, one provision in particular is required to be taken note of that is Section 14M(5) of the said Act, Section 14M(5) reads thus :-.

"The lands owned by a trust or endowment other than that of a public nature, shall be deemed to be lands owned by the author of the trust or endowment and such author shall be deemed to be a raiyat under this Act to the extent of his share in the said lands, and the share of such author in the said lands shall be taken into account for calculating the area of lands owned and retainable by such author of the trust or endowment, and for determining his ceiling area for the purpose of this Chapter.

Explanation - The expression "author of trust or endowment" shall include the successors-in-interest of the author of such trust or endowment."

191. We have noticed earlier that the Revenue Officer is empowered to consider the question as to whether a trust is public trust or private trust, but in view of our findings there cannot be any doubt that once a trust has been declared to be a public trust by a competent court of law, the said question cannot be reported. It is trite that revenue officers are bound by the degree passed by a Civil Court but the converse is not true.

192. There cannot be any doubt that an idol created under a trust be It private or public in nature is a juristic person and is capable of holding property. Where a person dedicated its property in favour of an idol by creating a private trust or a public trust, the idol becomes the owner thereof. The same would be the position as regards other charitable or religious trust. In, terms of the provision of West Bengal Estates Acquisition Act, the idol comes within the purview of the" definition of intermediary or tenure holder avail its properties vested in the State. Its position is the same eye of law as that of any other intermediary. In relation to the lands which are permissible to be retained under the Act, it becomes a tenant under the State. As indicated hereinbefore Raiyat has been defined in Section 2(10) of the Act to mean a person or any institution holding land for any purpose whatsoever. Once a trust or an idol becomes a raiyat for the purpose of the said Act, the question of divesting its interest and creating an interest in respect of the lands owned by it in the author of the trust, in my opinion, cannot be sustained. The same would amount to deprivation of property of a Juristic person which cannot be done without payment of compensation and if the land It within the ceiling area without payment of market value thereof.

193. An author of a trust might have dedicated the properties in favour of an idol by creating a trust, long long back. The Shebait or trustees may be outsiders. The said Act does not contain any provision for vesting of the estate of a raiyat

which would thus include an idol or a private trust. For the purpose of ceiling area, therefore, the idol cannot be divested of its properties and the author or his successors-in-interest cannot be deemed to be owner of the property. Under the Constitution, a raiyat is entitled to full compensation if his lands within the ceiling area are acquired. If such a provision is given effect to, the same would become self-contradictory. However, there cannot be any doubt that only in a given case where a private trust has been created in order to avoid ceiling limit, the appropriate authority may become entitle to tear the veil with a view to find out as to whether the trust in question is a genuine trust or not and only in the event of a finding that the trust in question is not a genuine trust but has been created for the purpose of evading the ceiling area, the Revenue Officer may hold that in truth and substance the author of the trust is the owner and thus the lands held in the name of trust should be held to be land available at the hands of the author or his successors-In-Interest. In other words such enquires are possible where there exists materials to show that the transaction has been entered into with a view to defeat the object and purport of ceiling law. It is now well known that fraud vitiates all transactions.

194. Some support to our aforementioned finding may be derived from a recent decision of the Supreme Court in *Peddinti Venkata Murali Ranganatha Desika Iyengar and Ors. v. Government of Andhara Pradesh and Anr.* reported in *Judgment Today* 1996(1) SC 234 wherein explanation II of Section 2(22) and Section 76 of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowment Act, 1987 was questioned. The contention raised was that a right having been granted to the petitioners under the Andhra Pradesh (Andhra Area) Inams (Abolition and conversion into Ryotwarl) Act and the same having attained finality, the legislature is defried (sic) of power under the Act to set at naught the effect of the grant of Ryotwarl patta to the archakas service holders or employees convered under the Act by legislative side-wind inasmuch as by reason of such ryotwari patta they become absolute owners. It was contended that by employing a non-obstante clause a vested right cannot be taken away without compensation. The question arose whether the legislature, by a side-wind, without suitably amending the Inams Abolition Act, as interpreted by the High Court, or repealing it, could directly nullify the said law laid by the Court and divest, u/s 76 of the Act, the vested right and declare that the land was not covered by said ryotwari patta or shall not be transferred or shall be deemed never to have been transferred thereunder and would treat such persons as encroachers.

195. The Apex Court held :

"It is settled law that repeal of an Act divesting vested right is always disfavoured. Presumption is against repeal by implication and the reason is based on the theory that the legislation, while enacting a law, has complete knowledge of the pre-existing law on the same subject matter. In the "Principles of Statutory Interpretation" by Justice G.P. Singh (5th Edition) 1992 at pages

186-87 under the caption "Reference to other statutes" in chapter IV (External Aids to Construction) it has been stated that "a legislation proceeding upon an erroneous assumption of the existing law without directly amending or declaring the law is ineffective to change the law. "The beliefs or assumptions of those who frame Acts of Parliament cannot make the Law" and a mere erroneous assumption exhibited in a statute as to state, of the existing law is ineffective to express an "intention" to change the law; if, by such a statute, the idea is to change the law, it will be said that "the legislature has plainly miss-fired. The "Legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so." The court will disregard such a belief or assumption and also the provision inserted in that belief or assumption. A later statute, therefore, is normally used as an aid to construction of an earlier one."

196. The Court also considered that without amending the law under the Inams Abolition Act and without properly removing the foundation of the judgment rendered by the High Court the legislature cannot seek to destroy the effect of Inams Abolition Act on an erroneous belief or assumption that it did not bind the religious or charitable institution or endowment or that the holder of the land did not acquire title or patta which was granted to him and the land was still with the institution and treated the occupant as encroacher. It, therefore, held that the said provision to be unconstitutional.

197. In the instant case also West Bengal Estates Acquisition Act had not been repealed. Under the West Bengal Estate Acquisition Act. "charitable purpose" and "religious purpose" has been defined. The definition of intermediary is also of wide amplitude, Section 6(1)(i) entitles an institution established exclusively for a religious or of charitable purpose or both to hold the lands like any other intermediary. In terms of West Bengal Estates Acquisition Act, therefore, they also become tenants of the State of West Bengal and in relation to the agricultural lands a raiyat. Section 2(10) of the west Bengal Land Reforms Act contains the definition of raiyat which is also of wide amplitude. Thus, there cannot be any doubt whatsoever that the religious or charitable institution having become a tenant under the State and thus, having been granted statutory right to hold, retain and dispose of the lands, cannot by a side-wind be deprived of its properties for any purpose whatsoever.

198. Mr. Gupta however, has relied upon a decision of the Supreme Court in Deoki Nandan Vs. Murlidhar, , wherein an observation has been made that it is only in an ideal sense that the idol is owner of the endowd property as it cannot make itself use of them not can enjoy or dispose of the same or even protect them. The Supreme Court itself in that decision held that idol can have no beneficial interest in the endowment.

199. The decision of the Supreme Court must be read in the fact of the said case. However, there cannot be any doubt whatsoever in view of the settled principles of law that idol is a juristic person and can own property and dispose of

the same through the. shebait. An idol loosely is also called a "perpetual minor" although that terminology is not correct. Like any other juristic person, it cannot enjoy the property itself or dispose of the same unless the persons managing the affairs think fit to do. They act on and behalf of the idol and takes a decision in that regard but that does not mean that a body corporate or an idol would not be entitled to own the property.

200. However, so far as the Section 14M(6) of the said Act is concerned, in my opinion, as the State has the legislative competence to make such enactment and bringing a public trust at par with such other persons no exception thereto can be taken. Moreover, exceptions have been provided in 14Q(3) where the State Government may increase the ceiling area of the trust if it is satisfied that the trust or the endowment requires land as district from the income or usufructs derived from such land for the due performance of its obligation.

201. We have already discussed the application of Article 25 and 26 of the Constitution in such matters and in view of our findings aforementioned we hold that the said provision is not ultra vires Articles 25 and 26 of the Constitution of India inasmuch as no one can claim an indefeasible right to acquire limitless immovable property. Any way u/s 17Q(3) there is a provision for increasing the ceiling where land is required by a religious or charitable institution as distinct from income from land.

202. Keeping in view of our findings aforementioned the other provisions which are the subject matter of the challenge may now be considered.

203. So far as the Section 14P(1) is concerned, the objection as regards the validity thereof cannot be upheld inasmuch as the provision applies to transfers which are not bonafide. In this connection reference may be made to *Nawal Singh v. State of U.P.*, wherein the Supreme Court observed that the mere fact that the transfer was effected subsequent to 24.1.1971 was not by itself reflective of the absence of good faith. Such an observation was made in the facts of that case.

204. So far as Section 14T is concerned, evidently the validity of the cut off date, namely, 7th August, 1969 had been accepted by the Supreme Court in *Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others*, In the statement of object and reasons also, the reason for the said cut off date has been assigned.

205. The state cannot be said to have thus, acted arbitrarily. A cut off date or an appointed date has to be fixed in the ceiling law for purpose of determination of a ceiling area. Moreover, as has been held in *Jilubhai's case* (supra) reported in 1995 Supp I SCC 596 that it is possible to give a retrospective effect to an Act. the Apex Court held :-

"The third contention that limited retrospective operation of Section 69 and 69-A with effect from 1.5.1960 is illegal and ultra vires, lacks force. Formation of the State of Gujarat became effective from 1.5.1960. In *Tata Iron and Steel Co. Ltd.*

v. State of Bihar and Rai Ramkrishna v. State of Bihar this court held that the power to make law on an entry in the Seventh Schedule of the constitution could be exercised both prospectively and retrospectively unless there is an express constitutional prohibition to make an enactment in that behalf, it is also equally settled law that the power to make law prospectively would include the power to make the law retrospectively."

206. It is now well known that a cut off date or an appointed date cannot be held to be arbitrary inasmuch as the State has to choose a date. This aspect of the matter has been considered in West Bengal Head Masters' Association v. State of West Bengal reported in 1995 Labour & Industrial Cases 1919 where in this court has considered various decisions of the Supreme Court of India distinguishing the case of D.S. Nakara and Others Vs. Union of India (UOI), .

207. Deletion of section. 14Q(2a) whereby and whereunder retention of 2 acres of orchard in addition to ceiling limit of agricultural land was made permissible cannot be said to be ultra vires, Similarly Section 14Q(1) can neither be said to be violative of Article 14 of the Constitution of India or Article 20 thereof. Although transfer of such land has been made penal, proviso appended to subsection (4) of section. 14U made absolutely clear that the penal provision will have no application in relation to a transfer made in accordance with the provisions of any law for the time being in force.

208. It may be noticed that Sub-section (1) came into force in 1971. So far as the Sub-section (2) is concerned, transfer of agricultural land would become an offence on and from 12.5.1989 when the 1986 Amendment Act came into force. No person can be prosecuted prior to the said date.

209. Similarly only because no exemption has been granted for orchard or fishery by itself cannot be said to make a provision ultra vires. Similar provision like Section 14Z is contained in Section 6(3) of the West Bengal Estates Acquisition Act.

210. It may be that Section 6(3) of the West Bengal Estates Acquisition Act, the word used "shall" has been used whereas merely a discretion has been conferred to permit retention. But as indicated hereinbefore that by itself is no ground for striking down the Act.

211. A distinction between Orchard and Fishery on the one hand and industry, tea garden etc. as mentioned in clause (2) of Section 14J has to be borne in mind. The lands mentioned in clause (2) of the said provision belonging to the industries form a class by themselves. Industries and tea garden etc. are important foreign exchange earners whereas the growth of livestock breeding, poultry farming and dairy which supply nourishment to the community is obviously considered to be extremely important for the common good. Moreover, by reducing the ceiling of orchards and fisheries the production of fruit or fish is not reduced and the production continues in the hands of those to whom they are distributed. It may be mentioned that the provision had been laid down for

revision of the excess lands as records tea gardens etc.,.

212. Although the other counsels did not raise those questions, the validity of some of the provisions had been raised by Mr. Saradindu Samanta. The learned Counsel contended that Section 14T which provides for a non-obstante clause is ultra vires. We do not find any reason to agree to the said contention, Section 14J occurs in Chapter-IIB, the said Chapter has an overriding effect which power the legislature have. However, keeping in view the proviso appended to said Act and interpreting the provisions of the said Act vis-a-vis the Urban Ceiling Act which also contains a non-obstante clause; we have already taken the view that harmonious construction requires that both the Acts would have application in their own respective fields.

213. So far as Section 14K(e) is concerned, it merely defines an orchard. We do not understand how the change in the definition of the word orchard can attract the wrath of Article 14 or 300A of the Constitution of India.

214. As indicated hereinbefore, certain provisions have been declared by the learned Trial Judge as ultra vires. Before us no cross-objection was filed or pressed, if any even if filed not any argument was advanced by Mr. Gupta except bringing to our notice a division bench decision in Bibhuti Bhushan. Bankura.

215. So far as the Section 14T(5) is concerned, as indicated hereinbefore, a perusal of the decision of division bench of Bibhuti Bhushan Bankura (supra) clearly shows that the division bench has overruled the decision of the learned Single Judge holding that there is no repugnance between the amended provision of Section 14T(5) and Section 4 of the Benami Transaction Prohibition Act. As the Judgment of the learned Trial Judge has been overruled, the question of sustaining the same by this Court does not arise as this bench is bound by the aforementioned decision.

216. However, we may note that the decision of the Supreme Court in Mithilesh Kumar and Another Vs. Prem Behari Khare, upon which reliance has been placed by the division bench is no longer a good law having been overruled by a larger bench of the Supreme Court in Nand Kishore Mehra Vs. Sushil Mehra, .

217. We may also note that the Supreme Court in AIR 1994 SCW 3796 has held that trust is not a person within the meaning of provision the Benami Transaction Prohibition Act.

218. However, a written note was submitted by Mr. Gupta (possibly without even supplying a copy thereof to the learned Counsel for the appellants) on 10.5.96, although the arguments were closed and the judgment was reserved on 26.4.96 Even no paper book has been filed on behalf of the respondents. In this situation, it is not possible for us to consider the correctness or otherwise of the decision of the learned Trial Judge as regards the validity of Section 4(4), Section 4(5) and Section 17(2).

219. So far as the submission of Mr. Gupta to the effect that the petitioners have

no locus standi is concerned the same is not necessary to be considered in details. It is not disputed at the Bar that hundreds (if not thousands) of writ applications had been filed in this court questioning virus of this Act. Even on the Appellate Side, there are various cases which have to be decided by us on merits.

220 The question which have been raised in this case arise in one form or the other in the said applications. Furthermore, the learned Trial Judge has passed a judgment on merit after hearing the counsel for both the parties. The learned Trial Judge has also rejected the contention of Mr. Gupta to the effect that the petitioners have no locus standi to question the virus of the said Act. We agree with the reasoning of the learned Trial Judge and we, therefore, reject the contention. It is, however, relevant to notice that in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, , wherein it has been held :--

"A technical point is taken in the counter affidavit that the 1st petitioner is an unrecognised association and that therefore, the petition to that extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to Justice through "class actions", "public interest litigation", and "representative proceedings". Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigation, is an affirmation of participative Justice in our democracy. We have no hesitation in holding that the narrow concept of "cause of action" and "person aggrieved" and individual litigation is becoming obsolescent in some jurisdictions. In must fairly be stated that the learned Attorney General has taken no objection to a non recognised association maintaining the writ petitions."

221. In D.S. Nakara's case (supra) it has been held by the Supreme Court that a society on behalf of a class of persons prejudiced by a common grievance can maintain the writ application. In this case also the petitioners represened to the State their common grievance.

222. However, we have not considered any point which have not been addressed before us by the learned Counsels for the parties.

223. It also appears that even the mater was heard on merits for a number of days in respect of F.M.A.T. No. 1679/92, F.M.A.T. No. 1680/ 92, F.M.A.T. No. 1758/92, F.M.A.T. No. 1768/92, F.M.A.T. No. 1802/ 92, F.M.A.T. No. 1880/92, F.M.A.T. No. 1881/92, F.M.A.T. No. 1882/ 92, F.M.A.T. No. 1892/92, F.M.A.T. No. 1879/92, F.M.A.T. No. 1932/ 92, F.M.A.T. No. 2004/92, F.M.A.T. No. 2085/92, F.M.A.T. No. 2303/ 92, F.M.A.T. No. 2304/92, F.M.A.T. No. 2305/92, F.M.A.T. No. 2380/ 92, F.M.A.T. No. 2158/91, before a bench presided over by A.M.

Bhattacharjee the then Chief Justice of this Court on the application for amendment and possibly on merit on several dates from 22.6.1992. However, from the order sheet dated 7.4.1994 passed in F.M.A.T. No. 1979/92 it appears that the said cases were released as the judgment could not be delivered. In this situation it will be, in our opinion, travesty of justice if the writ petitions are thrown out only on the ground of lack of locus on the part of Paschim Banga Bhumiijibi Sangha. Moreover, as notice hereinbefore, some other appeals on the appellate Side have also been heard also with this appeal.

224. In F.M.A.T. No. 1768/92 {Umananda Roy and Ors. v. State of West Bengal), the petitioners who are five in numbers, categorically stated that they had lands, agricultural, non-agricultural, tank, tank-fisheries, bagan etc. within the State of West Bengal.

225. In F.M.A.T. No. 1680/92, an appeal preferred by Paschim Banga Bhumiijibi Krishak Samiti and 12 Ors. who had been represented by Mr. Manna, the petitioner No. 1 is an association and petitioner No. 2 to 13 are the members and the said petitioners all had lands, agricultural, non-agricultural, tank etc. within the State of West Bengal. In paragraphs 4 to 12 all the petitioners have given details of their lands situated in different area comprising both agricultural and non-agricultural lands.

226. In F.M.A.T. No. 1802/92 has been filed by Tapash Kundu & 27 Ors. wherein also the petitioners had given detailed description of lands held by them from Paragraph 4 to 18J of the writ petition. In paragraph 19 of the said writ application it has, however, been stated that petitioner Nos. 25 to 28 hold tank, fisheries and they acquired the said lands by registered cobala and others. In those writ application, neither any affidavit-in-opposition has been filed nor their locus had been questioned.

227. For the reasons aforementioned, it is not possible to hold that this court will not enter into an academic question.

228. In view of our findings aforementioned the appeal is allowed in part.

229. But in the facts and circumstances of this case there will be no order as to costs.

230. The oral prayer for leave to file an appeal before the Supreme Court as prayed for by Mr. Gupta keeping in view of the fact that our decision is based on the Supreme Court Judgments is refused. Prayer for stay of the operation of the judgment is also refused.

231. Urgent xerox certified copy will be supplied on the priority basis.

S.N. Chakrabarty, J.

232. I agree