
(2003) 08 KL CK 0049

In the High Court Of Kerala

Case No : O.P. No's. 2508, 2870, 4575 and 7895 etc. of 2001

Ratna Bai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31, 31A, 31A(1)

Kerala Land Reforms (Amendment) Act, 1999 — Section 2(23A), 2(28), 2(3), 3

Citation : (2004) 1 ILR (Ker) 124 : (2004) 1 KLT 632

Hon'ble Judges : K. Thankappan, J; J.B. Koshy, J

Bench : Division Bench

Advocate : S.V. Balakrishnan and P.B. Krishnan, for the Appellant; C. Vathsalan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Constitutional validity of the Kerala Land Reforms (Amendment) Act, 1999 is questioned in these petitions. It is the contention of the petitioners that the above Act is unconstitutional and unenforceable. The Kerala Land Reforms Act, 1963 was exhaustively amended by Act No. 35 of 1969 with effect from 1st January, 1970. Next major amendment was the Kerala Land Reforms (Amendment) Act, 1989 dated 30th May, 1989 (Act No. 16 of 1989). The Kerala Land Reforms (Amendment) Act, 1999 (hereinafter referred to as "the impugned Amendment Act") deals with the rights of karaima holders only. In the original Act, karaima was not separately defined. By Act 35 of 1969, Section 2 (23A) was introduced defining "karaima" as follows:

"(23A) "Karaima" means a transfer of lands situate in the Kozhikode District or in the Ponnani Taluk of the Malappuram District, in consideration of ground rent, principally for the purpose of erecting a homestead, and described as karairna in the document, if any, evidencing the transfer."

Alongwith Section 2 (23A), definition of "tenant" in Section 2 (57) was expanded as to include holder of karaima by inserting Sub-section (hhh) to Section 2 (57).

Section 13 of the Kerala Land Reforms Act, 1963 gives right to the tenants to fixity of tenure and Section 53 gives a right to the cultivating tenants who are entitled to fixity of tenure to purchase the landlord's rights and by Act No. 35 of 1969 which came into force with effect from 1st January, 1970 that right of purchase was also given to holders of kudiyruppus and holders of karaimas. Section 72 provides for vesting of landlord's right in Government. From 1st January, 1970 karaima holding also vested in the Government. As per the definition of "karaima", under the 1959 Amendment Act, only the land described in the document as Karaima which was given in consideration of ground rent principally for the purpose of erecting homestead in Kozhikode District and Ponnani Taluk in Malappuram District was included and such holding was vested with the Government with effect from January, 1970 in view of Section 72 and u/s 53, such karaima holders have got a right to purchase the karaima holding.

2. An explanation and proviso was added to Clause (23A) of Section 2 by Act No. 16 of 1989 with effect from 30th May, 1989 giving an additional right to karaima holders to purchase the land in their possession as on 24th January, 1989 which is appurtenant to karaima land as described in the document. Explanation added by Act No. 16 of 1989 is as follows:

"Explanation.- For the purpose of this clause, so much of the land appurtenant to the land under the karaima belonging to the landlord or any person claiming through him and in the possession and beneficial enjoyment of the karaima holder or his legal representative or any other person claiming through him as on the 24th day of January, 1989 shall, subject to a maximum of three cents in Corporation area, five cents in Municipal area and ten cents in Panchayat area, inclusive of the land under the karaima, be deemed to be karaima."

Even though such explanation was added, it is the contention of the petitioners that a corresponding right to purchase the appurtenant land was not mentioned in the Amendment Act of 1989. In any event, they were not able to contest that matter because 1989 Amendment Act was also included in the Ninth Schedule. Like the original Act, Act No. 35 of 1969 and Act No. 16 of 1989 are also included in the Ninth Schedule and those provisions are not open to challenge.

3. In the impugned Amendment Act of 1999 which was not included in the Ninth Schedule, definition of "karaima" was substituted and redefined as follows:-

"(23A) "Karaima" means a transfer of lands situate in the Kozhikode District or in the Malappuram District, in consideration of ground rent, principally for the purpose of erecting a homestead, and described in the document, if any, evidencing the transfer, as karaima or Panayapattom, Panayachit, or by whatever name called which possesses the characteristics of karaima:

Explanation.- For the purpose of this clause, so much of the land appurtenant to the land under the karaima belonging to the landlord or any person claiming through him and in the possession and beneficial enjoyment of the karaima holder or his legal representative or any other person claiming through him as on

the 1st day of January, 1970 shall, subject to a maximum of three cents in Municipal Corporation area, five cents in Municipal Council area, and ten cents in Panchayat area, inclusive of the land under karaima, be deemed to be Karaima:

Provided that where the extent of the land appurtenant in the possession and beneficial enjoyment is in excess of the extent specified above as on the 1 st day of January, 1970, such land shall also be deemed to be karaima."

The following special provision was also added by the impugned Amendment Act:

"3. Special provisions for the issue of certificate of purchase.- Notwithstanding anything contrary contained in the Kerala Land Reforms Act, 1963 (1 of 1964) hereinafter referred to as the Principal Act) or in any other law for the time being in force or in any Judgment, Decree or order of any court or any authority or tribunal the karaima holder or his legal representative or any other person claiming through him who is entitled to get the fixity of tenure u/s 13 of the principal Act in respect of any land as per the explanation to Clause (23A) of Section 2 may apply to such authority as may be authorised by the Government in this behalf within a period of six months from the date of publication of this Act in the Gazette or within such time as may be extended in this behalf by notification in the Gazette for the issue of certificate of purchase of the said land and such authority may issue the certificate of purchase and restore the possession to such person the said land free from all encumbrances if any created by the land owners and intermediaries and subsisting on the date of publication of this Act in the Gazette."

By Sub-section (2) of Section 1 of the impugned Amendment Act, it is also provided that the 1999 Amendment Act shall be deemed to have come into force on the first day of January, 1970.

4. It is the contention of the petitioners that on 1st January, 1970 their right regarding the karaima holding vested with the Government and thereafter there is no landlord-tenant relationship with the karaima holders or karaima holdings. Those who had already purchased karaima holders rights cannot reopen the matter again. Secondly, it was contended that the present provisions are unreasonable and arbitrary and is violative of Article 14 of the Constitution of India. Unlike the earlier Acts, this Amendment Act was not included in the Ninth Schedule. Provision to take away their land and to give it to somebody else without any reasonable compensation will amount to arbitrary exercise of power and, in any event, passing an Act in 1999 to grant ownership right to somebody else considering the possession as on 1st January, 1970 is unreasonable and illegal and there is violation of Articles 14 and 21 of the Constitution of India. They have got a further contention that the definition "holding" relates only a single holding and once the holding of karaima is vested with the Government, there is no "karaima holding" after 1st January, 1970 and subsequent period towards appurtenant land by karaima holder is deemed karaima holding. It was also further stated that the Presidential assent has not been obtained specifying

reference to Article 31A of the Constitution of India and even if such an assent has been received, Article 31A itself is unavailable as it has no relation to the agrarian reforms and no compensation at the market value was paid as per second proviso to Article 31A of the Constitution of India. Therefore, the contention is that the present Amendment Act is wholly unconstitutional and violative of Article 14 of the Constitution of India and is liable to be set aside. It is also pointed out that the present right given in 1999 u/s 3 to purchase the appurtenant land of karaima holding considering the possession in 1970 is illegal as those rights with regard to appurtenant land was not mentioned in the karaima document was not vested as on 1st January, 1970 and once karaima holding vested with the Government is purchased, no second application will lie to purchase deemed Karaima right in respect of appurtenant land of original karaima holding.

5. Before going into the legal contentions, we may consider the facts of the case. Most of the lands of the petitioners herein are situated within Kozhikode City Corporation limits. Karaima right was peculiar to Kozhikode District as well as Ponnani Taluk of Malappuram district. In O.P. No. 4575 of 2000, the petitioners are the widow and two children of one Sreedhara Shenoy. Total land owned by them together is only 46.18 cents. The karaima holder, respondent No. 3, applied for purchase and certificate of purchase was issued in 1976 in respect of the karaima holdings as per the orders of the Land Tribunal in S.M.C. No. 766 of 1974. Second application filed for purchasing the appurtenant land said to be in his possession as on 24th January, 1989 on the basis of Act No. 16 of 1989 was dismissed as can be seen from Ext.P2 produced in that case. He filed application for assignment of an additional extent of 8.5 cents in 1999 following the impugned Act. It is stated in some of the cases that after purchase certificate was given for karaima holding as per the 1969 Amendment Act in the balance property in the possession of the owners they have constructed residential house and in some cases it is stated that it is alienated. In other words, as on 1st January, 1999 either the landowners are residing in the property apportioned to karaima holder or it was alienated or under their personal cultivation. But, because of the deeming provision in the impugned Act by which it is deemed to have come into force from 1st January, 1970, claimants are now claiming for purchasing those appurtenant lands alleged to be in their possession and beneficial enjoyment on a date 30 years back, whether it was in their possession in 1999 when the impugned Amendment Act was introduced in the Statute.

6. The contention of the State is that as Presidential assent is received under Article 31A of the Constitution, one cannot examine whether it is hit by Article 14 of the Constitution of India. It is also stated that State has got power to enact retrospective legislation. It was further argued that Article 31A of the Constitution is not limited to agrarian reforms and the Act was passed with full legislative competence and in view of Article 300(A), the land was taken by a valid law, impugned Amendment Act is fully constitutional. It is further argued that 1989 Amendment Act cannot be questioned as it was included in the Ninth

Schedule and, therefore, even if petitioners can question the present Amendment Act, the landowners cannot question the amendment made in 1989 declaring appurtenant land which is in possession of karaima holders as on 1st January 1989 within the definition of karaima holding as 1989 Act was protected in view of Article 31B. It is further submitted that since the possession as on 1st January, 1970 is relegated by a valid legislation, any subsequent purchase of right will not affect the rights between the parties and one has to consider the possession as on 1st January, 1970 and considering the object of the legislation and because of the legislative competence of the State Assembly, being a welfare legislation, court should not declare the Act as unconstitutional. According to the claimants/respondents, possession as on 1st January, 1970 can be proved by evidence and being a welfare legislation, court shall not interfere in the impugned Act and the Original Petitions are liable to be dismissed.

7. Now, we will consider the various contentions raised by the parties. It was contended by the learned Government Pleader that the amending Act was intended for achieving the purpose of the original Act itself and, therefore, since the original Act is included in the Ninth Schedule, provisions of this Act are also entitled to protection under Article 31B of the Constitution of India. Hence the justifiability of the impugned Amendment Act cannot be questioned. We are of the view that the above plea cannot be accepted at all. In fact, earlier amendments of the Kerala Land Reforms Act were specifically included in the Ninth Schedule after the respective Amendment Acts were passed notwithstanding the fact that the original Act was included in the Ninth Schedule which shows that unless the Amendment Act is specifically included in the Ninth Schedule, the benefit of Ninth Schedule and Article 31B of the Constitution is not attracted. In this connection, we refer to the decision of the Supreme Court in *Ramanlal Gulabchand Shah Vs. The State of Gujarat and Others*, There, the Apex Court was considering the validity of the amendment of Section 65(1) effected in the Bombay Tenancy and Agricultural Lands Act, 1948. The Court held that since the amendment Act was not included in the Ninth Schedule, the benefit of Article 31B is not applicable to the second part of Section 65(1) as the amendments are not entitled to the benefit even if the parent Act was included in the Ninth Schedule. The same view was followed by the Supreme Court in *State of Orissa Vs. Chandrasekhar Singh Bhoi, etc.*, . A Full Bench of this High Court also held so in *V.N. Narayanan Nair and Others Vs. State of Kerala and Others*, . It was held by this Court that if the Amendment Act is not included in the Ninth Schedule and it will not get the protection under Article 31B of the Constitution. The fact that the parent Act has been included in the Ninth Schedule, is not enough to get the benefit of protection under Article 31B for the subsequent Amendment Act, if it is not specifically included in the Ninth Schedule. Hence, the above contention raised by the State cannot succeed.

8. According to the learned Government Pleader, the challenge against the amended provisions is that it is arbitrary and discriminatory and it unsettles the right of the petitioners retrospectively and, therefore, it is violative of Articles 14

and 21 of the Constitution and other fundamental rights of the petitioners and such contentions cannot be raised as the assent of the President is received as provided under Article 31A of the Constitution. Even though it has been stated in the counter-affidavit filed by the State that the assent of the President has been received, details were not shown. While dictating the Judgment, the file was shown to the Court. The file shows that before introducing the legislation itself, a request was made to the Government of India to introduce the Amending Act. The request was made on the basis that the Bill affects the rights "estate" and therefore, State wanted permission under Article 31A of the Constitution of India to introduce such a Bill. Government of India consented to it. File shows that the assent of the President was given u/s 31A of the Constitution of India. The request was made to the President u/s 31A(1)(a) which reads as follows:

"31A. Saving of law providing for acquisition of estates, etc.- (1) Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

* * * * *

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19:

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this Article,-

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include -

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) 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;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

9. It is settled law that if the matter is covered under Article 31A and the assent of the President is received, legislation cannot be struck down on the ground that it is violative of Articles 14 and 19 of the Constitution. The propriety of the President in granting the assent also cannot be looked into as it is a matter outside the judicial review. But, the court can look into whether the benefit of Article 31A is applicable in this case and whether the enactment in question is covered under Article 31A. Admittedly, the request was made for the assent of the President under Article 31A(1)(a) as the acquisition by the State of the "estate" or rights therein or modification of such rights. The State has no case that it was acquired for any purpose dealt with in Article 31A(1) (b) to (e). The expression "estate" is denned in Article 31A(2)(a) and it relates only to the land tenures given for cultivation or for the purposes ancillary to cultivation or rural development for the benefit of agricultural labourers or village artisans. Admittedly, this land is not used for agricultural purposes or purposes ancillary to agriculture or rural development. Lands of the petitioners who approached this Court are situated in Kozhikode City Corporation and Government while filing the counter-affidavit has clearly stated that these lands are not used for agricultural purposes. The amendment regarding acquisition of vesting of appurtenant/land is not intended for cultivation or purposes ancillary to agriculture. In paragraph 4 of the counter-affidavit it is stated as follows:

"..... .The appurtenant land is not intended to be used for cultivation. This is intended for providing minimum basic amenities to the karaima holders. The Amendment Act, 1999 received the assent of President. Hence the protection under Article 31A of the Constitution is available to the Act."

10. The Supreme Court had considered the matter in detail in the decision reported in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, . The Supreme Court held as follows:

"16. Unhampered by any judicial decision, let us now scrutinize the express terms of the article to ascertain its scope and limitations. Sub-clause (a) of Article 31A(1) enables the State to acquire any estate or of any rights therein or to extinguish or modify any such rights. "Estate" is defined in Clause (2) (a) to have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and by inclusive definition it takes in any jagir, inam, or muafi or other similar grants and in the States of Madras and Kerala any janmam right. Clause (2) (b) defines the expression "rights" in relation to an estate, to include any rights vesting in a

proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. If an estate so defined is acquired by the State, no law enabling the State to acquire any such estate can be questioned as inconsistent with the rights conferred by Articles 14, 19 or 31 of the Constitution. So too, any law extinguishing or modifying any such rights mentioned in Clause (1)(a) and defined in Clause (2) (b) cannot be questioned on the said grounds. The broad contention that a law regulating inter se the rights of a proprietor in his estate and the junior members of his family is also covered by the wide phraseology used in Clause (2)(b), may appear to be plausible but that argument cannot be sustained if that clause is read along with the other provisions of Article 31A. 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 rights 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 land-holder 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. Such acts have no relation to land tenures and they are purely acts of expropriation of a citizen's property without any reference to agrarian reform. Article 31A deprives citizens of their fundamental rights and such an article cannot be extended by interpretation to over each the object implicit in the article."

11. Learned Government Pleader pointed out to our attention to the decision in *Ranjit Singh and Others Vs. State of Punjab and Others*, wherein the Supreme Court has considered the matter again. In paragraph 12 it was held as follows:

"12. From a review of these authorities it follows that when the Punjab High Court decided these cases on the authority of *Jagar Singh's* case 64 P&H LR 241 : *Jagat Singh Didar Singh and Others Vs. The State of Punjab and Others*, the view taken in this Court was in favour of giving a large and liberal meaning to the terms "estate", rights in an "estate" and "extinguishment and modification" of such rights in Article 31A. No doubt *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, considered a bare transfer of the rights of the sthanee to the tarwad without alteration of the tenure and without any pretence of agrarian reform, as not one contemplated by Article 31A however liberally construed. But, that was a Special case and we cannot apply it 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 the reforms, In our Judgment the High Court was right in not applying the strict rule in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, to the facts here."

There, it is stated that the court was considering the right of a sthanee to the tarwad and held that by giving a liberal interpretation Article 31A can cover acquisition of an estate apart from the agricultural reforms if it is done as an ancillary thereto "in the interest of rural economy". Here, the acquisition is not done in the interest of rural economy and it is, admittedly, not intended done for the benefit of cultivation or agricultural reforms, ancillary or incidentally.

12. It is contended by the learned Government Pleader that provision to purchase the appurtenant land by a karaima holder is equal to purchase of the land by the kudikidappukars as can be seen from Section 80A and 80B of the Land Acquisition Act. There, appurtenant land enjoyed by the kudikidappukars are also entitled to purchase. The validity of the above sections was considered by a Full Bench of this Court in V.N. Narayanan Nair and Ors. v. State of Kerala and Ors. (AIR 1971 Kerala 98) and held that those cases came up before the court were in respect of agricultural lands in Panchayat areas and, therefore, provisions can be upheld as they related to agrarian reforms and entitled to the protection under Article 31A of the Constitution. The Full Bench held as follows:

"13.....As we have said, Sub-clause (iii) of Clause (2) (a) of the Article embodies the essential definition of the word "estate" within the meaning of the Article. We can think of no reason why the qualifications in Sub-clause (iii) of Clause (2) (a) of the Article should not apply to the lands described in the earlier part of the clause, and we think that, as far as land reforms are concerned, the protection of the article extends only to land held or let for purposes of agriculture or for purposes ancillary thereto including sites of buildings occupied by cultivators, agricultural labourers and village artisans, namely, by persons having an intimate connection with agriculture, in other words, only to what we shall hereafter refer to as agricultural lands.

**** ** *** 55. The principal objection taken to the provisions relating to kudikidappukars is that, having regard to the definition of "kudikidappukaran", the rights will be available even to persons who have no connection with agriculture, in occupation of huts on land which is not agricultural. The conferment of rights on such persons would not be agrarian reform, and, therefore, the provisions cannot have the protection of Article 31A. But, in no case before us is it alleged that there is any such person claiming or likely to claim the benefit of the provisions in question. In fact, as we have said, all the lands with which these petitions are concerned are agricultural lands constituting estates, and, to deny the protection of Article 31A to any particular provision it must be shown that that provision is not a measure of agrarian reform.

**** ** *** 58. Kudikidappus are mainly a feature of the coconut gardens in the

coastal areas of the State and are largely confined to the Cochin and Travancore areas. As we have seen, the occupation originates in permission, and, although in most cases the permission might, in some measure, be prompted by charitable considerations, it is never wholly so. Some benefit in return, other than spiritual, is always expected. In some cases, the kudikidappukars are agricultural labourers who were in the earlier days, expected to work for the holder of the land for a lower wage than the prevailing wage, and in all cases they are expected to keep watch over the land and prevent theft or trespass. In the case of coconut gardens, the very existence of these dwelling houses in the midst of the gardens is beneficial to the trees in the immediate vicinity of the houses and increases their yield. So far as agricultural land is concerned, it seems to us that there is in all cases some connection between the existence of a kudikidappu there and the cultivation of that land so that the conferment of benefits on kudikidappukars must prima facie be regarded as a measure of agrarian reform."

(Underlining for emphasize)

But, the Bench declared Section 45A, 50A, (2), 73, 85(1) and Section 127(A) unconstitutional for want of protection u/s 31A as these provisions are not relating to agrarian reforms. The Supreme Court upheld the above view of the Full Bench in *Kunjukutty Sahib, etc., etc. Vs. The State of Kerala and Another*. The above Judgments would show that the court did not consider kudikidappu rights in Municipal areas as those cases came up before the court at that time were of kudikidappu rights with regard to rural areas and constitutionality of these provisions in Municipal areas was not considered in the above decision. But, it was considered in *V.N. Narayanan Nair and Others Vs. State of Kerala and Others*, . A reading of paragraphs 55 and 57 of the decision in *V.N. Narayanan Nair and Others Vs. State of Kerala and Others*, would show that the Full Bench held that the provisions regarding purpose of kudikidappu in respect of non-agricultural land would have been struck out as it will not get the benefit of Article 31A (a) and (b). A Constitution Bench of the Supreme Court in the *The Malankara Rubber and Produce Co. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc.*, held that any acquisition under Article 31A for any public purpose other than that falling under the expression agrarian reform cannot get the protection of that Article. In para 38 it was observed as follows:

"38. In accordance with the well recognised canon of construction adopted in a number of cases decided by this Court we read the sub-section to mean only reservation of the land for such public purposes as would bring about agrarian reform inasmuch as any acquisition under Article 31A for any public purpose other than that falling under the expression "agrarian reform" cannot be considered as having the protection of that Article."

At para 48 it was observed as follows:

"48. However laudable may be the object of the Legislature in attempting to

settle landless persons on land obtained by the Land Reforms Act, the taking away of such lands in the circumstances mentioned above either from industrial or Commercial undertakings or from the owner of house sites within a municipality for distribution among the landless cannot be said to effect agrarian reform. The Act in so far as it purports to acquire these lands cannot be upheld."

In concluding part, the Apex Court held at para 54 (10) as follows:

"(10) Lands which are interspersed between sites of commercial undertakings and house site in municipalities with lands surrounding them are not agricultural lands fit for acquisition under the Act."

Article 31A(1)(a) is not intended to protect all land reforms but only agrarian reforms. But, the provisions of 1969 Amendment Act were saved by the provisions of Article 31B of the Constitution as it was included in the Ninth Schedule. Since the present Amendment Act was not included in the Ninth Schedule and not relate to agrarian reforms it has no protection under Article 31A.

13. Shri P.B. Krishnan arguing for the petitioners further submitted that for attracting Article 31A(1)(a) for acquiring land within ceiling limit provisions for compensation have to be made at the rate of the market value as provided under the second proviso. In *Malankara Rubber Produce Company's case* (supra), Constitution Bench observed as follows:

"46..... Although no specific argument was advanced on the point it appears to us that the provisions for purchase contained in Section 80A of the Act by kudikidappukaran of their kudikidappus for consideration less than the market value of the land when the same was below the ceiling are a fixed under the Act and within the area in the personal cultivation of the landlord would be hit by the second provisio to Article 31A of the Constitution."

As already noticed, Article 31A(1)(a) protection can be given to agrarian reforms, rights conferred by the second proviso for compensation at the market rate cannot be violated as held by the Constitution Bench of the Apex Court *Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another*, (See paragraphs 8 and 40). Here, no provision for paying compensation is also made. It is true that under Article 300A, Government can pass a law to acquire the land without providing for compensation. But, that does not mean that Government can act arbitrarily violating Article 14 and acquire lands of citizens without paying compensation according to its whims and fancies discriminating citizens. It is the duty of the Government to show that such legislation is not offending Article 14 of the Constitution of India in the absence of protection under Article 31A or B. For acquisition of land for public purposes, compensation is payable under the Land Acquisition Act also. There is no reason for discrimination. In this connection, we refer to the observation of the Apex Court in *Savitri Cairae v. U.P. Avas Evam Parishad and Anr.* (2003) 8 SCC 255.

14. The impugned Amendment Act gives retrospective effect from 1st January, 1970. It is true that the Parliament has got full power to enact a legislation retrospectively. But, such retrospectivity can be given without affecting the vested rights of the parties for decades resulting in injustice. In this connection, we refer to the decision of the Supreme Court in *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, . The Supreme Court held as follows:

"The Legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A Legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history."

After quoting the Constitution Bench decision in *B.S. Yadav and Others Vs. State of Haryana and Others*, , the Apex Court again held as follows:

"Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws."

The impugned provisions are arbitrary as they deprive the landowners of their land without payment of just compensation, considering the possession of the land three decades back.

15. Another contention raised by the petitioners is that "holding" is defined u/s 17 and appurtenant land will not come u/s 17(2). Here, holding of karaima holders was already vested in the Government by the 1963 Amendment Act and thereafter there is no landlord-tenant relationship and there is no holding left when the impugned amendment came. Deemed karaima holding of land appurtenant to karaima land will not arise as land mentioned in the karaima document, i.e., original karaima holding is already vested with the Government. We are not considering that aspect as we have already seen that the impugned Amendment Act will not get the benefit of Article 31A as it is not relating to an "estate" as defined in that article. It has no relation to agrarian reform. No

compensation was also provided. Taking away of the land considering the possession of the same 30 years ago without considering the possession of the same at this time or near to the enactment is also arbitrary and violative of Article 14 of the Constitution of India. Hence the provisions are arbitrary and unreasonable so as to offend Article 14 of the Constitution of India. The Act deprives the right of a person to hold the land unreasonably and it takes away the property and gives the same to another without any real compensation, that too, considering the possession of land on a date three decades back. Land of a poor man is acquired without any reasonable compensation and without complying with the provisions of the Land Acquisition Act for giving it to another person which is discrimination. In the case of kudikidappus, right of purchase is given only to landless. Here, there is no such restriction. Hence provisions in the impugned Amendment Act are arbitrary and discriminatory and so long as it is not protected under Articles 31A or 31B, it is unconstitutional and violative of Article 14 of the Constitution.

16. The facts of the case also show that real hardship and prejudice is caused on the part of the landowners also. A poor landlord who is unable to construct a house out of the necessity and hardships when gives small portion of the land for constructing a house on a ground rent and that citizen is deprived of that property without any real compensation. There are cases where karaima holders had obtained the right and ownership on the basis of the 1963 Act and thereafter balance property is alienated by the landlord or buildings are constructed for residential occupation of the landlord and lands are cultivated by him. By the present amendment that has to be given to karaima holder considering the possession of three decades ago. Whether one is in possession of the land as on 1st January, 1970 is also a difficult question which is to be decided by the Land Tribunal. Of course, it is true that the burden is so heavy on the person to prove that he was in possession of the property on 1st January, 1970. When the 1989 Amendment came, no specific corresponding right was made for purchase of the appurtenant land. But, even in 1989 Act, the possession to be considered was with respect to 1989 and not of a retrospective date and the landowners are unable to question the 1989 Act because it was already included in the Ninth Schedule. There are cases in these groups where second application based on the 1989 Act was dismissed. A Single Bench of this Court held in *Damayanthi and Ors. v. Karthiayani and Ors.* ILR 1997 Ker 428 that once a tenant raises a claim of actual tenancy, he cannot be permitted to advance the case of deemed tenancy. Anyway, that is a matter to be decided by the Tribunal when an application is filed before the Tribunal. We are not considering the question of constitutionality of the 1989 Amendment Act as it is included in the Ninth Schedule and we are not also mentioning anything regarding the rights of the karaima holder under the 1969 or 1989 Acts as we are only concerned in these petitions about the effect of the 1999 Amendment Act and we are of opinion that the impugned Amendment Act is unconstitutional and unreasonable.

Consequently, all the Original Petitions are allowed.