(1958) 10 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Revenue Appeals No's. 1, 3, 28, 32 and 70 of 2011 and Writ Petition No. 42 of 1957

S. Sant Singh and Others APPELLANT

Vs

State of Jammu and Kashmir and Others RESPONDENT

Date of Decision : 13-10-1958

Acts Referred:

Ajmer Government Wards Act, 1888 — Section 6
Ajmer Tenancy and Land Records Act, 1950 — Section 11, 112
Constitution of India, 1950 — Article 1, 13, 14, 15A, 19
Industries (Development and Regulation) Amendment Act, 1953 — Section 13
Insurance (Amendment) Act, 1950 — Section 42
Insurance Act, 1938 — Section 52A, 52B, 52C, 52D, 52E
Jammu and Kashmir Big Landed Estates Abolition Act, 2007 — Section 20
Jammu and Kashmir Tenancy (Amendment) Act, 1955 — Section 4
Jammu and Kashmir Tenancy Act, 1980 — Section 112, 15, 15A, 16(1)1, 19B
Part C States (Laws) Act, 1950 — Section 2

Citation : (1958) 10 J&K CK 0003

Hon'ble Judges : J.N. Wazir, C.J;S.M. Fazl Ali, J;K.V. Gopalakrishnan Nair, J

Bench : Full Bench

Advocate : Lok Nath Sharma, Hirdey Nath Dhar, Sunderlal, Jankinath Bhat and Bishamber Nath Nehru, for the Appellant; A.G. for State, Shambu Nath Dhar, Dina Nath Potedar and Amar Nath Raina, for the Respondent

Judgement

K.V. Gopalakrishnan Nair, J.—These revenue appeals and the writ petition raise common questions relating to the constitutional validity of

Sections 15-A, 16(1)1(a), 19-B, 45, 47 and 49 of the Jammu and Kashmir Tenancy Act (II of 1980), hereinafter referred to as the Act. These

provisions were inserted in the original Act by amending Act Section 16(1)1(a) by the amending Act VII of 2005 and the rest by the amending Act

XII of 1955. The challenge to their validity is based on Articles 14, 19(1)(f), 19(1)(r), and 31st of the Constitution of India as applied to the State of Jammu and Kashmir.

2. The Advocate-General appearing for. the State contends that the impugned provisions, are immune from challenge by virtue of Article 31B. If

this contention succeeds, it will be unnecessary to go further into the merits of the attack made against the provisions. We have therefore first to

consider whether the provisions in question are protected by Article 31B.

This Article expressly states that none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof, shall be

deemed to be void or ever to have become void on the ground that such Act, Regulation or provision is inconsistent with or takes away or

abridges any of the rights conferred by any provisions of Part III of the Constitution and that notwithstanding any judgment, decree or. order of any

court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to' the power of any competent legislature to repeal or amend

it, continue in force.

The President by Order made in exercise of the powers conferred by Clause (1) of Article 370 of the Constitution inserted the Jammu and

Kashmir Tenancy Act (II of 1980) in the Ninth Schedule in its application to the State. This order called the Constitution (Application to Jammu

and Kashmir) Order, 1954 came into force on 14-5-1954. The effect of the insertion of the Jammu and Kashmir Tenancy Act in the Ninth

schedule is to save it from attack on any ground based on any of the provisions of Part III of the Constitution.

The Advocate General therefore argues that all the provisions of the Act, irrespective of whether they were inserted by amending Acts enacted

before or after 14-5-1954 when the President's Order came into force, should be held to be protected by Article 31B. If this argument is correct,

it will be open to the State Legislature to make any drastic amendment to the Act at any time and claim protection for it under Article 31B,

although the amended provisions were, never before the President and their eligibility for inclusion in the Ninth Schedule was never considered by

him.

In other words, the State Legislature will be entitled by independent subsequent action substantially to enlarge and vary the scope and extent of the

protection afforded by Article 31B. This we, consider, is an untenable position to take. The inclusion of an Act or a provision of an Act in the

Ninth Schedule is not made as a matter of course. It undoubtedly must be the result of adequate consideration by the President in the case of

Jammu and Kashmir, and by the Parliament in the case of the test of the India, of the nature and scope of the Act or the provision so included.

And the effect of such inclusion is as if the actual text of the Act or of the provision is physically embodied in the Ninth Schedule. Such physical

incorporation in the Ninth Schedule, can be only of the Act or the provision as it stood on the date of its incorporation. To ascertain what precisely

was included in the Ninth Schedule we have naturally to find out what was the actual content of the Act at the time of its inclusion. The Act in

question was admittedly included in the Ninth Schedule on 14-5-1954.

Any provision which was not in the Act on that date cannot therefore be said to be included in that Schedule. What was brought into the Act

subsequent to that date was therefore outside the scope of the Ninth Schedule and consequently outside the scope of the protection of Article

31B. As we already indicated, we cannot attribute to the President the intention of giving protection or immunity to something the existence of

which he was totally unaware of.

Further more, the acceptance of the Advocate General's somewhat extreme contention will amount to saying that the State Legislature which is a

subordinate legislature is clothed with power and authority to amend the Constitution of India, contrary to the express and imperative provisions of

Article 368. Thus, for more than one reason the argument of the Advocate General is unacceptable. In Abdul Rahiman Jamaluddin Vs. Vithal

Arjun and Others, a similar question arose for consideration.

The Bombay Tenancy and Agricultural Lands Act, 1948, (Act XLVII), was included in the Ninth Schedule and consequently validated by Article

31B. Subsequently, a new provision was inserted in that Act by an amending Act (Act 33 of 1952). It was argued that this new provision must

also be deemed to be included in the Ninth Schedule and should therefore protected by Article 31B. In repelling this contention a Division Bench

of the Bombay High Court observed as follows:

It is true that in the Ninth Schedule of the Constitution, the Bombay Tenancy and Agricultural Lands Act, 1948, is one of the Acts, specifically mentioned. By Article 31-B none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof are to be deemed

void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with or takes away or abridges any of the

rights conferred by any provision of the Third Part of the Constitution.... Evidently Article 31-B has been enacted with a view to protect from

challenge the provisions of the Specified Acts. But the protection in our judgment can only apply to the Acts as they stood at the date when the

Constitution (First Amendment) Act, 1951, was enacted. If any other interpretation of Article 31-B were permissible, it would in effect confer

upon a subordinate legislature the power of amending the Constitution. The effect of Article 31-B and the Ninth Schedule is to incorporate the

diverse provisions of the Acts in the Constitution and the provisions of those Acts are rendered free from challenge as inconsistent with or taking

away or abridging any rights conferred by the provisions of the Third Part of the Constitution. There is nothing in Article 31-B which conferred

upon the Legislatures which had originally passed these Acts the power to amend them inconsistently with the provisions of the Constitution or to

take away or abridge the rights conferred by the Constitution. If the provisions of the Acts specified in the Ninth Schedule have to be amended, the

amendments must either be consistent with the provisions of the Constitution or be saved under Article 31-A of the Constitution. If those

provisions are not saved by Article 31-A and are otherwise inconsistent with the Constitution, they must be held void. The Constitution can be

amended only by Parliament and in the manner provided by Article 368 of the Constitution, and any attempt to amend the provisions of any of the

Acts mentioned in the Ninth Schedule so as to take away or abridge any of the rights conferred by the Third Part of the Constitution by a

Legislature other than the Parliament of India and in a manner different from that provided in Article 368 is in our judgment void and ineffective.

We are, therefore, of the view that Article 31-B does not assist the State in maintaining that Section 34(2-A)(1) of the Bombay Tenancy and

Agricultural Lands Act, 1948 is intra vires.

We are in respectful agreement with these observations.

3. It is, therefore, abundantly clear that what is saved by Article 31-B are the

provisions of the Act as they stood on 14-5-1954 when the Act was

included in the Ninth Schedule and not any other or different provision which was enacted by the State Legislature subsequent to that date.

Provisions which were subsequently enacted by way of amendments have therefore to be judged on their merits.

Learned Counsel for the Petitioner now urges that as the Act specified in the Ninth Schedule is the Jammu and Kashmir Tenancy Act (II of 1980)

it is only the provisions of the Act as they stood in the Samvat year 1980 that can be said to be saved by Article 31B and not any other provision

which was inserted in the Act by way of amendment after the original Act came into force in Samvat 1980.

We think this contention is unfounded. It is well settled that an original Act cannot be considered independently of the amendments, because it is

inextricably bound up with the amendments. This view is supported by a decision of the Patna High Court in Brij Bhukan Kalwar and Others Vs.

S.D.O. Siwan and Others, . There is also the clear authority of the Supreme Court for this proposition in Shamarao V. Parulekar Vs. The District

Magistrate, Thana, Bombay and Others, . Bose, J., stated the law at p. 326 as follows:

The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of

construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier,

then the earlier Act must thereafter be read and construed (except where they would lead to a repugnancy inconsistency or absurdity) as if the

altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the

amending Act at all. This is the rule in England (see Craies on Statute Law, 5th Edition, page 207) it is the law in America (see Crawford on

Statutory Construction, page 110) and it is the law which the Privy Council applied to India in AIR 1927 97 (Privy Council) ."" In view of these

authorities which if we may respectfully say so, entirely square with sound principles and commonsense, the contention of the Petitioner's learned

Counsel has to be rejected. It follows that the impugned Section 16(1)1(a) which was inserted in the Act by the Amending Act VII of 2005 (1948

AD) is completely protected by Article 31-B, and is immune from any attack on the ground that it is inconsistent with or takes away or abridges

any of the rights conferred by any provision of Part III of the Constitution.

4. But this does not dispose of the argument of the Petitioner's learned Counsel regarding Section 16(1)1(a). In a determined effort to bring this

section under judicial scrutiny in the light of Articles 14 and 19 of the Constitution, he has advanced a somewhat ambitious argument that the

inclusion of the Act in the Ninth Schedule by the Order of the President was beyond the scope of Article 370(1) under which he purported to act.

The relevant part of Clause (1) of Article 370 reads as follows:

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President

may by order specify....

It is common ground that it is in exercise of the powers conferred by this provision that the President included the Act in the Ninth Schedule. The

effect of this inclusion is to exempt the Act from conformity with the provisions of Part III of the Constitution to which it would otherwise have to

conform. This is therefore a case of applying the provisions of the Constitution subject to exceptions within the meaning of Sub-clause (d) of

Clause (1) of Article 370. By the same order made under this provision. the President added a new Clause (c) to Article 35 in its application to the

State. The validity of the provision so added came up for consideration before the Supreme Court in P.L. Lakhanpal Vs. The State of Jammu and

Kashmir, . Sinha J., observed at page 201:

The effect of this modification in Article 35 of the Constitution is that such of the provisions of the Act as are inconsistent with Part III of the

Constitution shall be valid until the expiration of five years from the commencement of the order. This is an exception which has been engrafted on

the Constitution in respect of fundamental rights relating to personal liberty for the limited period of five years....

At another place on the same page his Lordship observes:

It is manifest that Article 370(1)(c) and (d) authorizes the President by Order to specify the exceptions and modifications to the provisions of the

Constitution (other than Articles 1 and 370) subject to which the Constitution shall apply to the State of Jammu and Kashmir. Clause (c) as indicated above has been added to Article 35 of the Constitution only so far as the State of Jammu and Kashmir is concerned.

The inclusion of the Act in the Ninth Schedule by the President's Order is as already indicated, to make the Act an exception to the provisions in

Part III of the Constitution. Article 370(1)(d) does expressly confer on the President the power to do so. But the learned Counsel argues that this

is not an exception and that it cannot be construed as a modification within the meaning of Sub-clause (d) of Clause (1) of Article 370. According

to him a modification can only whittle down restrict or take away but not enlarge broaden or add to. We find it difficult to accept this argument. In

its accepted grammatical sense the expression ""modification"" does also comprehend addition, extension or enlargement. This view is amply

supported by a Full Bench decision of this Court in Mahomed Subhan v. State (S) AIR 1956 J and K 1, where Wazir C.J., dealing with Sub-

clause (d) of Clause (1) of Article 370 states at page 4:

In this Article there is nothing to show that the word ""modify"" shall have restricted meaning. The word ""modify"" is capable of meaning enlargement.

In this particular case there is no reason for thinking that the Constituent Assembly did not intend a word to have its largest meaning which it is

capable of having.... In Roland Burrows Words and Phrases the word 'modify' has been defined as meaning ""vary, extend or enlarge, limit or

restrict.

5. In Mithan Lal Vs. The State of Delhi and Another, , a Constitution Bench of the Supreme Court considered Section 2 of Part C States (Laws)

Act No. XXX of 1950 which reads as follows:

The Central Government may by Notification in the Official Gazette extend to any Part C State (other than Coorg and the Andaman and Nicobar

islands) or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State at the

date of the Notification....

6. On April 28, 1951 the Chief Commissioner of Delhi issued a notification under this section extending the operation of the Bengal Finance (Sale

Tax) Act, 1941, to Delhi as from 1-11-1951. One of the contentions in that case was that some of the provisions of the Bengal Finance (Sales

Tax) Act, 1941. were ultra vires the State Legislature and they could not, therefore, be considered an ""enactment in force"" in the State of West

Bengal within the meaning of Section 2 of Part C States (Laws) Act. The argument was that the provisions extended to Delhi were not validly in

force and operations in a Part A State because they were not within the legislative competence of the legislature which enacted them. Dealing with

this argument his Lordship Mr. Justice Venkatarama Aiyar who delivered the judgment of the Constitution Bench observed as follows:

But even if we accept the narrow construction contended for by the Petitioners, that would not make any difference in the result, as the authority

conferred by Section 2 on the Government to extend enactment in force in Part A States includes power to do so with restrictions and

modifications and it was within the competence of the Government acting on this provision to incorporate on its own authority the impugned

provisions by way of modification of the Bengal Finance (Sales Tax) Act, 1941.

7. This passage is sufficient authority for the proposition that ""modification"" also means addition and that power to extend an enactment subject to

modifications will comprehend the power to add certain provisions to that enactment and extend to the area concerned the enactment so added to.

The contention of the learned Counsel that ""modification"" does not permit of addition or enlargement is, therefore, devoid of substance. Thus the

position remains that Section 16(1)1(a) is beyond challenge in view of the immunity Section 31-B affords it.

8. The rest of the impugned sections were placed on the Statute Book by the amending Act XII of 1955. The Advocate General urges these

sections also fall within the protective scope of Article 31B. According to him this is the effect of the Constitution (Application to Jammu and

Kashmir) Second Amendment Order 1958. This argument has only to be stated for being rejected. This Advocate General says that by the

President's Second Amendment Order of 26-2-1958, the inclusion of the Jammu and Kashmir Tenancy Act II of 1980) in the Ninth Schedule was

maintained and, that, therefore, the Act as it stood on 26-2-1958 must be deemed to have been included in the Schedule.

He also relies on the circumstance that a new serial No. 23 was given to the Act by the Second Amendment Order in place of the old serial

number 16, as reinforcing his contention. It is clear beyond any possible doubt that the Second Amendment Order of 1958 has not in any way

either expressly or by implication sought to enlarge or alter the scope, nature or content of Entry No. 10 Jammu and Kashmir Tenancy Act (No. II

of 1980). inserted in the Ninth Schedule by the President's Order of 1954.

The Act which was inserted in the Ninth Schedule by the 1954 Order is undoubtedly the same as the one which stands today in that schedule. The

additions and alterations to the Act made subsequent to 14-5-1954 stand today as much outside the scope of the Ninth Schedule as they did at

any time before 26-2-1958. The re-numbering was due to the fact that some other Acts and provisions were added to the Ninth Schedule by the

Constitution (Fourth Amendment) Act, 1955.

Therefore, the Acts which we were included by the President in the Schedule in exercise of his powers under Clause (1) of Article 370 were

assigned convenient consecutive serial numbers, the Acts included by the Parliament being put earlier in the List. By no stretch of imagination can

this renumbering have the effect of altering the scope and content of the Act as it previously stood in the Schedule.

Indeed, if the intention was to save also the provision introduced by Act XII of 1955, that Act would have been specifically mentioned in the Ninth

Schedule as a separate entry. A perusal of the several entries in the Schedule will show that they were made with care and accuracy. For example,

Entry 9 of the Schedule is the Madras (Abolition and Conversion into Ryotwari) Amendment Act, 1950, and Entry 10 is the Madras Estates

(Abolition and Conversion into Ryotwari) Amendment Act, 1950.

This shows that care was taken to specifically mention even an amending Act in the Schedule. Again, when only certain provisions of an enactment

were intended to be included, they are described with careful particularity (See Entry 17 Sections 52A to 52G of the Insurance Act, 1938 (Act IV

of 1938). These sections are described in the entry as inserted by Section 42 of the Insurance (Amendment) Act, 1950. The same is the case with

entry 19 which is devoted to Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951) as inserted by Section

13 of the Industries (Development and Regulation) Amendment Act, 1953.

All this points to the conclusion that the Jammu and Kashmir Tenancy (Amendment) Act (XII of 1955) was not included in the Ninth Schedule either by the President's Order of 1954 or by the Amending Order of 1958, because it was not intended to be included. It follows that such of the

impugned sections as were placed on the Statute Book by the Jammu and Kashmir Tenancy (Amendment) Act, 1955, are not saved or validated

by Article 31B, and that their validity has there fore to be examined in the light of the other pro visions of Part III of the Constitution.

9. The Advocate General next contended that Sections 15-A. 19-B, 45, 47 and 49 of the Act which are assailed as void on the ground that they

are inconsistent with Articles 14, 19 and 31 are saved by Article 31-A of the Constitution. The main part of this Article so far as it is material to the

present contention reads:

Notwithstanding anything contained in Article 13. no law providing for the acquisition by the State of any estate or of any rights therein or the

extinguishment or modification of any such rights 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, Article 19 or Article 31.

It is common ground that the lands in question are estates In its application to the State of Jammu and Kashmir Clause (2) of Article 31-A reads as

follows:

Estate shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture....

The rest of the definition is not relevant to the present case.

10. None of the impugned provisions provide for acquisition by the State of an estate or any rights therein. Neither an estate nor any rights therein

are sought to be transferred to the State. In the absence of an actual transference to the State of the estate or any rights therein, there can be no

question of acquisition by the State. It is impossible to say that any of these sections effect vesting in the Government of any right in the estate. The

provisions in question regulate and adjust the rights of landlords and tenants 'inter se'. In other words they regulate the relationship between

landlord and tenant. Even if such regulation and adjustment of the rights of landlords and tenants inter se diminish the rights hitherto exercised by

the landlords in connection with their lands, it cannot be said to involve any question of acquisition by the State.

11. It is convenient in this context to deal with attack levelled against the

provisions of the Act, on the ground of Article 31. We have found it

somewhat difficult to follow the argument based on Article 31. Clause (1) of this Article says that no person shall be deprived of his property save

by authority of law. The easy answer in the present case is that deprivation of property if any is by authority of law. If this law is declared void

under any of the provisions of the Constitution, there will be no law and no authority can be derived therefrom.

The offending law will be struck down and that law will not operate to deprive any person of property. On the other hand if we assume that the

authority of law is there, the deprivation will be in accordance with Article 31(1). This is perhaps a superficial reading of this Article. There has

been considerable difference of opinion on the interpretation of Clauses (1) and (2) of Article 31, and the amendment of this Article by the

Constitution (Fourth Amendment) Act 1955 which inserted a new Clause (2-A) was at least to some extent due to the interpretation by courts of

Clauses (1) and (2) of Article 31. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , Mr. Justice S.R. Dass (as he then was)

observed at pages 62-63:

Article 31(1) formulates the fundamental right in a negative form prohibiting the deprivation of property except by authority of law. It implies that a

person may be deprived of his property by authority of law. Article 31(2) prohibits the acquisition or taking possession of property for a public

purpose under any law, unless such law provides for payment of compensation. It is suggested that Clauses (1) and (2) of Article 31 deal with the

same topic, namely, compulsory acquisition or taking possession of property, Clause (2) being only an elaboration of Clause (1). There appears to

me to be two objections to this suggestion. If that were the correct view then Clause (1) must be held to be wholly redundant and Clause (2) by

itself would have been sufficient. In the next place, such a view would exclude deprivation of property otherwise than by acquisition or taking of

possession...the language of Clause (1) of Article 31 is wider than that of Clause (2), for deprivation of property may well be brought about

otherwise than by acquisition or taking possession of it. I think Clause (1) enunciates the general principle that no person shall be deprived of his

property except by authority of law, which, put in a positive form, implies that a person may be deprived of his property, provided he is so

deprived by authority of law.

12. This view was not however accepted in a later decision of the Supreme Court in the The State of West Bengal Vs. Subodh Gopal Bose and

Others, , in which a majority of the Court held that Clauses (1) and (2) of Article 31 were not mutually exclusive but should be read together and

understood as dealing with the same subject, namely, the protection of the right to property by limiting the State's power and that the deprivation

contemplated in Clause (1) is nothing other than the acquisition or taking possession of the property referred to in Clause (2).

Mr., Justice S.R. Das (as he then was) did not agree and adhered to the earlier view expressed by him in Chiranjit Lal Chowdhuri Vs. The Union

of India (UOI) and Others, . The majority view of the Court was affirmed in Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and

Weaving Co. Ltd. and Others, , where it was held again by a majority that the words 'acquisition' and 'taking possession' used in Article 31(2) had

the same meaning as the word ""deprivation"" in Article 31(1) and that Article 31 is a self-contained, provision delimiting the field of eminent domain

and that the two clauses deal with the same topic of compulsory acquisition of property.

It is after these decisions were rendered that Parliament enacted the Constitution (Fourth Amendment) Act, 1955, whereby the original Clause (2)

of Article 31 was. recast and a new Clause (2A) was inserted. This new clause states that

where a law does not provide for the transfer of the ownership or right to possession of any property to the State or a corporation owned or

controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it

deprives any person of his property.

It appears that the interpretation put on Article 31 by Mr. Justice S.R. Dass in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others,

, was accepted and acted upon by the Parliament in enacting the new Clause (2A). This new clause seems to make it clear that even if a person is

by law deprived of his property, it is not to be deemed to be compulsory acquisition or requisitioning of property unless the ownership or right to possession of property is transferred to the State, or to a corporation owned or controlled by the State. The new Clause (2A) of Article 31 has

been applied to this State also.

13. Neither of the two interpretations of Article 31 set out above can possibly avail the Appellants and the Petitioner before us. According to the

one interpretation the Article cannot at all be invoked; according to the other deprivation of property, if any, will be valid, being sanctioned by the

authority of law. As pointed out earlier, if the law which sanctions deprivation of property is itself bad, there can be no valid deprivation under

Article 31(1).

But the challenge to the validity of any such law cannot be based on Article 31(1) itself. If the law is repugnant to any other Article contained in

Part III of the Constitution, that is the appropriate Article to invoke. In this view Article 31 must be left out of account in determining the questions

raised before us.

14. In examining further the applicability of Article 31A to Sections 15-A, 19-B, 45, 47 and 49 of the Act we have to ascertain whether these

sections or any of them provide for extinguishment or modification of any rights in an estate. In Thakur Raghubir Singh Vs. Court of Wards, Ajmer

and Another, at p. 375 Mahajan C.J., who rendered the judgment of the court stated that the word ""modification"" in the context of Article 31-A.

only means a modification of the proprietary right of a citizen like an extinguishment of that right and cannot include within its ambit a mete

suspension of the right of management of estate for a time, definite or indefinite.

His, Lordship added:

Historically speaking, Article 31A which has relation to Article 31(2) of the Constitution has no relevancy whatsoever to the law enacted in Section

112 of Act 42 of 1950.

In that case their Lordships dealt with Section 112 of the Ajmer Tenancy Land Records Act (42 of 1950)' which was one of the Sections in a

group of seven sections in Chapter 10 of the Ajmer Act which dealt with the subject of ""compensation and penalties."" That section prescribed

penalties for habitual infringement of rights of tenants by a landlord. It provided that a landlord who habitually infringes the rights of a tenant shall be deemed to be a ""landlord who is disqualified to manage his Own property within the meaning of Section 6 of the Ajmer Government Wards

Regulation, 1888 (1 of 1888)"" and that his property shall be liable to be taken under the superintendence of the Court of Wards.

In pursuances of this provision the entire estate of a landlord was taken under the superintendence of the Deputy Commissioner of Ajmer who was

the Court of Wards constituted under the Ajmer Government Wards Regulation. The challenge of the landlords before the Supreme Court was

sought to be met by the State on the ground that the provision is saved by Article 31-A of the Constitution. It was contended for the State that the

assumption of superintendence over the estate by the Court of Wards, was either extinguishment or modification of the landlord's rights in the

estate.

The Supreme Court held that it was not a case of extinguishment or modification of the landlord's proprietary rights in the estate but only one of

suspension of the right of management of the estate for a time, definite or indefinite. In discussing the merits of the contention under Article 31A

advanced by the State, Chief Justice Mahajan made the observations already adverted to.

15. On the strength of these observations the contention is raised by the Appellants that the word ""modification"" occurring in Article 31-A has the

same meaning and import as extinguishment mentioned in that Article. This contention is based on a misunderstanding of the true meaning and

significance of the observations of the Supreme Court. There is no warrant for regarding those observations as authority for the position contended

for.

It is plainly incorrect to construe Article 31-A) in such a manner as to render the word ""modification"" Occurring therein wholly redundant. Both the

words 'extinguishment' and 'modification' which find place in Article 31A must be given their respective meanings and significance. We cannot

legitimately impute to Parliament the employment or an unnecessary word which had no purpose of its own, and especially so in the Constitution

and that too in such an important context as that of Article 31-A.

We think that the difference in the import of these two words lies in the degree of the impairment or invasion of the rights in an estate. While extinguishment indicates a total annihilation of the right, whether it be in respect of the entire estate or a part of it, modification covers a case where

a right in the estate is abridged or impaired short of extinguishment to the prejudice of the person in whom the right resides.

The provisions of the Ajmer Act which the Supreme Court considered in Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another, , were

not, as the Supreme Court itself observed at page 375 of the Report, law providing for the extinguishment or modification of the rights of a

landlord in the estate. The precise scope and import of the words 'extinguishment' and 'modification' did not therefore fall to be considered in that

case. The effect of the combined operation of Section 11 of the Ajmer Act (42 of 1950) and the Ajmer Government Wards Regulation 1888, was

to make the landlord a disqualified person whose estate had to be put under the care and superintendence of the Court of Wards.

The entire rights in the estate which the disqualified landlord had were absolutely kept intact; only the Court of Wards took over the management

instead of allowing the landlord to continue in management. The reason for it was not that the law intended any extinguishment or modification of

the rights of the landlord in the estate, but that it aimed at preserving and taking care of the estate for the benefit of the disqualified person. The

mode by which the landlord was rendered a disqualified person is not material, but the effect of the law was to make him a ward subject to the

care and superintendence of the Court of Wards.

Suppose the landlord was a disqualified person apart from the provisions of the Ajmer Act 42 of 1950, then the superintendence of his estate

would have been taken over by the Court of Wards without any question. Could the disqualified landlord in that case have successfully challenged

the Court of Wards Regulation on the ground that it sought to extinguish or modify his proprietary rights in the estate?

The answer has obviously to be in the negative; for far from trying to invade or impair the rights of the landlord, the Regulation would be construed

as seeking to protect and preserve the estate. This really was the position in Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another, , so

far as the question of modification or extinguishment of the landlord's rights was concerned.

The court interfered in favour of the aggrieved landlord because he was declared a disqualified person by a fiction enacted by Section 112 of the

Ajmer Act (42 of 1950), and the mode provided for giving effect to that fiction was found to be arbitrary and unreasonable. The observations of

the Supreme Court in that case must not be isolated from the setting and context of that case and applied to an altogether different context and

dissimilar circumstances.

16. We have now to examine the impugned provisions namely, Sections 15-A, 19-B, 45, 47 and 49 without any preconceived notions to ascertain

whether they fall within the ambit of Article 31A or not. Section 15-A in the main declares that

all tenants other than occupancy tenants and such fixed term tenants as hold Maliari or vegetable growing land shall be deemed to be protected

tenants and recorded as such in respect of such land as is held by them in their cultivating occupation at the time of the commencement of Jammu

and Kashmir Tenancy (Amendment) Act, 1955.

The rest of the section explains when the tenancy of a protected tenant will cease and how he is to be recorded in the revenue records as a

protected tenant. Section 19-B provides the procedure for recovery of rent. Section 45 places certain restrictions on the right of a landlord to eject

a tenant on the ground that the land is required for his personal cultivation.

Section 45(1)(a) enacts that a landlord whose holding does not exceed four acres of Abi or six acres of Khushki land in the province of Kashmir

and six acres of Abi and 8 acres of Khuski land in the Jammu Province shall be entitled to resume for personal cultivation a unit of land not more

than two acres of Abi or four acres of Khushki in the Kashmir Province and four acres of Abi and six acres of Khuski in the Jammu Province,

including such land as is held by him in his personal cultivation.

Clause (b) of Section 45(1) permits a landlord whose holding exceeds the size of the holding specified in Clause (a) to. retain for personal

cultivation a unit of land not more than two acres of Abi or four acres of Khuski in the Kashmir Province and four acres of Abi and six acres of

Khuski in the Jammu Province, including such land as is held by him in his personal cultivation, provided that no tenant shall as a result of such

resumption be ejected in a manner as to reduce his tenancy to less than two acres of Abi or four acres of Khuski land in the Kashmir Province and

four acres of Abi and six acres of Khuski land in the Jammu Province.

Clause (c) provides for selection of lands for personal cultivation by mutual agreement between the landlord and tenant. In case the landlord and

the tenant do not agree, the revenue officer shall make the selection

with due regard to the better cultivation and management of such lands, such as the proximity of the lands to the dwelling houses, consolidation of

holdings and facility of cultivation.

Clause (d) provides for settlement of the ejected tenant on alternative lands. Section 45(2) reads:

Any landlord who after the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, ejects any tenant otherwise than in due

course of law shall forfeit his right to resume for personal cultivation the quantum of land from which the tenant is so ejected.

Section 47 enacts that

a tenant shall not be ejected otherwise than in execution of a decree for ejectment except

(a) where a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied, or

(b) where he is liable to be ejected u/s 46 of this Act; or

(c) where on an application by the landlord for resumption of land for personal cultivation an order has been passed u/s 49 of the Act."" Sub-

section (2) of Section 47 provides that

all suits for ejectment pending on the date of the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955 against occupancy,

protected or fixed-term tenants on any of the grounds other than those specified in Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 44

shall abate and the Plaintiffs in such suits shall, on application to the Collector, be entitled to a refund of court-fees paid by them on the plaint filed

in such suit.

The Explanation to this sub-section includes execution applications and appeals within the expression 'suit'. Section 49(1) runs as follows:

In any such case as is mentioned in Clause (c) of Sub-section (1) of Section 47 a landlord may within a period of six months from the date the

Jammu and Kashmir Tenancy (Amendment) Act, 1955, comes into force, apply to a Revenue Officer in the form as given in Appendix C for

ejectment of the tenant:

Provided that such an application may be entertained beyond this period if the landlord proves that there was sufficient cause for not making it

within such period.

Provided further that where a landlord holds land in more than one district, he shall be entitled to exercise his right for resumption of land in respect

of only such portions of it as is held by him in any one of such districts....

17. Sub-section (3) provides the procedure to be followed by the revenue officer to whom the application under Sub-section (1) is made. It also

provides that the revenue officer after such inquiry as he deems sufficient shall subject to the provisions of Section 45 order ejectment of the tenant

from the land or such portions of it as he considers fair, with due regard to the quantum of land that may be left with such tenant after such

ejectment, and such other factors as the productive capacity of the land and the number of dependents or other sources of income of the tenant.

This section further empowers the revenue officer to order exchange of lands between tenants inter se or between a landlord and tenant with a

view to consolidate their holdings or otherwise as he considers fair, provided that the exchange of land between a landlord and tenant shall be

effected only if the landlord also is the owner of the land. Provisions of more or less the same character were made in the Bombay Tenancy and

Agricultural Land Amendment Act (13 of 1956) which made wide and drastic amendments to the Bombay Tenancy and Agricultural Lands Act,

1948.

The Bombay Act (13 of 1956) was impugned as violative of the Fundamental Rights conferred by Article 19 and some other Articles of Part III of

the Constitution before a Division Bench of the Bombay High Court. The decision of that court is reported in Parashram Damodhar Vaidya Vs.

The State of Bombay and Another, . At page 256 the history of the tenancy legislation in the Bombay State is briefly traced.

In the year 1938 the Bombay legislature passed the Bombay Small Holders Relief Act 8 of 1938. in 1939 the Bombay Tenancy Act was passed

giving protection to tenants against eviction by landlords and conferring upon all persons who had been continuously in possession of lands for six

years preceding January 1938 the status of protected tenants even if they had been evicted after 1-4-1937.

Provision was also made for fixation of minimum rates of rent payable by the tenants in areas specified in the notification to be issued under the

Act. In 1948 the Bombay Tenancy and Agricultural Lands Act was passed which provided for fixation of a reasonable rent and restricted the

rights of the landlords to terminate contractual tenancies. Transfer of lands to non-agriculturists was severely restricted and tenants in possession

were given priority in purchasing lands from their landlords at prices fixed by a Tribunal appointed in that behalf.

The jurisdiction of the civil courts to entertain suits in matters which were entrusted for decision to the Mamlatdar or the revenue courts was

expressly excluded. Restrictions were placed upon the rights of the landlords to terminate tenancies contractual as well as protected. Protected

tenancies were only to be terminated if the landlord required the land bona fide for personal cultivation or for a non-agricultural use and even the

enforcement of that rights was made subject to several restrictions.

By the Bombay Act 13 of 1956 the legislature conferred occupancy rights on all tenants subject to certain exceptions. The Act has for its aim the

equitable distribution of lands by removing intermediaries between the actual cultivators and the State and by introducing peasant proprietorships.

The tenants could compulsorily purchase the land, of the landlord subject to certain conditions. By Section 4(b) of the Amendment Act all the

tenancies, were made quasi permanent by enacting that no-tenancy of any land shall be terminated merely on the ground that the period fixed by

agreement of usage for its duration has expired.

All tenancies were made heritable whether they be contractual or protected. Even in the matter of surrender of a tenancy by a tenant safeguards

were enacted by Section 15 to ensure that the surrender is not made by force, fraud, coercion or undue influence. The right of the landlord to

terminate the tenancy for personal cultivation was severely restricted by certain conditions imposed by Sections 31A to 31D.

It is unnecessary to notice the other provisions devoted to the compulsory purchase of lands by tenants. All these provisions which are plainly restrictive of the rights of the landlord were challenged before the Bombay High Court. The challenge was met by the State on the ground that the

provisions fall within the ambit of Article 31A and are, therefore, immune from attack based on Articles 14, 19 and 31. In dealing with the

amended Sections 31A to 31D inserted in the impugned Bombay Act 13 of 1956, their Lordships held as follows:

The validity of Sections 31A, 31B, 31C and 31D was also challenged. By Section 31 provision is made for termination of tenancy for personal

cultivation and non-agricultural purpose by landlords and conditions are prescribed therein. By Section 31A certain restrictive conditions are

placed upon the landlords. They are: (1) that by terminating the tenancy the landlord shall not obtain possession of land in excess of the ceiling area

(2) that the income by the cultivation of the land is the principal source of the landlord's income for his maintenance; (3) that the land leased stands

in the record of rights in. the name of the landlord himself or any of his, ancestors, or if the landlord is a member of a joint family in the name of a

member of such family; and (4) that if more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate

only the tenancy or tenancies which are the shortest in point of duration. Evidently restriction has been placed upon the landlord in enforcing his

right to obtain possession but it is difficult to appreciate how the imposition of the conditions is inconsistent with the Constitution. The restrictions

placed upon the landlord in taking possession of the land held by his tenant are imposed under the law and the provision would be valid under

Article 31(1) and 31A1(a) of the Constitution. We are unable to hold that by the restrictions placed upon him the landlord's right to property is

affected in a manner inconsistent with the Constitution There are further restrictions imposed upon the landlord by Section 31B of the Act. It is

provided that no tenancy shall be terminated u/s 31 in such manner as will result in leaving with a tenant after termination less than half the area of

the land leased to him, or in such a manner as will result in a contravention of the provisions of the Bombay Prevention of Fragmentation and

Consolidation of Holdings Act, 1947, or if the tenant has become a member of a co-operative farming society and so long as he continues to be

such member. The imposition of these conditions cannot also be regarded as void in view of Article 31A1(a) and for reasons already mentioned this provision also cannot be regarded as ultra vires. By Sections 31C and 31D the landlords are prohibited from terminating tenancies for personal

cultivation of land left with the tenant after termination of the tenancy u/s 31 and provision is made for apportionment of land after termination of

tenancy. These are incidental provisions made with a view to effectuate the policy of the Legislature that even for his personal cultivation the

landlord shall not be entitled to deprive the tenant of all the land so as to take away from the tenant his means of livelihood. These provisions,

however stringent they may appear to be, do not, in our judgment, conflict in the right to property guaranteed by the Constitution.

18. It is well to note that at page 261 of the Report the Bombay High Court discussed the ruling of the Supreme Court in Thakur Raghubir Singh

Vs. Court of Wards, Ajmer and Another, This ruling of the Supreme Court was not considered as standing in the way of the Court's holding that

the impugned sections of the Bombay Tenancy Act fell within the protective scope of Article 31A. It may also be noticed that these provisions

were not held to fall under Article 31A on the ground that they extinguished the rights in the estate but on the ground that they modified those

rights. A careful, reading of this decision will show that the words ""extinguishment and modification"" employed in Article 31A have different import

and application.

19. A Full Bench of the Punjab High Court in Bhagirath Ram Chand v. State of Punjab AIR 1954 Punj 167, upheld the validity of the Punjab

Security of Land Tenures Act, 1953 (10 of 1953). That Act also severely restricted eviction of tenants and provided for purchase of lands in

possession of the land-holders in excess of a specified extent. At pages 168 and 169 Mr. Justice Khosla has summarised the main provisions of

the Punjab Act as follows:

The main provisions of the Act are the landlords cannot in effect eject their tenants except for reasons mentioned in Section 9 which are:

(a) failure to pay rent regularly without sufficient cause;

(b) the rent being in arrears at the commencement of the Act;

(c) failure on the part of the tenant to cultivate the land to the extent customary in the locality;

(d) user of tenancy in a manner which renders the land unfit for the purpose for which he holds it;

(e) subletting on the part of the tenant;

(f) refusal on the part of the tenant to execute a 'Qabuliayat' or a 'patta';

(g) if the landlord is what is described as a small land-owner.

The maximum holding is limited to 30 standard acres except in the case of displaced person who may hold upto a maximum of 50 standard acres.

Certain tenants are given the right to pre-empt the land in case the landowner wishes to sell it and certain tenants have even been given the right to

purchase the land. The tenant's right to water is guaranteed and the amount of maximum rent is fixed at one-third of the produce. Tenancy during

the period of its duration is heritable.

There are certain other incidental provisions, but the important ones have been set out above. It will thus be seen that the Act makes the position of

the tenants much securer than it was under the old law. The Act is further intended to prevent large holdings and the concentration of land in a few

individuals. Where a land-owner owns land in excess of the maximum limit permissible under the Act his holding is reduced but the Act does not

have the effect of confiscating any part of his property.

20. In answer to the challenge made against the validity of the Punjab Act the Advocate General of Punjab contended that the provisions are saved

by Article 31-A. This contention was accepted in the following words:

I would therefore hold that this Act is saved by the provisions of Article 31A of the Constitution inasmuch as it is intended to modify rights in

estates....

21. The decision in Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another, was cited, discussed and distinguished by the Full Bench of

the Punjab High Court. It is therefore idle to contend that 'modification' in Article 31A means nothing other than ""extinguishment"" and that anything

short of extinguishment will not be covered by Article 31A. Nor is it tenable to contend that a drastic limitation imposed upon a landlord's right to

obtain land for personal cultivation by evicting the tenant will not amount to modification of the landlord's right in the estate.

The right to resume the land especially for personal use or cultivation is undoubtedly a valuable right which the landlord has in his estate. Any

curtailment of this right so as to preclude him from his recovering the extent of land he desires or actually needs to bring under personal cultivation

will be a modification of his right in the estate.

Examining the impugned provisions of the' Jammu and Kashmir Tenancy Act (II of 1980) from this point of view, it is seen that Section 45 and

part of Section 49 provide for modification of the right of the landlord in the estate and therefore fall within the ambit of Article 31A. The particular

portions of Section 49 which clearly fall within the mischief of Article 31 are Sub-sections (iv) and (v)(a) of Section 49(3). The rest of Sub-section

(3) of Section 49 is not and cannot. really be impugned. Sub-section (4) of Section 49 goes with Section 15-A and both must be treated alike in

adjudging constitutional validity.

Regarding Sub-section (1) of Section 49 it is difficult to say that it is a modification of the landlord's right in the estate. This section may therefore

have to be dealt with in the light of Article 19. But the second proviso to Sub-section (1) of Section 49 stands on a different footing, in that the

landlord's right to resume the land is confined to such portion of land as is situate only in one district.

Suppose a landlord has only four acres of Abi land, two acres of which are situate in one district in the Jammu province and the other two acres in

another district in that Province. In view of the second proviso to Section 49(1) he will be entitled only to resume the portion of land situated. in

any one of the two districts, although u/s 45(1)(a) he, will be entitled to resume all the four acres if they were situated. in the same district.

This proviso is thus a modification of the landlord's right to resume the land and, therefore, falls within Article 31-A, being a modification of the

landlord's right in the estate. Proviso one to Section 49(1) read along with the explanation is quite susceptible of being construed as conferring a

reasonable right upon a landlord to effectively resume the extent of land allowed under the Act by making an application for that purpose even

beyond the prescribed period of six months. But it was strenuously argued that this proviso and the explanation do not confer any right whatever

and do seriously curtail the landlord's right to obtain the land for cultivation after the prescribed period of six months.

If this interpretation is accepted, Section 49(1) will have the effect that a landlord who does not apply to a revenue officer within a period of six

months from the date of the coming into force of the amendment Act 12 of 1956 will have no right to resume the land. If this is true construction of

Sub-section (1) of Section 49 it is undoubtedly a serious curtailment of the rights of the landlord in the estate. But as we do not consider this to be

the true interpretation of Section 49(1) we hold that it does not fall under Article 31-A.

22. Section 47(1)(c) which is bound up with Section 45 and Sub-sections (iv) and (v)(a) of Section 49(3) in so far as resumption of lands for

personal cultivation is concerned should also be held to fall within the protective sphere of Article 31A. Sub-cl. (1)(b) of Section 47 which deals

with ejectment of a tenant other than an occupancy, protected or a fixed term tenant is not really impugned before us. The only restriction which

Section 46 imposes on the ejectment of a tenant falling within that Section is that ejectment has to be only at a time specified in Appendix B of the

Act.

And Appendix B is not challenged. It prescribes a proper and a convenient period for ejecting a tenant according to the usages and practices

prevalent amongst the agricultural community. Attack has not been levelled against Section 47(1)(a) either. It provides only for eviction of tenants

who have not. satisfied the decree for arrears of rent passed against them in respect of their tenancies,

Sub-section (2) of Section 47 provides for abatement of suits for ejectment on the ground that the landlord requires the land for his personal

cultivation as also of appeals and execution applications arising out of such suits. This provision cannot be said to be a modification of the right of

the landlord in the estate. What the legislature has done is only to provide another machinery and procedure; to cases where ejectment is sought on

the ground of personal cultivation. Sub-section (2) of Section 47 deals with a mere procedural matter and does not fall within the pale of Article

31A.

23. Section 15-A which declares certain tenants to be protected tenants does not also fall within Article 31A. The mere fact that certain tenants

are given certain rights does not necessarily mean that the right of the landlord in the estate is modified or extinguished within the meaning of Article

31A. We shall notice this aspect of the matter more fully when we take up Article 19.

24. Section 19-B, which is the other impugned section merely provides for procedure for recovery of rent and does not come within Article 31A.

The proper test for ascertaining which article of Part III relates to an impugned provision is the test of directness. It cannot be said that either

Section 15-A or Section 19-B of the Act is directly intended to modify the rights of the landlord in the estate. We shall deal at some length later in

tills judgment with the scope of the test of directness. Suffice it to say here that the impugned Section 15-A and 19-B of the Act cannot be brought

within the scope of Article 31-A.

25. We have already found that Sections 45, 47(1)(c), 49(3)(iv) and 49(3)(v)(a) are protected by Article 31A. These provisions cannot therefore

be deemed to be void on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Articles 14, 19 or 31.

No attack is made against these sections except on the ground of Articles 14, 19 and 31. The result is that these sections should be held to be

valid.

26. We shall now examine the tenability of the attack made by the Appellants and the Petitioner that other impugned sections contravene Articles

14, 19(1)(f) and 19(1)(g). In view; of the conclusions we have already readied in the foregoing paragraphs the only sections which can be assailed

under Articles 14, 19(1)(f) or 19(1)(g) are Sections 15-A, 19-B, 47(2), 49(1) without the second proviso and Sub-section (4) of that section.

27. The argument based on Article 14 is that the impugned provisions subject the landlords to hostile discrimination and treat the tenants with

generous favour. This, it is argued, is a plain denial of equal protection of rights guaranteed by Article 14 It is asked with some vehemence as to

what justification is there for the Legislature to favour the tenants to the prejudice of the landlords? Questions like this under Article 14 have many

a time been answered by the Supreme Court in a series of decisions beginning from Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and

Others, and ending with Mohd. Hanif Quareshi and Others Vs. The State of Bihar, . The following passage from the last mentioned decision of the

Supreme Court will furnish a complete answer to the Petitioner's objection:

It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and

that in order to pass the test of permissible classification two conditions must be fulfilled namely (i) the classification must be founded on an

intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must

have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on

different bases, namely, geographical or according to objects or occupations or the like and what is necessary is that there must be nexus between

the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish amongst other things,

that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him, who attacks it, to show that there

has been a clear, violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly

appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based

on adequate grounds. It must be borne in mind that the Legislature is free to recognize degrees of harm and may confine its restrictions to those

cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into

consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can

be conceived existing at the time of legislation.

28. The provisions in question constitute an example of the familiar constitutional practice of reasonable classification. The tests of permissible

classification are fully satisfied in this case. The landlords and tenants undoubtedly belong to two different well-defined classes. The unmistakable

intention of the legislature is to improve the economic condition of the teeming multitude of tenantry and promote economic welfare of the peasants

and thereby bring about agrarian peace and prosperity. The disabilities which handicap the tenants in many ways are sought to be removed by this

provision of the Act. Insecurity of tenure, rack renting and the resultant financial embarrassment of the tenants are attempted to be eliminated by

the Act.

The provisions enacted have a direct and rational relation to the objects sought to be achieved by the Statute in question. The classification is also

founded on an intelligible differentia which places tenants in a well-defined class and distinguishes them from landlords. There is no question in this

case of equals being treated unequally or of dissimilar treatment being accorded to persons similarly situated. The impugned provisions are not

therefore violative of Article 14.

29. We shall next consider the argument whether the impugned sections are repugnant to Article 19(1)(g). This article confers on all citizens the

right to practise any profession or carry on any occupation, trade or business. The argument of the Appellants is that by giving fixity of tenure to

tenants, the right of the landlords to practise the profession of cultivating their lands is practically taken away, and that, therefore, the provisions

infringe the Fundamental Rights vouchsafed by Article 19(1)(g).

It is difficult to say that the impugned provisions in any way violate the right of a landlord to take to professional cultivation of agricultural lands. The

mere conferment of fixity of tenure on tenants cannot make the legislation one which denies or restricts the freedom of the landlords to practise the

profession or occupation of cultivation.

The legislation in question is clearly not intended to restrict the practise of any profession or the carrying on of any occupation by the landlords. To

ascertain whether a particular legislation is hit by one or the other of the provisions in Part III. of the Constitution, we have to apply the test of

directness. In A.K. Gopalan Vs. The State of Madras, at page 35, Kania, C.J. made the following observations:

If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without

arms etc. the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not

directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his

right under any of these sub-clauses is abridged, the question of the application of Article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenue's life.

30. The above observations of Kania C.J. were subsequently adopted by the Supreme Court in Ram Singh and Others Vs. The State of Delhi and

Another, , at p. 272.

31. Approaching the impugned sections from the point of view of directness of the legislation, it cannot be said that the legislation is intended to

affect in any way the right of the landlord to carry on any occupation or practise any profession. From this point of view it has to be held that

Article 19(1)(g) does not come into the picture.

32. There are other grounds, for coining to the same conclusion, The freedom guaranteed by Article 19(1)(g) is not to carry on an occupation or

practise a profession in any particular place, but the clause is designed to ensure that no unreasonable fetters shall be imposed if one desires to

engage oneself in an occupation or to practise a profession. See T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, at p. 82.

Furthermore, the impugned provisions do not place any obstacle in the way of any landlord if he is in possession of agricultural land or is able to

obtain it to cultivate it himself. It is also well to point out that even if it is assumed that the granting of fixity of tenure to tenants fetters the freedom of

landlords conferred by Article 19(1)(g), the law bringing about such a result will surely fall within the saving Clause (6) of that Article. From no

point of view can it, therefore, be held, that the impugned provisions contravene Article 19(1)(g).

33. We have next to consider the validity of the attack levelled by the Appellants and the Petitioner on the ground of Article 19(1)(f), which

guarantees to all citizens the right to acquire, hold and dispose of property. But this is not an absolute or an unrestricted right. The right is subject to

and controlled by Clause (5) of Article 19 which expressly enacts that nothing in Article 19(1)(f) shall affect the operation of any existing law in so

far as it imposes, or prevent the State from making any law, imposing reasonable restrictions on its exercise, in the interests of the general public.

Thus, Article 19 seeks to harmonise the rights of the individual and the interests of the community at large. In other words, the individual right is

subordinated to the common good of the community. The principle is that in an organised society without which there cannot be any safeguard of

individual rights, the good of the community as a whole must be given paramount importance and the exercise of individual rights which are

injurious to the community as a while must be subjected to reasonable restrictions so as to make them yield to the common good of the community.

34. In the Constitution of the United States no limitation was imposed upon the Fundamental Rights conferred by the first ten. amendments of

1791, but it was soon realised that in a modern State absolute or unrestricted individual rights cannot exist. Therefore the Supreme Court of

America in interpreting the Constitution had to invent the Doctrine of Police Power under which the States were recognized to possess the inherent

power to impose such restrictions upon the Fundamental Rights as are necessary for the protection of the common good.

The scope and ambit of the Doctrine of Police Power gradually widened with the passage of time. It was, to begin with, a power intended to be

exercised for protection of life and property and was strictly a police power. Then it came to be regarded as the power to enact all laws calculated

to promote public welfare, prosperity and convenience; and legislation of an ameliorative and not merely of a protective character also came to be

upheld as legitimately falling with the area of police power.

The next stage in the evolution of the law relating to police power was reached when questions arose as to whether legislation could be enacted in

public interests, fixing prices of goods or regulating terms of employment. At first the view was taken that such legislation would interfere with the

freedom of contract and would, therefore, be outside the scope of the police power. See for instance Lochner v. New York (1905) 49 Law 937

and Adkins v. Childrens' Hospital (1923) 67 Law 785 The tide definitely changed in 1924 when the case of Nebbia v. New York (1934) 78 Law

940 was decided.

The principle of this decision was followed by the Supreme Court of America in series of later decisions. See for instance West Coast Hotel Co. v.

Parish (1937) 81 Law 703 and Lincoln Federal Labour Union v. North Western Iron and Metal Co. (1949) 93 Law Ed. 212. In a recent case

reported in Day Brite Lighting v. State of Missouri (1952) 342 U.S. 421, the Supreme Court of America held that the police power is not confined to ""a narrow category but extends to all the great public needs"" including even political well-being.

It was pointed out that ""public welfare"" is a broad and inclusive concept and that moral, social, economic, and physical well-being of the

Community is one part of it and that the political well being is another part of it. The history of the origin and growth of the Doctrine of Police

Power in America illustrates the progressive character of judicial interpretation and how it keeps pace with the changing pattern of society and the

ever-growing needs and interests of the community as a whole.

35. Clauses (2) to (6) of Article 19 of our Constitution may be said to be somewhat partial codification of the police powers known to the

American Constitutional Law. The expressions ""reasonable restrictions"" and ""in the interests of the general public"" in Clause (5) of Article 19

undoubtedly enable our Courts to construe the rights conferred by sub-clauses (d), (e) and (f) of Clause (1) of that Article in such a manner as to

make them accord with social needs and economic and other interests of the community at large. Our Supreme Court has in more than one

decision laid down the test of reasonableness. In the State of Madras Vs. V.G. Row, at p. 200 the Supreme Court observed:

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute

impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right

alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby

the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors

and forming their own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the

scale or values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in

such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only

for people of their way of thinking but for all. and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

36. These observations have been adopted by the Supreme Court in later decisions (vide The State of West Bengal Vs. Subodh Gopal Bose and

Others, at p. 104 and Ebrahim Vazir Mavat Vs. The State of Bombay and Others, at p. 235).

36a. In the The State of Bihar Vs. Sir Kameshwar Singh, at p. 290 Mr. Justice S.R. Das (as he then was) when dealing with what is ""public

purpose"" made the following weighty observations:

From what I have stated so far, it follows that whatever furthers the general interests of the community as opposed to the particular interest of the

individual must be regarded as a public purpose. With the onward march on civilization our notions as to the scope of the general interest of the

community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual

can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community.

His Lordship proceeded to sound a note of caution in these words:.

We must not read a measure implementing our mid-twentieth century constitution through spectacles tinted with early nineteenth century notions as

to the sanctity or inviolability of individual rights....

37. It is, therefore, clear that a Court in determining the question whether the right conferred by Article 19(1)(f) has been invalid or not should not

fail to take into account the interests of the general public, the present social and economic needs of the community and the main trends of life and

progress of the people in general and the ameliorative schemes and measures undertaken by the State to promote their common welfare.

38. The learned Counsel for the Appellants and the Petitioner contend that the impugned Section 15A which confers on all tenants other than

occupancy tenants and such fixed-term tenants as hold Malyari or vegetable-growing lands the status of protected tenants is violative of Article

19(1)(f) and that it does not fall within the saving Clause (5) of that Article Even before Section 15-A was put on the Statute Book, certain tenants

had been recognized as protected tenants.

All that Section 15-A has done is to enlarge the scope of the previous section and confer on a larger class of tenants the rights of protected tenants. We have already referred to the object of the legislation. We find it difficult to agree that by conferring fixity of tenure on tenants in

occupation of lease-holds, the legislature unreasonably restricted the right of the landlords to hold property and that the restriction is not in the

interests of the general public.

The necessary pre-requisite to agrarian contentment and prosperity is to secure the tenants, who form the large bulk of the population, against

arbitrary eviction. The general pattern of tenancy legislation all over India is to give security and protection to the tenants who are the actual tillers

of the land. This pattern has been followed in this State also.

A harassed and unhappy agrarian population is a positive danger to social peace, economic development and the general prosperity of the country

as a whole. Any measure which is designed to keep the tenantry reasonably secure and happy is, therefore, indubitably in the interests of the

general public. No measure can be more effective in achieving this object than the one which gives them fixity of tenure In Sardar Inder Singh Vs.

The State of Rajasthan, the Supreme Court held as follows:

It is finally contended that the provisions of the Act are repugnant to Article 19(1)(f) in that they oblige the land-owners to keep tenants on their

lands, thereby preventing them from themselves cultivating the same. The object of the ordinance, as set out in the preamble, is clearly not to put a

restriction on the right of an owner to himself cultivate the lands, but to prevent him when, he had inducted a tenant on the land from getting rid of

him without sufficient cause. A law which requires that an owner who is not himself a tiller of the soil should assure to the actual tiller some fixity of

tenure, cannot on that ground alone be said to be unreasonable. Legislation of this character has been upheld in America as not infringing any

Constitutional guarantee. Thus in Block v. Hirsh (1920) 65 Law Ed. 865 : 256 US 135 a statute which gave a right to tenants to continue in

possession even after the expiry of the lease, was held to be valid, Holmes J. observing:

The main point against the law is that tenants are allowed to remain in possession at the same rent that they have been paying unless modified by

the commission established by the Act, and that thus the use of the land and the right of the owner to do what ho will with his own and to make what contracts he pleases are cut down. But if the public interest be established, the regulation of rates is one of the first form in which it is asserted

and the validity of such regulation has been settled since Mu(sic)m v. People of Illinois, (1877) 24 Law Ed. 77 : 94 US 113.... The preference

given to the tenant in possession is an almost necessary ingredient of the policy, and is traditional in English Law. If the tenant remained subject to

the landlord's power to evict the attempt to limit the landlord's demands would fail.

39. A close reading of this decision shows that it was not based on the consideration that the Ordinance which was impugned in that case was of

an emergency or temporary character. That was only an added reason re-inforcing the conclusions reached by their Lordships.

40. In Shri Kishan Singh and Others Vs. The State of Rajasthan and Others, the Supreme Court held:

The question whether a law is valid under Article 19(5) can arise only when there is a violation of the fundamental Right declared in Article 19(1)(f)

and if the right to hold property imports, as we have held it does, only a right to recover reasonable rent from cultivating tenants, that right cannot

be held to have been invaded by a law fixing reasonable rent, even when it is retrospective in operation.

Their Lordships clearly pointed out on the same page that the ""fundamental right"" which a citizen has to hold and enjoy property imports only a

right to recover reasonable rent when the lands are cultivated by a tenant....

41. It is unnecessary to labour this point further. We are clearly of the opinion that the impugned Section 15-A squarely falls within Clause (5) of

Article 19 and is, therefore, not violative of the right declared by Article 19(1)(f).

42. Section 19-B of the Act is the other pro vision assailed. This section only provides the procedure and the machinery for recovering arrear of

rent. It is difficult to see how this can be said to infringe the right to hold property. No doubt, Sub-section (4) of Section 19-B enacts that all suits

for arrears of rent pending on the date of the Jammu and Kashmir Tenancy (Amendment) Act 1955 comes into force shall be triable as

applications made under Sub-section (2). This provision does not in any manner invade the right of the landlords to hold property. Instead of going

through the lengthy procedure prescribed for suit, a simpler procedure for collection of rent has been provided.

Sub-Clause (2) of Section 47 of the Act also provides for abatement of all suits and appeals for ejectment of tenants on the ground that the

landlord requires the land for personal cultivation. This also is a procedural matter. A simplified procedure for eviction is provided in Section 49.

The position. therefore, is that the landlords have not now to go through the elaborate procedure of regular ejectment suits, but need only adopt the

simpler procedure of making an application for ejectment before a revenue officer.

This change of procedure and forum cannot be held to constitute an invasion of the right to hold property. There is no vested right in procedure.

The landlords cannot be heard to say that they are entitled as of right to collect rent and evict their tenants by instituting regular suits for the purpose

in the ordinary civil courts, and that the legislature has no right to prescribe another forum and another procedure for the purpose.

43. Statutory provisions to the effect that proceedings for eviction of tenants and collection of rent arrear should be instituted before revenue courts

or revenue officers are neither novel nor unreasonable. The Tenancy Acts of different States in India contain similar provisions. The provision in

Section 49(1) which requires the landlords to apply to the revenue officer within a period of six months from the commencement of the Tenancy

(Amendment) Act (XII of 1955) for ejecting their tenants on the ground of personal cultivation cannot also be said to be unreasonable.

If Sections 49(1) and 47(2) are read together, it will be easy to reach the conclusion that the prescribed period of six months does not operate

harshly or unreasonably. It is important to note that Section 49(1) does not bar applications for ejectment made after the prescribed period of six

months. On the other hand, the first proviso to that Section expressly enacts that applications may be entertained beyond this period if the landlord

proves that there was sufficient cause for not making the application within such period. The explanation to this section reads:

(a) that the landlord was minor, of unsound mind or was under some other mental or physical disability rendering him incapable of undertaking

cultivation or

(b) that he was employed in the service of the Government of Jammu and Kashmir, the Union of India or any other State of the Union and on the termination of such service his income is so inadequate that it has become necessary for him to take to personal cultivation; or

(c) that he was out of the State for reasons beyond his control.

44. The argument that Section 49(1) deprives, the landlord of his right to resume the land for personal cultivation is wholly devoid of force. Under

this section the landlord has no doubt to show cause why he did not make his application within the prescribed period of six months. But he is

entitled under the section to adduce any reasonable ground for the delay. The explanation to Section 49(1) is drawn in the widest terms and brings

within its purview all conceivable grounds of a reasonable nature as constituting sufficient cause for the delay.

Thus ample opportunity is given to the landlord to account for, the delay in making the application for ejectment. It is difficult to imagine a more

liberal provision in the matter, short of making it possible for the landlord just to come with an application at any time he chooses, without having to

even state any reason for the delay however enormous it be.

To say that the landlord must be able just to ask for ejectment and get it, is all too unreasonable a contention to merit serious consideration. The

obvious intention underlying the Section is to give the tenant a sense of security in respect of his holding and left from his mind the gnawing fear of

being liable to be evicted at any moment and for any reason, by a landlord who might become displeased with him, on any ground however

unjustified.

A tenant who is subject to perpetual fear and obsession of being liable to be evicted, naturally cannot bestow sufficient care and attention and put

forth enough effort to improve the land and increase its productivity. He will be the picture of an eternally unhappy person going through life with

weary melancholy and helpless resignation to economic distress; or he may turn into a desperate and violent person trying to perpetrate crime on a

society which has been harsh to him.

If the mass of the country's population is placed in such a state, it is easy to imagine how un-fortunate it will be for the country and the community

as a whole. Therefore, any provision which aims at giving a sense of security and contentment to the cultivating population of the country must be

held to be in the general interests of the public.

45. The provision in Section 19-B for payment of rent arrears in instalments is also intended to project the poor tenant who defaults due to adverse

circumstances. Bad Season, death of cattle, unexpected calamities, like floods are some of the disabling circumstances. If a landlord is empowered

to insist on payment of the entire rent in a lump by a tenant crippled by adversity, it will finally crush the tenant and constrain him to give up his

holding.,

The Act has made default in payment of rent an inexorable ground for ejectment. The legislature had therefore, to mitigate the rigour of this

provision by providing that the defaulting tenant be allowed to pay up his arrears of rent in instalments. This cannot fee construed as constituting an

unreasonable restriction on the landlord's right to hold property.

The restriction, if any, is only reasonable and in the interests of the general public; for nothing would make for greater dissatisfaction and hardship

to the cultivating tenants who form the backbone of the country's economy, than a provision that they are bound to pay the entire rent in a, lump by

a specified date and that they can default only on penalty of losing their holding, however unforeseen, adverse and over-powering be the reasons

for the default.

The Act, therefore, rightly affords a reasonable opportunity to the defaulting tenants to pay up in instalments. If they fail to do so, the landlords are

entitled to evict them. A right type of landlord while being interested in collecting his rent will not desire to bring economic ruin to his tenant. The

method of effectively collecting rent from an economically distressed tenant is to allow him to pay in instalments.

Thus the Act, while sternly telling the tenant that failure to pay the rent will entail his eviction, does not permit the landlord to use the tenant's initial

default as an instrument for the tenant's destruction. A proper balance is struck by providing for instalment payments. Further, the provision in Sub-

section (6) of Section 19-B is plainly intended to act as a check on the landlord making a false, frivolous or vexatious claim against the tenant in

respect of rent arrears. It is. therefore, difficult to hold that this provision is an unreasonable restriction on the landlord's rights,

46. The provisions of Sub-section (4) of Section 19-B and those of Sub-section (2) of Section 47 which provide for abatement of ejectment suits

and for the trial of suits for arrear of rent as applications u/s 19B(2) are as pointed out earlier, essentially procedural in character. It is by no means

clear how these provisions infringe the rights declared by Article 19(1)(f) to hold property.

The right for instituting a regular suit for eviction or for rent arrear in an ordinary civil court cannot be held to be an essential part of the right to hold

property. These rights are at best only incidental or ancillary to the right to hold property. In Chiranjit Lal Chowdhuri Vs. The Union of India

(UOI) and Others, his Lordship Mukerji J. pointed out the difference between rights which would be comprised within the term property and

privileges which are appurtenant to or flow from ownership of property but which taken by themselves and independently could not be reckoned

as property capable of being, acquired, held or disposed of as contemplated by Article 19(1)(f).

In that case the Petitioner before the Supreme Court was undoubtedly precluded from exercising his right of voting at the election of Directors from

getting a resolution passed by the share-holders without the sanction or the Central Government, and from instituting winding up proceedings in a

court of law. But these disabilities were held to be not restrictions on the right of the share-holders as such. His Lordship S.R. Das J. (as he then

was) described these disabilities as curtailment of incidental privileges not amounting to deprivation of any property.

This reasoning equally applies to the restriction of the right of the landlord to institute a regular suit in an ordinary court of law for securing eviction

or for obtaining a decree for arrear of rent. The Act simplifies the procedure by enabling the landlord to move the revenue officer by an application'

u/s 19-B for arrear of rent. And Section 49(1) gives the landlord the right to, apply to the revenue officer for ejectment of his tenants, on the

ground that the land is required for personal cultivation.

The Act thus substitutes simpler, speedier, and less costly procedure in place of the procedure which existed previously. This cannot in any sense

be held to have made an unreasonable inroad into the right of the landlord to hold property. If anything, the new procedure helps the landlord as

well as the tenant, and especially the tenant, in view of his usually poor pecuniary circumstances which render it difficult for him to fight out a litigation against his landlord in an ordinary court of law.

47. Nor can it successfully be contended that the conferment of powers on revenue officers under the impugned sections is an unreasonable

restriction on the light to hold property. The practice of entrusting similar powers to revenue officers and revenue courts has been in existence in the

State for decades. Such practice is also in vogue in several others States. In N. Sundararaja Iyer Vs. Sub-Collector of Dindigul and Another, a

Division Bench of the Madras High Court held that the conferment of powers on a revenue officer for reinstating tenants in possession of lands

from which they were evicted by landlords before the coming into force of the particular Act, was not unreasonable even though no appeal was

provided against the orders of the revenue officer.

48. We cannot presume that the revenue officers will exercise their powers arbitrarily. Even if we assume that some revenue officer may in some

case abuse his powers under the Act, that cannot be a reason for striking down the provisions of the Act. What will be struck down is the

particular order passed by abusing the powers, and not the Statute which gives the powers. What is even more important is that the Act provides

for appeals and revisions against the orders of revenue officers and decrees of revenue courts.

A perusal of the different provisions of the Act will bear out that no naked, arbitrary or untrammelled power has been vested in a revenue officer or

in a revenue court. The provisions of the Act do properly guide and control the exercise of the powers by the revenue officers and the revenue

courts. Therefore the mere circumstance that the Act has confided to the revenue officers certain powers and has charged them with certain duties

in relation to eviction of tenants and collection of arrear of rent cannot by any stretch of reasoning be held to constitute an unreasonable restriction

on the right of the landlord.

We must not fail to notice that the several provisions in the Act enjoin upon the revenue officers the duty of acting judicially. The appellate and the

revisional authorities constituted under the Act are likewise bound to act judicially in disposing of the appeal or the revision. In Nagendra Nath

Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , his Lordship Sinha J. held as follows in interpreting

Section 9 of the Eastern Bengal and Assam Excise Act (1 of 1910):

If the choice had rested in the hands of only one authority like the District Collector on his subjective satisfaction as to the fitness of a particular

candidate without his orders being amenable to an appeal or appeals or revision, the position may have been different But Section 9 of the Act has

laid down a regular hierarchy of authorities, one above the other, with the right of hearing appeals or revisions. Though the Act and the rules do

not, in express terms, require reasoned orders to be recorded, yet, in the context of the subject matter of the rules, it becomes necessary for the

several authorities to pass what are called 'speaking orders.' Where there is a right vested in any authority created by statute, be it administrative or

quasi-judicial, to hear appeals and revisions, it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving

reasonable opportunity to the parties concerned in the dispute to place their respective cases before it.

His Lordship relied upon Local Government Board v. Arlidge 1915 A.C. 120 and Halsbury's Laws of England Vol. II 3rd Ed. pp. 50 and 57.

49. A Full Bench of the Punjab High Court in Narain Singh Hira Singh v. The State AIR 1958 Punj 372 dealing with the Punjab Gram Panchayat

Act, 1952 held that a Gram Panchayat is bound to act judicially under the provisions of that Act In Cooper v. Wilson (1937) 2 K.B. 309 340 the

tests of a decision made judicially are pointed out in the following words:

A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites: (1) The presentation (not

necessarily orally) of their case by the parties to the dispute; (2) If the dispute between them is a question of fact, the ascertainment of the fact by

means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence;

(3) If the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the

whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling

upon any disputed question of law.

50. This authority was relied upon by the Supreme Court in Maqbool Hussain Vs. The State of Bombay, where the question whether the Sea

Customs Authorities when they entertained proceedings for confiscation of goods acted as. a judicial tribunal fell for decision.

51. The aforesaid authorities show that the revenue officers in passing the several orders under the provisions of the Act have to act judicially as

also the revenue authorities empowered to hear the appeals and revisions from those orders. This is indeed an important safeguard against arbitrary

action by the revenue authorities who are vested with powers under the Act. And the argument that the provisions of the Act by vesting revenue

officers with powers imposed unreasonable restrictions on the landlords is without doubt devoid of substance.

52. On a careful consideration of all the impugned provisions we are definitely of the opinion that they do not contravene the right declared by

Article 19(1)(f) and they are saved by Clause (5) of Article 19. ""These remarks largely apply even to those provisions which we have held to be

protected by Article 31A. If the interests of the general public are kept in view and if the reasonableness of the restrictions imposed by the

impugned provisions are examined in their proper perspective, one cannot but come to the conclusion that the provisions in question are essentially

intended to impose reasonable restrictions in the interests of the general public and consequently fall within the purview of permissible legislation

contemplated by Clause (5) of Article 19.

53. The learned Counsel for the Appellants and the Petitioner have invited our attention to two decisions of the Madras High Court reported in

Santhanakrishna Odayar Vs. Vaithilingam and Others, and N. Sundararaja Iyer Vs. Sub-Collector of Dindigul and Another, . In Santhanakrishna

Odayar Vs. Vaithilingam and Others, the provisions of the Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1952) fell for consideration.

Under that Act certain tenants who were evicted long before the coming into force of that Act were directed to be restored to possession and the

agricultural labourers (Punnaiyals) who were dismissed by the landlords during a period prior to the commencement of the Act were directed to be

reinstated.

The area to which the Act applied was a Ryotwari area in the Madras State, to which no tenancy legislation applied previously. The aggrieved

landlords challenged the Act mainly on the grounds that even the land in their actual possession were sought to be restored to the tenants whom

they had previously evicted and that the agricultural labourers whom they had dismissed for misconduct or insubordination were also compelled to

be taken back by them.

A Division Bench of the Madras High Court recognised that the right to hold property meant the right to enjoy property which included the right to

cultivate the lands. But they pointed out mat the Act was of an emergency and temporary nature and that the restrictions imposed on the landlord's

right to hold property were, therefore, reasonable and were saved by Article 19(5). A close reading of the decision however shows that it was not

only on the ground of the temporary or emergency character of the legislation that it was held to be valid. The Division Bench discussed the

provisions of Article 19 of the Constitution at length, and reached that conclusion.

54. Another Division Bench of the same Court in N. Sundararaja Iyer Vs. Sub-Collector of Dindigul and Another, in referring to the decision in

Santhanakrishna Odayar Vs. Vaithilingam and Others, stated at p. 336:

It is true that the learned Judges when dealing with the constitutional validity of the Tanjore Tenants and Pannaiyal Protection Act did in part rest

their reasoning on the two factors namely, that it was a piece of temporary legislation and secondly that it was passed to meet an emergency.

55. These remarks show that it is incorrect to say that the decision in Santhanakrishna Odayar Vs. Vaithilingam and Others, was based wholly on

the temporary or emergency character of the Madras Act. The inter decision of the Madras High Court dealt with another temporary tenancy

legislation but the Division Bench did not rest their decision that the Act was valid solely en the ground of its temporary or emergency character.

The provisions of the Act were discussed apart from its temporary or emergency character, and they came to the conclusion that they were valid.

At page 335 they observed:

We shall first consider whether the provisions of Section 4(1) are repugnant to the freedom guar anteed by Article 19(1)(f). learned Counsel for

the Petitioner urged that the freedom to -- 'hold property' meant a right to enjoy property and that if there was any interference with the enjoyment

of property it was tantamount to interference with the right 'to hold property.' To this extent learned Counsel is supported by authority and even by the ordinary meaning attributable to the words of the constitution. From this the next step in the argument was that the right to enjoy property

involved a right to enjoy it in such manner as the owner chose including a right (a) of choosing his tenants and (b) of resuming personal cultivation.

We are not disposed to quarrel with this import of the freedom guaranteed but the real question for consideration is whether the restrictions

imposed on this freedom are reasonable as to fall within Article 19(5) of the Constitution.... The Division Bench held that the economic

background of the legislation has to be taken into consideration in judging the reasonableness of the restrictions. The economic background

according to the decision, consisted of the pattern of tenancy legislation in the State, and the economic pattern envisaged by the two Five Year

Plans, more especially the second of them.

56. After considering the background of the legislation in this manner they came to the conclusion that the impugned provisions were valid. Those

provisions included a provision for compulsory reinstatement in possession of tenants evicted even before that Act came into force.

57. The impugned provisions of our Act are less drastic than the provisions of the Madras Acts which were examined in Santhanakrishna Odayar

Vs. Vaithilingam and Others, and N. Sundararaja Iyer Vs. Sub-Collector of Dindigul and Another, . We are not able to agree that the two Madras

decisions cited above can usefully be relied upon for holding that any of the impugned provisions is violative of Article 19(1)(f).

58. The later decisions of the Supreme Court to which we have already referred indicate that the impugned provisions cannot be held to

contravene the freedom guaranteed by Article 19(1)(f).

59. We cannot examine the impugned provisions only from the point of view of landlords who are dissatisfied with them, and to whom they are

annoying and irksome. We have to examine the provisions also from the point of view of the vast multitude of tenants and against the social and

economic background of the country and the needs and aspirations of the community as a whole, keeping in view all the time the future prosperity

and progress of the country.

Courts of law cannot live entirely in the past and be guided only by the notions of property rights recognised by systems of law which have long been submerged by time. Courts have to understand the need and problems of the present and take note of the onward march of progress and

keep in mind what is essential to the growth and development of the country.

The broad claim of the landlords that a court must look long back to ascertain the nature and content of property rights enjoyed by their forebears

and allow them the same right undiminished in content and unaltered in quality overlooks the context of the latter half of the twentieth century and

the steady march of our country to the goal of securing justice, social, economic and political"" to all its citizens.

60. The learned Counsel for the landlords have argued that the practical effect of the impugned tenancy legislation is to take away something from

certain class of owners of land and bestow it on certain class of tenants. We do not consider this is a correct way of looking at it. The question is

not whether the rights are conferred on A or B but whether, he is benefited as a result of a scheme which is in the interests of the general public.

If the legislation is in the interests of the general public, as we have held it to be, it is not a valid argument against it to say that it takes away from

the landlords and gives to the tenants. Such an argument can be levelled against practically every piece of welfare legislation. As a learned

American jurist put it.

In the last analysis nearly every law transfers something from A to B. It matters not whether this advantage be tangible or fancied, large or small.

Somebody gains, somebody loses, for you cannot create something out of nothing, you cannot create an advantage out of a vacuum. This makes

the whole question one of degree, and there is no principle, no fundamental right, in a matter of degree. (Vide Mr. Luce quoted in Strong on

American Constitutional Law at page 576).

61. It follows from the foregoing that the provisions of the Act do not violate any of the Fundamental Rights conferred by Part Three of the

Constitution of India. The challenge made by the Appellants and the Petitioner therefore fails and the impugned provisions are held to be valid.

62. In the writ petition Section 20 of the Big Landed Estates Abolition Act (Act XVII of 2007) was also challenged, but the learned Counsel for

the Petitioner did not press this part of his case. We have already found against the other contentions of the Petitioner.

63. In the result the writ petition fails and is dismissed with costs which are fixed at Rs. 100/ -. The revenue appeals will be disposed of in

accordance with the judgment. Costs in the revenue appeals will abide the result.

S.M. Fazl Ali, J.

64. I agree.

J.N. Wazir, C.J.

65. I agree.

