

(2014) 02 BOM CK 0300

In the Bombay High Court

Case No : Writ Petition No. 1455 of 1999

Shivraj Fine Art Litho Works

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(1)(d), 19(6)
Industries (Development and Regulation) Act, 1951 — Section 18AA, 18AA, 18AA(1)(b)
Maharashtra Housing and Area Development Act, 1976 — Section 44
Shivraj Fine Art Litho Works Acquisition and Transfer of Undertaking Act, 1984 —
Section 12, 15, 16, 18, 19
Urban Land (Ceiling and Regulation) Act, 1976 — Section 23, 23(1), 27(1)

Citation : (2014) 5 ABR 719

Hon'ble Judges : B.R. Gavai, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : S.V. Manohar, Senior Advocate and A.A. Naik, Advocate for the Appellant; B.H. Dangre, I/C Government Pleader and U.R. Tanna, Advocate for the Respondent

Judgement

B.R. Gavai, J.—By these petitions, the petitioners have approached this Court challenging validity of the Shivraj Fine Art Litho Works (Acquisition and Transfer of Undertaking) Act, 1984 (hereinafter referred to as "the Act") being unconstitutional. The petitioners have, in the alternative, prayed for striking down Sections 3, 4, 5, 7, 8, 12, 16, 18, 19, 20 and 24 of the Act. The facts giving rise to the present petitions, in brief, are as under:

The petitioner M/s. Shivraj Fine Art Litho Works, which is a partnership firm, was constituted originally by eight partners. Since dispute arose between the partners, the partnership firm came to be dissolved in January 1974. A suit for dissolution of partnership and for accounts was filed in 1974 being Special Civil Suit No. 9/1974, which is pending before the competent Civil Court. In the said suit, Receivers came to be appointed from time to time in respect of properties of the partnership firm. The partnership firm owns several properties. One of the

properties was Industrial Unit, known as M/s. Shivraj Fine Art Litho Works, which is situated near Cotton Market, Nagpur (hereinafter referred to as the "industrial undertaking"). The said industrial undertaking was engaged in the business of lithography and printing and employed about 500 workers.

2. Apart from the said property, the petitioners also owned several other properties which, according to petitioners, had no connection with the industrial undertaking, which are as under:

(a) Dhanwatey Chambers - a non business building situated on Malviya Road, Sitabuldi, Nagpur,

(b) Dhanwatey Chamber Annexe, situated just behind the Dhanwatey Chambers,

(c) Two Ghat Road buildings, one behind the other with vast open land situated in the vicinity of Cotton Market, Nagpur,

(d) An old House situated at Khandoba Galli in Sanichara, Nagpur.

It is the contention of the petitioners that the above properties were never used for the purpose of industrial undertaking.

3. An order came to be passed by the Central Government under Section 18-AA(1)(b) of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as "the IDR Act") on 23/8/1980, thereby authorising the Development Corporation of Vidarbha Ltd. (hereinafter referred to as "DCVL") to take over management of the industrial undertaking belonging to the petitioners. Being aggrieved thereby, the petitioners filed Writ Petition No. 2741/1980. The said writ petition was allowed by the Division Bench of this Court vide judgment and order dated 28/4/1982, as a consequence of which the order issued under Section 18-AA of the IDR Act came to be quashed. The same came to be challenged by the DCVL by filing Special Leave Petition No. 5160/1983 before the Apex Court. However, during pendency of the special leave petition, the original period of take over as provided under order dated 23/8/1980 came to an end on 22/8/1984 and as such, the special leave petition came to be dismissed on 4/2/1992 as infructuous.

4. On 11/8/1984, the State Government issued Ordinance No. V titled as Shivraj Fine Art Litho Works (Acquisition and Transfer of Undertaking) Ordinance. On 21/12/1984, the said Ordinance was translated into Maharashtra Act No. 36 of 1984. On 7/5/1984, by Amending Act of 1994, Section 6A came to be inserted in the parent Act.

5. Another fact, which is required to be taken into consideration, is that in the civil suit that is pending before the Civil Court, the petitioners had filed civil application seeking direction to the respondents not to hand over non-business properties of the partnership firm to the DCVL. The learned Civil Judge passed an order holding that the Central Government and DCVL were entitled to take possession and control of the property belonging to the industrial undertaking as

well as the Godowns at Ghat Road along with adjacent open plot. However, the learned Civil Judge held that the Central Government and DCVL were not entitled to claim other properties of the partnership firm. Being aggrieved by the said order, the DCVL as well as Receiver filed three Civil Revision Applications bearing Nos. 666/1980, 679/1980 and 753/1980 before learned single Judge of this Court.

6. The learned single Judge of this Court vide common judgment and order dated 15/12/1980 dismissed the civil revision applications filed by the DCVL and allowed the civil revision application filed by the Receiver. The learned single Judge of this Court by the said judgment held that front side of the godown on the Ghat Road and open plot adjoining thereto were not the business properties of the partnership firm and directed the DCVL to hand over possession thereof along with other properties to the Receiver. Being aggrieved thereby, the DCVL preferred Special Leave Petition No. 660/1981 before the Apex Court. Initially stay was granted by the Apex Court, which was modified vide order dated 6/5/1981, as a result thereof, the DCVL handed over possession of the front side Ghat Road godowns to the Receiver. Thereafter, the Godowns have been in possession of the Receiver, who has leased out the same to different entities.

7. In the meantime, apart from the present petitions, which are filed challenging validity of the said Act, the petitioners had filed a separate petition challenging taking over of the non-business properties of the partnership firm. The said petition was dismissed by this Court vide judgment reported in 2007 (1) Mh LJ 68 (Shivraj v. State of Maharashtra). This Court held that in view of deeming provisions in the Act, all the properties of the firm are covered by the said enactment. However, this Court refused to go into the question of validity of the Act as the same was subject-matter of the present petitions. The Special Leave Petition preferred by the present petitioners challenging the said order being Civil Appeal No. 8222/2009 is pending before the Apex Court. In this background, the petitioners have approached this Court for the reliefs as aforesaid.

8. We have extensively heard Shri Manohar, learned Senior Counsel for the petitioners, Smt. Dangre, learned In-charge Government Pleader for the respondent Authorities, and Ms. Tanna, learned Counsel for respondent No. 2.

9. Shri Manohar, learned Senior Counsel for the petitioners, submits that protection of Article 31C of the Constitution of India would be available only when the acquisition is for egalitarian and noble purpose, which is aimed at social reforms, social structuring or social engineering. It is contended that protection of Article 31C of the Constitution cannot be stretched to such an extent to protect compulsory acquisition of private property of the individual, which has no nexus with the policy of the State towards securing directive principles mentioned in Clauses (b) and (c) of Article 39 of the Constitution. In other words, the learned Senior Counsel for the petitioners submits that unless there is a clear and discernible policy of the State towards securing the directive principles under Article 39(b) or (c) of the Constitution, protection of Article 31C

would not be available. It is submitted that in the present matter, there is no clear policy of the State to take over all lithographic activities or all sick industries and as such, protection of Article 31C of the Constitution is not available to the Act.

10. It is further contended by the learned Senior Counsel for the petitioners that even if it is presumed that the object of the said enactment is to save about 500 workers from unemployment, it has no nexus with the directive principles under Article 39(b) or (c) of the Constitution. The learned Senior Counsel in this respect relies on the judgment of the Apex Court in *Excel Wear and Others Vs. Union of India (UOI) and Others*, .

11. It is also contended by the learned Senior Counsel for the petitioners that if protection of Article 31C of the Constitution is taken away from the said enactment, then validity of the said enactment can be challenged on the ground of it being violative of Article 14 of the Constitution. He submits that meagre compensation of Rs. 14,12,000/- is paid for the huge property of the petitioners, which is unreal and illusory. It is submitted that value of the assets was determined as per the book value and after giving depreciation and not as per market value of the assets at the relevant time. The learned Senior Counsel submits that even during pendency of the suit before the learned Civil Court, the offer, which was received for the property used in industrial undertaking only was many more times higher than the said compensation. It is contended that when the assets of the petitioners are taken away without due compensation and by paying only illusory compensation, the same would be wholly unconstitutional. It is also contended that in addition to that, by the said Act, all the liabilities are fastened upon the petitioners and, therefore, nothing would reach in the hands of the petitioners. It is submitted that though right to compensation now is not a fundamental right, but still it is a Constitutional right and, therefore, amenable to scrutiny by this Court in its jurisdiction under Article 226 of the Constitution. The learned Senior Counsel for the petitioners in this respect relies on the judgments in *Bhupal Premchand Shah and others Vs. State of Maharashtra*, and *Rajiv Sarin and Another Vs. State of Uttarakhand and Others*, .

12. The learned Senior Counsel for the petitioners further submits that properties of the petitioner partnership firm have no nexus with the property in which industrial undertaking is situated and as such, acquisition of the said properties by the impugned Act has no nexus with the object to be achieved by enacting the said Act and as such, the impugned Act insofar as it relates to the properties, which are held to be not concerned with the industrial undertaking by the judgment of the learned single Judge of this Court in Civil Revision Application Nos. 666/1980, 679/1980 and 753/1980 is liable to be struck down as not having protection under Article 31C of the Constitution. It is contended that each and every provision of the Act must satisfy the test for applicability of Article 31C of the Constitution and if it is found that the said provisions do not have protection of Article 31C of the Constitution, the same is liable to be struck down

as violative of Constitution of India. The learned Senior Counsel relies on the judgments of the Apex Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, , Waman Rao and Others Vs. Union of India (UOI) and Others, and I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, as well as commentary on Constitutional Law of India by an eminent Jurist H.M. Seervai.

13. Shri Manohar, learned Senior Counsel for the petitioners, submits that in any case now the rule of law itself is embodied in Article 14 of the Constitution of India and if provision of law is held to be violative of rule of law, it has to be declared as unconstitutional. Reliance in this respect is placed on the judgments of the Apex Court in Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others, and Express Hotels Private Ltd. Vs. State of Gujarat and Another, .

14. As against this, Smt. Dangre, learned In-charge Government Pleader submits that the impugned Act came to be enacted since it was found that on account of bickerings amongst the partners, the business of lithography and printing had come to a standstill. She submits that on account of nonfunctioning of the said industrial undertaking, employment of about 460 employees was in danger and as such, an order came to be passed under Section 18AA of the IRD Act by the Central Government on 23/8/1980. She further submits that by now it is well settled that fundamental rights and directive principles are to be given an important weightage by the Courts. It is contended that securing employment of employees and preventing resources from going into waste would very well have a nexus with egalitarian principles enshrined under Article 39(b) and (c) of the Constitution of India.

15. Smt. Dangre further submits that benevolent Constitutional provisions cannot be read in a narrow manner. It is contended that if acquisition of property is for a socio economic reform, then such an issue is not open for judicial scrutiny of this Court under Article 226 of the Constitution of India. It is submitted that by nationalization, State can take over any property on payment of amount determined by it and not the market value. The learned In-charge Government Pleader in this respect relies on the judgments of the Apex Court in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, , Maharashtra State Electricity Board Vs. Thane Electric Supply Co. and others, ; State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others, ; State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others, ; Rashtriya Mill Mazdoor Sangh Vs. State of Maharashtra and Others, and also on the judgments of the Apex Court in the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , which are cited by the learned Senior Counsel for the petitioners. The learned In-charge Government Pleader, therefore, submits

that the present petitions are devoid of merit and liable to be dismissed.

16. For appreciating the rival controversy, it will be relevant to refer to Clauses (f) and (j) of Section 2, Section 3, sub-section (1) of Section 4, sub-section (1) of Section 5, Section 7 and Section 8 of the Act.

Clause (f) of Section 2 of the Act provides that "proprietors" means the partnership firm, namely, the Shivraj Fine Art Litho Works, Nagpur, registered under the Indian Partnership Act, 1932, with head office at Subhash Road, Nagpur, as it existed immediately before its dissolution on the 9th January 1974 and includes the Receiver or Receivers appointed in Civil Suit No. 9 of 1974 in the Court of the Civil Judge, Senior Division, Nagpur.

Clause (j) of Section 2 of the Act defines "undertaking" as industrial undertaking known as "Shivraj Fine Art Litho Works, Nagpur" belonging to the proprietors.

Section 3(1) of the Act provides that on the appointed day, the undertaking and the right, title and interest of the proprietors in relation to their undertaking shall, by virtue of this Act, stand transferred to and vest absolutely in the State Government. Sub-section (2) of Section 3 provides that subject to the other provisions of the Act, the undertaking which stands vested in the State Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to and vested in the Corporation.

Sub-section (1) of Section 4 of the Act provides that the undertaking shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, book debts and all other rights and interests in or arising out of such property as were immediately before the appointed day in the ownership, possession, power or control of the proprietors whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto.

Section 5(1) of the Act provides that every liability other than the liability specified in subsection (2), of the proprietors in respect of any period prior to the appointed day, shall be the liability of the proprietors and shall be enforceable against them and not against the State Government or against the Corporation or where the undertaking is directed under Section 6 to vest in a new Government company against that new Government company.

Section 7 of the Act provides that for the transfer to, and vesting in, the State Government, under Section 3 of the undertaking and the right, title and interest of the proprietors in relation to their undertaking, there shall be paid by the State Government to the proprietors, in cash and in the manner specified in Chapter VI, an amount of rupees fourteen lakhs and twelve thousand.

Sub-section (1) of Section 8 of the Act provides that for the deprivation of the proprietors of the management of their undertaking (which has remained closed

with effect from the 17th May, 1979 to the 22nd August, 1980) during the period commencing on the 23rd August, 1980 being the date on which the undertaking was taken over in pursuance of the orders made by the Central Government under the provisions of the Industries (Development and Regulation) Act, 1951 and ending on the appointed day, there shall be paid by the State Government to the proprietors in cash and in the manner specified in Chapter VI, an amount of rupees five thousand per annum.

Section 6 of the Act empowers the State Government to direct vesting of the undertaking in a new Government Company. Section 6A of the Act permits the State Government from taking over management of the undertaking or transferring the Management to any Corporation or new Government Company. Chapter IV deals with management, etc. of the undertaking. Chapter V deals with the provisions relating to employees of the proprietors. Chapter VI deals with Commissioner of Payments. Chapter VII deals with miscellaneous matters.

17. In the background of the provisions contained in the Act, we have to consider whether such Act can enjoy protection under Article 31C of the Constitution of India.

Article 31C came to be inserted in the Constitution by the Constitution (Twenty-fifth Amendment) Act, 1971. Article 31C of the Constitution reads thus:

"31C - Saving of laws giving effect to certain directive principles: Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy:

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

18. The Constitutional validity of Article 31C of the Constitution fell for consideration before the Constitution Bench of the Apex Court consisting of thirteen Judges in the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . The constitutional validity of Article 31C was upheld by majority of 7:6. It will be relevant to refer to certain observations made by the learned Judges of the Apex Court taking view on both the sides.

We will first refer to the views of minority, expressing opinion on Constitutional invalidity of the said Article.

Chief Justice Sikri has observed thus:

"431) I have no doubt that the State Legislature and Parliament in its ordinary

legislative capacity will not exercise this new power conferred on them fully but I am concerned with the amplitude of the power conferred by Article 31-C and not with what the Legislatures may or may not do under the powers so conferred.

432) I have already held that Parliament cannot under Article 368 abrogate fundamental rights. Parliament equally cannot enable the Legislatures to abrogate them. This provision thus enables Legislatures to abrogate fundamental rights and therefore must be declared unconstitutional."

It can thus be seen that His Lordship observed that though the State Legislature and Parliament in its ordinary legislative capacity will not exercise the new power, however, effect of bringing the said amendment was to abrogate fundamental rights and as such, the same was unconstitutional.

Their Lordships Shelat and Grover, JJ. have observed thus:

"604) In our judgment Article 31-C suffers from two kinds of vice which seriously affect its validity. The first is that it enables total abrogation of fundamental rights contained in Articles 14, 19 and 31 and secondly, the power of amendment contained in Article 368 is of special nature which has been exclusively conferred on the Parliament and can be exercised only in the manner laid down in that article. It was never intended that the same could be delegated to any other Legislature including the State Legislatures.

605) The purpose sought to be achieved by Article 31-C may be highly laudable as pointed out by the learned Solicitor-General, but the same must be achieved by appropriate laws which can be constitutionally upheld. We have no option, in view of what has been said except to hold that the validity of Article 31-C cannot be sustained."

It can be seen that Their Lordships found that Article 31C of the Constitution suffered from two vices. Firstly, it enables total abrogation of fundamental rights contained in Articles 14, 19 and 31 of the Constitution and secondly, the power of amendment contained in Article 368 of the Constitution, which is of special nature, cannot be delegated to any other Legislature. Their Lordships found that the purpose sought to be achieved by Article 31C of the Constitution may be highly laudable, however, the same may be achieved by appropriate laws, which must be constitutionally upheld.

Their Lordships Hegde and Mukherjea, JJ. have observed thus:

"726) As far back as in 1951 this Court ruled in *The State of Bombay and Another Vs. F.N. Balsara*, that merely because law was enacted to implement one of the directive principles, the same cannot with impunity encroach upon the fundamental rights. The ratio of *Akadasi Padhan Vs. State of Orissa*, would be equally applicable in respect of the laws made under Article 31-A which speaks of the "law providing for the" topics mentioned therein. But that ratio cannot be effectively applied when we come to laws made under Article 31-C. The reach of Article 31-C is very wide. It is possible to fit into the scheme of that article

almost any economic and social legislation. Further, the Court cannot go into the question whether the laws enacted do give effect to the policy set out in Article 39(b) and (c). We were told on behalf of the Union and the States that it is open to the Courts to examine whether there is a nexus between the laws made under Article 31-C and Article 39(b) and (c) and all that the Courts are precluded from examining is the effectiveness to the law in achieving the intended purpose. But, such a power in its very nature is tenuous. There can be few laws which can be held to have no nexus with Article 39(b) and (c). At any rate, most laws may be given the appearance of aiming to achieve the objectives mentioned in Article 39(b) and (c). Once that facade is projected, the laws made can proceed to destroy the very foundation of our Constitution. Encroachment of valuable constitutional guarantees generally begins imperceptibly and is made with the best of intentions but, once that attempt is successful further encroachments follow as a matter of course, not perhaps with any evil motives, and may be, out of strong convictions regarding the righteousness of the course adopted and the objectives intended to be achieved but they may all the same be wholly unconstitutional. Lord Atkin observed in AIR 1931 94 (Privy Council):

"Both the Act and the sections have a legislative history which is relevant to the discussion. Their Lordship entertain no doubt that time alone will not validate an Act which when challenged is found to be ultra vires; nor will a history of a gradual series of advances till this boundary is finally crossed avail to protect the ultimate encroachment."

It can thus be seen that Their Lordships have observed that merely because law was enacted to implement one of the directive principles, the same cannot with impunity encroach upon the fundamental rights.

His Lordship Jaganmohan Reddy, J. has observed thus:

"1212) I now state my conclusions which are as follows--

.....

3(ii) Section 3 of the Twenty-fifth Amendment -- New Article 31-C is only valid if the words "inconsistent" with or takes away or", the words "Article 14" and the declaration portion "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy", are severed, as in my view they are severable. What remains after severing can be operative and effective on the interpretation given by me as to the applicability of Articles 19 and 31, so as to enable laws made under Article 31-C to further the directives enshrined in Article 39(b) and (c). In the result on the construction of Article 31-C, after severing the portions indicated above, I hold Section 3 of the Twenty-fifth Amendment valid."

It can thus be seen that His Lordship has held that Article 31C of the Constitution will be valid only if it is read down by severing the words "Article 14" and "declaration part".

19. Let us now consider the views of the Hon'ble Judges of the Apex Court, who have upheld the validity of the amendment.

His Lordship Ray, J. has observed thus:

"1034) The declaration mentioned in Article 31-C is for giving effect to the policy of the State towards securing the principles in Article 39(b) or (c). Such a declaration in a law shall not be called in question on the ground that it does not give effect to such policy. The laws which receive protection under Article 31-C are laws for securing the directive principles of Article 39(b) and (c). The nexus or connection between the law and the objectives set out in Article 39(b) and (c) is a condition precedent for the applicability of Article 31-C. On behalf of the Union and the State it was not contended that whether there was such nexus or not was not justiciable. The real reason for making the declaration free from question in a Court of law on the ground that it does not give effect to such policy is to leave legislative policy and wisdom to the legislature. The legislative measure might not according to some views give effect to directive principles. Therefore, legislatures are left in charge of formulating their policy and giving effect to it through legislation. It is the assessment and judgment of such measures which is sought to be excluded from judicial review by the declaration.

1035) In order to decide whether a statute is within Article 31-C the Court may examine the nature and the character of legislation and the matter dealt with as to whether there is any nexus of the law to the principles mentioned in Article 39(b) and (c). If it appears that there is no nexus between the legislation and the objectives and principles mentioned in Article 39(b) and (c) the legislation will not be within the protective umbrella. The Court can tear the veil to decide the real nature of the statute if the facts and circumstances warrant such a course."

It can thus be seen that His Lordship has observed that nexus or connection between the law and objectives set out in Article 39(b) and (c) of the Constitution is a condition precedent for the applicability of Article 31C of the Constitution. His Lordship has further observed that in order to decide whether a statute is within Article 31C, the Court may examine the nature and the character of legislation and the matter dealt with as to whether there is any nexus of the law to the principles mentioned in Article 39(b) and (c). It has further been held that if it appears that there is no nexus between the legislation and the objectives and principles mentioned in Article 39(b) and (c), the legislation will not be within the protective umbrella.

His Lordship Palekar, J. has observed thus:

"1329) No other ground is precluded from judicial review under Article 31-C. It was rightly conceded on behalf of the union that the Court in deciding whether the law falls within the general description given of it in Article 31-C will be competent to examine the true nature and character of the legislation, its design and the primary matter dealt with, its object and scope. See e.g. Charles Russell

v. Queen. If the Court comes to the conclusion that the above object of the legislation was merely a pretence and the real object was discrimination or something other than the object specified in Article (b) and (c). Article 31-C would not be attracted and the validity of the Statute would have to be tested independently of Article 31-C. Similarly as observed in Attorney-General v. Queen Insurance Co. "If the legislation ostensibly under one of the powers conferred by the constitution is in truth and fact really to accomplish an unauthorised purpose the Court would be entitled to tear the veil and decide according to the real nature of the statute".

It can thus be seen that His Lordship has accepted the contention on behalf of the Union that the Court in deciding whether the law falls within the general description given of it in Article 31C, will be competent to examine the true nature and character of the legislation, its design and the primary matter dealt with, its object and scope. His Lordship has further observed that if the Court comes to the conclusion that the above object of the legislation was merely a pretence and the real object was discrimination or something other than the object specified in Article 39(b) and (c), Article 31C would not be attracted and the validity of the statute would have to be tested independently of Article 31C of the Constitution. His Lordship has further observed that if the legislation ostensibly under one of the powers conferred by the Constitution, is in truth and fact really to accomplish an unauthorised purpose, the Court would be entitled to tear the veil and decide according to the real nature of the statute.

His Lordship H.R. Khanna, J. has observed thus:

"1518) Indeed, the legislature in making a law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 acts upon the mandate contained in Article 37, according to which the directive principles are fundamental in the governance of the country and it shall be the duty of the State to apply those principles in making laws. If the amendment of the Constitution by which Article 31-A was inserted was valid, I can see no ground as to how the Twenty-fifth Amendment relating to the insertion of the first part of Article 31-C can be held to be invalid. The validity of the First Amendment which introduced Article 31-A was upheld by this Court as long ago as 1952 in the case of Sri Sankari Prasad Singh Deo Vs. Union of India (UOI) and State of Bihar, . Article 31-A having been held to be valid during all these years, its validity cannot now be questioned on account of the doctrine of stare decisis....."

It will be seen that His Lordship has observed that the Legislature in making a law giving effect to the policy of the State towards securing the principles specified in Article 39(b) or (c) acts upon the mandate contained in Article 37, according to which the directive principles are fundamental in the governance of the country and it shall be duty of the State to apply those principles in making laws. His Lordship has also observed that if validity of amendment to the Constitution by which Article 31A was inserted was upheld in view of the decision

of the Apex Court in the case of *Sankari Prasad v. Union of India* and on the ground of doctrine of stare decisis, the amendment inserting Article 31C also needs to be upheld.

His Lordship Mathew, J. has observed thus:

"1779) In order to decide whether a law gives effect to the policy of the State towards securing the Directive Principles specified in Article 39(b) or (c), a Court will have to examine the pith and substance, the true nature and character of the law as also its design and the subject-matter dealt with by it together with its object and scope. If the Court comes to the conclusion that the declaration was merely a pretence and that the real purpose of the law is the accomplishment of some object other than to give effect to the policy of the State towards securing the Directive Principles in Article 39(b) and (c), the declaration would not be a bar to the Court from striking down any provision therein which violates Articles 14, 19 or 31. In other words, if a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil created by the declaration and decide according to the real nature of the law."

It can thus be seen that His Lordship has observed that in order to decide whether a law gives effect to the policy of the State towards securing the directive principles specified in Article 39(b) or (c) of the Constitution, the Court will have to examine the pith and substance, the true nature and character of the law so also its design and subject-matter dealt with by it together with its object and purpose.

His Lordship Beg, J. has observed thus:

"1852) Article 31-C has two parts. The first part is directed at removing laws passed for giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 of the Constitution from the vice of invalidity on the ground that any such law "is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 and 31 of the Constitution". If we stop here, the question whether the law is really for the purpose of giving effect to the principles specified in clauses (b) or (c) of Article 39 would still be justiciable wherever laws passed under this provision come up before Courts. In other words, the question of relevancy of the law passed to the specified principles could still be examined by Courts although the effect of invalidity for alleged violations of Articles 14, 19 or 31 would vanish so long as the law was really meant to give effect to the principles of Article 39(b) and (c). In other words, a colourable piece of legislation with a different object altogether but merely dressed up as a law intended for giving effect to the specified principles would fail to pass the test laid down by the first part. The second part of Article 31-C goes on to provide that, if such a law contains a declaration that it is for giving effect to such policy, it will become immune from judicial review altogether. In cases of laws passed by State Legislatures there is a further

safeguard that such laws must have been reserved for consideration by the President and assented to by him. The purpose of the declaration is, therefore, to take the place of a judicial verdict on relevancy of the grounds to the principles found in clauses (b) and (c) of Article 39 as well as on effectiveness of these laws for the intended purposes. Nevertheless, the Attorney-General and the Solicitor-General, appearing for the Union of India, conceded, both in written submissions and in the course of arguments, that the question of relevancy or nexus with the specified principles would be open to judicial scrutiny in such cases of declarations annexed to laws passed."

It can thus be seen that His Lordship has observed that the question whether the law is really for the purpose of giving effect to the principles specified in Article 39(b) or (c) would still be justiciable. His Lordship has further observed that question of relevancy of law could be examined by the Courts.

His Lordship Dwiwedi, J. has observed thus:

"1979) The main part of Article 31-C consists of two parts. The first part provides that no law giving effect to the policy of the State towards securing the principles specified in Article 39(b) and (c) 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 Articles 14, 19 and 31. The first part may be split up into two: (a) giving effect to the policy of the State towards securing, (b) the principles specified in Article 39(b) and (c). Under the first part the Court has to see two things before a particular law can receive protection of Article 31-C. Firstly, the law must have relevancy to the principles specified in Article 39(b) and (c); secondly, the law should give effect to those principles, Article 39(b) provides that the State shall strive to secure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 39(c) urges the State to strive to secure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. It may be observed that "subserve the common good" in clause (b) and "common detriment" in clause (c) raise questions of fact. Now, it is possible to imagine a State of affairs where a law having relevancy to the principles specified in Article 39(b) and (c) may not appear to the Court to subserve the common good or to prevent common detriment. Such a law will not prevail over Articles 14, 19 and 31. Thus the first part retains the Court's power to decide the legal question of the law's relevancy to the principles specified in Article 39(b) and (c) as well as the factual question of the law's efficacy to subserve the common good or to prevent common detriment. It can test the ends as well as the means of the law."

It can thus be seen that His Lordship also holds that the first part retains the Court's power to decide the legal question of the law's relevancy to the principles specified in Article 39(b) and (c) as well as the factual question of the law's efficacy to sub-serve the common good or to prevent common detriment.

His Lordship Chandrachud, J. has observed thus:

"2129) The language of Article 31-C makes it clear that only such laws will receive its protection as are for giving effect to the policy of the State towards securing the principles specified in Article 39(b) or (c). Under clause (b) the State has to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good. Under clause (c) the State has to take steps towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Apart from the declaration contained in the latter part of Article 31B (sic 31-C), it seems to the transparent that the nexus between a law passed under Article 31-C and the objective set out in Article 39(b) and (c) is a condition precedent to the applicability of Article 31-C. The declaration cannot be utilised as a cloak to protect laws bearing no relationship with the objective mentioned in the two clauses of Article 39."

It can thus be seen that His Lordship has held that only such laws would receive protection under Article 31C of the Constitution, which are giving effect to the policy of the State towards securing the principles specified in Article 39(b) or (c) of the Constitution.

20. By way of Constitution (Forty-second Amendment) Act, 1976, Article 31C was further amended by substituting the words "all or any of the principles specified in Part IV" for the words "principles specified in Clauses (b) and (c) of Article 39". The said amendment came up for examination before the Constitution Bench of the Apex Court in the case of *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . The Constitution Bench by a majority of 4:1 declared the amendment as unconstitutional. It will be relevant to refer to some of the observations of His Lordship Chandrachud, C.J. (as His Lordship then was):

"60) Fundamental rights occupy a unique place in the lives of civilized societies and have been variously described in our Judgments as "transcendental", "inalienable" and "primordial." For us, it has been said in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , they constitute the ark of the Constitution.

61) The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution. Granville Austin's observation brings out the true position that Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the bedrock of the balance between

Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.

62) This is not mere semantics. The edifice of our Constitution is build upon the concepts crystallised in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice - social, economic and political. We, therefore, put part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved. We promised to our people a democratic policy which carries with it the obligation of securing to the people liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and the assurance that the dignity of the individual will at all costs be preserved. We, therefore, put Part III in our Constitution conferring those rights on the people. Those rights are not an end in themselves but are the means to an end. The end is specified in Part IV. Therefore, the rights conferred by Part III are subject to reasonable restrictions and the Constitution provides that enforcement of some of them may, in stated uncommon circumstances, be suspended. But just as the rights conferred by Part III would be without a radar and a compass if they were not geared to an ideal, in the same manner the attainment of the ideals set out in Part IV would become a pretence or tyranny if the price to be paid for achieving that ideal is human freedoms. One of the faiths of our founding fathers was the purity of means. Indeed, under our law, even a dacoit who has committed a murder cannot be put to death in the exercise of right of self-defence after he has made good his escape. So great is the insistence of civilised laws on the purity of means. The goals set out in Part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution."

It can thus be seen that the Apex Court has held that fundamental rights occupy a unique place in the lives of civilized societies. It has further been held that Indian Constitution is founded on the bedrock of the balance between Parts III and IV. It has further been held that to give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution. The Apex Court has further held that the goals set out in Part IV of the Constitution have to be achieved without abrogation of the means provided for by Part III. It has further been held that in this sense Parts III and IV together constitute the core of the Constitution and combine to form its conscience. It has further been held that anything that destroys the balance between the two parts would itself destroy an essential element of the basic structure of our Constitution.

The Apex Court has further observed in para 66 of the judgment, which reads thus:

"66) Articles 14 and 19 do not confer any fanciful rights. They confer rights which are elementary for the proper and effective functioning of a democracy. They are universally so regarded, as is evident from the Universal Declaration of Human Rights. Many countries in the civilised world have parted with their sovereignty in the hope and belief that their citizens will enjoy human freedoms. And they preferred to be bound by the decisions and decrees of foreign tribunals on matters concerning human freedoms. If Articles 14 and 19 are put out of operation in regard to the bulk of laws which the legislatures are empowered to pass. Articles 32 will be drained of its life-blood. Article 32(4) provides that the right guaranteed by Article 32 shall not be suspended except as otherwise provided for by the Constitution. Section 4 of the 42nd Amendment found an easy way to circumvent Article 32(4) by withdrawing totally the protection of Articles 14 and 19 in respect of a large category of laws, so that there will be no violation to complain of in regard to which redress can be sought under Art. 32. The power to take away the protection without a valid basis for classification. By a long series of decisions this Court has held that Article 14 forbids class legislation but it does not forbid classification. The purpose of withdrawing the protection of Article 14, therefore, can only be to acquire the power to enact class legislation. Then again, regional chauvinism will have a field day if Article 19(1)(d) is not available to the citizens. Already, there are disturbing trends on a part of the Indian horizon. Those trends will receive strength and encouragement if laws can be passed with immunity, preventing the citizens from exercising their right to move freely throughout the territory of India. The nature and quality of the amendment introduced by Section 4 of the 42nd Amendment is therefore such that it virtually tears away the heart of basic fundamental freedoms."

The Apex Court has thus observed that the power to take away the protection of Article 14 is the power to discriminate without a valid basis for classification. It has further been held that Article 14 forbids class legislation, but it does not forbid classification. The purpose of withdrawing the protection of Article 14, therefore, can only be to acquire the power to enact class legislation.

The Apex Court has further observed in para 79 of the judgment, which reads thus:

"79) Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21. Article 31C has removed two sides of that golden triangle which affords to the people of this country an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculation of the rights to liberty and equality which alone can help preserve the dignity of the individual."

It can thus be seen that the Apex Court has held that Articles 14, 19 and 21 of the Constitution are golden triangle, which affords to the people of India an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era.

21. It will also be relevant to refer to the minority view of His Lordship Bhagwati, J. in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, upholding the Constitutional validity of the said amendment:

"120) There is also one other aspect which requires to be considered before protection can be given to a law under the amended Article 31C. Even where the dominant object of a law is to give effect to a Directive Principle, it is not every provision of the law which is entitled to claim protection. The words used in the amended Article 31C are: "Law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV" and these words, on a plain natural construction, do not include all the provisions of the law but only those which give effect to the Directive Principle. But the question is how to identify these provisions giving effect to the Directive Principle in order to accord to them the protection of the amended Article 31C. The answer to this question is analogically provided by the decision of this Court in *Akadasi Padhan Vs. State of Orissa*, . There the question was as to what was the precise connotation of the expression "a law relating to" a State monopoly which occurs in Article 19(6). This Court held that "a law relating to" a State monopoly cannot include all the provisions contained in such law but it must be construed to mean, "the law relating to the monopoly in its absolutely essential features" and it is only those provisions of the law "which are basically and essentially necessary for creating the State monopoly" which are protected by Article 19(6). This view was reiterated in several subsequent decisions of this Court which include inter alia *Rashbihari Panda etc. Vs. State of Orissa*, ; *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, and *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, . I would adopt the same approach in the construction of Article 31C and hold that it is not every provision of statute, which has been enacted with the dominant object of giving effect to a Directive Principle, that is entitled to protection, but only those provisions of the statute which are basically and essentially necessary for giving effect to the Directive Principle are protected under the amended Article 31C. If there are any other provisions in the statute which do not fall within this category, they would not be entitled to protection and their validity would have to be judged by reference to Articles 14 and 19. Where, therefore, protection is claimed in respect of a statute under the amended Article 31C, the Court would have first to determine whether there is real and substantial connection between the law and a Directive Principle and the predominant object of the law is to give effect to such Directive Principle and if the answer to this question is in the affirmative, the Court would then have to consider which are the provisions of the law basically and essentially necessary for giving effect to the Directive Principles and give protection of the amended Art. 31C only to those provisions. The question whether any particular provision

of the law is basically and essentially necessary for giving effect to the Directive Principle, would depend to a large extent, on how closely and integrally such provision is connected with the implementation of the Directive Principle. If the Court finds that a particular provision is subsidiary or incidental or not essentially and integrally connected with the implementation of the Directive Principle or is of such a nature that though seemingly a part of the general design of the main provisions of the statute, its dominant object is to achieve an unauthorised purpose, it would not enjoy the protection of the amended Article 31C and would be liable to be struck down as invalid if it violates Article 14 or 19."

It can thus be seen that His Lordship has observed that if there are any provisions in the statute, which do not fall within the category, they will not be entitled to protection under Article 31C of the Constitution and their validity will have to be judged by reference to Articles 14 and 19. His Lordship has further observed that while finding out as to whether a statute is entitled to protection under Article 31C, the Court will have first to determine whether there is real and substantial connection between the law and a directive principle and the predominant object of the law is to give effect to such directive principle. It has further been held that if the Court finds that particular provision is subsidiary or incidental or not essentially and integrally connected with the implementation of the directive principle or is of such a nature that though seemingly a part of the general design of the main provisions of the statute, its dominant object is to achieve an unauthorised purpose, it would not enjoy the protection of the amended Article 31C and would be liable to be struck down as invalid if it violates Article 14 or 19 of the Constitution.

22. In the above background, we proceed to examine the cases wherein statutes have been held to be entitled to protection under Article 31C of the Constitution and cases wherein statutes have been held to be not entitled to protection under Article 31C of the Constitution.

23. In the case of *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, , the Constitution Bench of the Apex Court was considering validity of the Urban Land (Ceiling and Regulation) Act of 1976. The Apex Court in the said case though held the entire statute to be valid by majority, Section 27(1) thereof insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or of a portion of such building, which was within the ceiling limit, was held to be unconstitutional. Chandrachud, J. in the judgment for himself and Bhagwati, J. has observed thus:

"4) If sub-section (1) of S. 23 were to stand alone, no doubt could have arisen that the Urban Land Ceiling Act is a facade of a social welfare legislation and that its true, though concealed, purpose is to benefit favoured private individuals or associations of individuals. But the preponderating provision governing the disposal of excess vacant land acquired under the Act is the one contained in sub-section (4) of Section 23 whereby, all vacant lands deemed to have been acquired by the State Government under the Act "shall be disposed

of..... to sub-serve the common good".

It can thus be seen that the Apex Court has held that in the absence of sub-section (4) of Section 23 of the Urban Land (Ceiling and Regulation) Act, 1976, where all vacant lands deemed to have been acquired by the State Government are to be disposed of to sub-serve the common good, it could have been said that under the facade of social welfare legislation, a legislation was being enacted to benefit favoured private individuals or association of individuals.

Justice Krishna Iyer has observed in para 18 thus:

"18) I wholly agree with the perspective of my learned brother Sen, J. that Part IV which seeks to build a Social justice Society, is basic to our constitutional order. Any transgression of Art. 39(b) and (c) is beyond the scope of S. 23(1) and disposal of land thereunder must sub-serve the common good and not the reverse. This limitation on the wide words of S. 23(1) is a matter of semantics and reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule. To be trigger-happy in shooting at sight every suspect law is judicial legicide. Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. As Lord Denning said: "A judge should not be a servant of the words used. He should not be a mere mechanic in the powerhouse of semantics". May Lord Denning live long, and his shadow never grow less ! "Lawyer" October 1980 Silver Jubilee Issue p. 172."

His Lordship has observed that disposal of lands under Section 23 of the said Act must sub-serve the common good and not the reverse.

24. In the case of Maharashtra State Electricity Board Vs. Thane Electric Supply Co. and others, , the Constitution Bench of the Apex Court was considering constitutional validity of the Electricity (Maharashtra Amendment) Act, 1976. By the said amending Act, principle of market value in the relevant provisions of the Act was substituted by the concept of amount legitimately fixed as the same equal to the depreciated book value of the assets of the undertaking to be taken over. The validity of the same was challenged on the ground that the said Act was not entitled to protection of Article 31C of the Constitution of India. The Apex Court reversed the judgment of the High Court and held that the said amending Act was entitled to protection under Article 31C of the Constitution. The observations of Apex Court in paras 43, 44 and 48 are relevant, which read thus:

"43) The idea of nationalisation of a material resource of the community cannot be divorced from the idea of distribution of that resource in the community in a manner, which advances common good. The cognate and sequential question would be whether the provisions of the Amending Act, 1976, had a reasonable and direct nexus with the objects of Article 39(b). It is true, the protection of Article 31-C is accorded only to those provisions, which are basically and essentially necessary for giving effect to the objects of Article 39(b). The High

Court from the trend of its reasoning in the judgment, appears to take the view that while the provision for the take over in the Principal Act might amount to a power to acquire, however, the objects of the Amending Act of 1976, which merely sought to beat down the price could not be said to be part of that power and was, therefore, incapable of establishing any nexus with Article 39(b). There is, we say so with respect, a fallacy in this reasoning.

44) The Amending Act of 1976, renders the cost of this economic reform brought about with the objects of Article 39(b) in view an affordable one in terms of money. Can this be held to have no direct or reasonable nexus with the objects of Article 39(b)? When a legislative enactment is challenged as not conforming to the constitutional mandate "the judicial branch of the Government" it is said "has only one duty - to lay the article of the Constitution, which is invoked beside the statute which is challenged and to decide whether the latter squares with the former".

48) We accordingly hold that the provisions of Amending Act of 1976 have a direct and substantial relationship with the objects of Article 39(b) and, therefore, are entitled to the protection of Article 39C. If the impugned law has such protection, as we indeed hold that it has, all challenges to it on the ground of violation of Articles 14, 19 and 31 must necessarily fail. That apart, even on the merits, many of the contentions are insubstantial. For instance, the grievance that "service lines" had been omitted from computation of the amount is without merit. That again has been dealt with in paras 88 to 92 of the judgment in Writ Petition Nos. 457 and 458 of 1972. Insubstantial, likewise, is the contention that the value of the "goodwill" has been omitted from computation of the amount."

It can thus be seen that the Apex Court held that once the Amending Act, 1976 was held to be having direct and substantial nexus with the object of Article 39(b) of the Constitution, the same was entitled to protection under Article 31C and then challenge to it on the ground of violation of Articles 14, 19 and 21 of the Constitution would fail.

25. The Apex Court in the case of State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others, was considering validity of the Maharashtra Housing and Area Development Act, 1976. The High Court had held that sub-sections (3) and (4) of Section 44 of the said Act were unconstitutional. Reversing the judgment of the High Court, the Apex Court observed thus:

"13) Even granting for purposes of argument that sub-sections (3) and (4) of Section 44 are violative of Article 14 of the Constitution, we are of the view that the said provisions receive the protection of Article 31-C of the Constitution. We shall proceed to test the validity of the argument keeping aside for the time being the observation in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, . Let us proceed on the basis that after His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , Article 31-C reads as:

Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19.

Clause (b) of Article 39 of the Constitution, which is relevant for our purpose states that the State shall, in particular, direct its policy towards securing that the ownership and control of material resources of the community are so distributed as best to sub-serve common good. The High Court rightly observed at the end of paragraph 14 of its judgment following Sanjeev Coke manufacturing Co. case that the expression "material resources of the community" would cover the lands held by private owners also. But it however erred thereafter in reaching the conclusion that Article 31-C was not applicable to the case for the reason that (i) the Act did not contain a declaration that it was enacted to give effect to Article 39(b) and (ii) by undertaking development of commercial centres while providing housing accommodation, the Authority was expected to make profits and hence, it followed that the power to acquire was not conferred with a view to achieving the directive principles in Article 39(b) and (iii) the object of enacting the legislation was obviously to provide wholesome civic life to the citizens and not distribution of material resources. We are of the view that each of these reasons is invalid and erroneous. First Article 31-C does not say that in an Act there should be a declaration by the appropriate legislature to the effect that it is being enacted to achieve the object contained in Article 39(b). In order to ascertain whether it is protected by Article 31-C, the Court has to satisfy itself about the character of the legislation by studying all parts of it. The question whether an Act is intended to secure the objects contained in Article 39(b) or not does not depend upon the declaration by the legislature, but depends on its contents. We have already dealt with the objects of the Act with which we are concerned in this case. It inter alia makes provision for acquisition of private lands for providing sites for building houses or housing accommodation to the community. The title to the lands of the private holders which are acquired first vest in the State Government. Later on the land is developed and then distributed amongst the people as house sites. It also provides for reserving land for providing public amenities without which people cannot live there. Community centres, shopping complexes, parks, roads, drains, playgrounds, are all necessary for civic life and these amenities are enjoyed by all. That is also a kind of distribution."

It can thus be seen that the Apex Court has observed that even if there is no declaration in the Act to the effect that it was intended to give effect to Article 39(b) of the Constitution, the Court can always examine the question as to whether the Act was in effect being enacted to achieve the object contained in Article 39(b) of the Constitution. It has further been held that the Court has to satisfy itself by character of the legislation by studying all parts of it. Taking into consideration the object of the Act, the Apex Court held that it had nexus with

the object contained in Article 39(b) of the Constitution of India.

26. In the case of State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others, , the Apex Court was considering the question as to whether the Tamil Nadu Stage Carriage and Contract Carriages (Acquisition) Act, 1973 was entitled to protection under Article 31C of the Constitution or not. It will be relevant to refer to paragraphs 88 to 92 of the said judgment, which read thus:

"88) The persons whose properties are taken over cannot be heard to complain that the compensation awarded to them should be according to market value which, if conceded, would defeat the very purpose and objective of Article 39(b) and (c). In the instant case, both the conditions mentioned above are fully satisfied having regard to the provisions of the Act.

89) The last contention raised by the respondents was that the conditions or objects mentioned in Article 39(b) and (c) are not subserved by the nationalisation policy codified by the Statute because there is no distribution at all in the sense that the property taken over is distributed to various members of the community for their benefit. Moreover, the members of the community have been deprived of the services rendered to them by the operators under permits issued by the transport authority. So far as this argument is concerned, it is based on a serious misconception of understanding the real position. The word "distribution" used in Article 39(b) must be broadly construed so that a Court may give full and comprehensive effect to the statutory intent contained in Article 39(b). A narrow construction of the word "distribution" might defeat or frustrate the very object which the Article seeks to sub-serve. In Black's Law Dictionary the word "distribution" has been defined thus:

"The giving out or division among a number, sharing or parcelling out, allotting, dispensing, apportioning." (p. 426)

90) Similarly, Webster's Third International Dictionary at p. 660 defines "distribution" thus:

"the position, placement, or arrangement (as of a mass or the members of a group); the disposition or arrangement in rational groups or classes: CLASSIFICATION -- the accurate distribution of several rare zoological specimens; delivery or conveyance (as of newspapers or goods) to the members of a group (the distribution of telephone directories to consumers) in charge of company sales and distribution; a device, mechanism, or system by which something is distributed (as from a main source); the marketing or merchandising of commodities."

91) In Family Word Finder published by Reader's Digest the word "distribution" has been defined at p. 237 thus:

"dissemination, scattering, spreading, circulation, grouping, organisation, apportionment, allotment, allocation, division."

92) It is obvious, therefore, that in view of the vast range of transactions contemplated by the word "distribution" as mentioned in the dictionaries referred to above, it will not be correct to construe the word "distribution" in a purely literal sense so as to mean only division of a particular kind or to particular persons. The words, apportionment, allotment, allocation, classification, clearly fall within the broad sweep of the word "distribution". So construed, the word "distribution" as used in Article 39(b) will include various facets, aspects, methods and terminology of a broad-based concept of distribution. In other words, the word "distribution" does not merely mean that property of one should be taken over and distributed to others like land reforms where the lands from the big landlords are taken away and given to landless labourers or for that matter the various urban and rural ceiling Acts. That is only one of the modes of distribution but not the only mode. In the instant case, as we have already pointed out, distribution is undoubtedly there though in a different shape. So far as the operators were concerned they were mainly motivated by making huge profits and were most reluctant to go to villages or places where the passenger traffic is low or the track is difficult. This naturally caused serious inconvenience to the poor members of the community who were denied the facility of visiting the towns or other areas in a transport. By nationalising the transport as also the units the vehicles would be able to go to the farthest corner of the State and penetrate as deep as possible and provide better and quicker and more efficacious facilities. This would undoubtedly be a distribution for the common good of the people and would be clearly covered by clause (b) of Article 39."

It can thus be seen that the Apex Court has held that the term "distribution" should not be given a narrow construction, but should be given wider construction so as to achieve the mandate in the directive principles. The Apex Court in para 11 of the said judgment has also observed that though directive principles are not enforceable, yet the Court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible.

27. It would thus be seen that it is a settled position that in spite of there being a declaration in the Act that it has protection under Article 31C of the Constitution, judicial scrutiny as to whether such an Act is entitled to protection under Article 39(b) and (c) of the Constitution is permissible. As observed by His Lordship Ray, J. in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the question is as to whether the laws, which receive protection under Article 31C of the Constitution, are laws for securing the directive principles enshrined in Article 39(b) and (c). As held by His Lordship, while deciding as to whether statute is entitled to protection or not, the Court is entitled to examine nature and character of the legislation and matter dealt with and whether there is any nexus of the law to the principles mentioned in Article 39(b) and (c) of the Constitution and if it appears that there is no nexus between the legislation and objectives and principles mentioned in Article 39(b) and (c), such legislation would not be within the protective umbrella. His Lordship has further observed that the Court

can tear the veil to decide the real nature of the statute, if the facts and circumstances warrant such a course.

28. His Lordship Palekar J. in the said case has observed that the Court while deciding the question as to whether the law falls within the general protection of Article 31C of the Constitution, will be competent to examine the true nature and character of the legislation, its design and the primary matter dealt with. His Lordship has further observed that if the Court comes to the conclusion that the above object of the legislation was merely a pretence and the real object was discrimination or something other than the object specified in Article 39(b) and (c), Article 31C would not be attracted and the validity of the statute would have to be tested independently of Article 31C of the Constitution.

29. His Lordship Mathew, J. has observed that in order to decide whether a law gives effect to the policy of the State towards securing the directive principles specified in Article 39(b) or (c), the Court will have to examine the pith and substance the true nature and character of the law as also its design and the subject-matter dealt with by it together with its object and scope. His Lordship has further observed that if the Court comes to the conclusion that the declaration was merely a pretence and that the real purpose of the law is the accomplishment of some object other than to give effect to the policy of the State towards securing the directive principles in Article 39(b) and (c), then the declaration would not be a bar to the Court from striking down any provision therein, which violates Articles 14, 19 and 31. His Lordship has further observed that if a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil created by the declaration and decide according to the real nature of the law.

30. His Lordship Chandrachud, J. has observed that apart from the declaration contained in the latter part of Article 31C of the Constitution, the nexus between a law passed under Article 31C and the objective set out in Article 39(b) and (c) is a condition precedent to applicability of Article 31C. His Lordship has also observed that declaration cannot be utilised as a cloak to protect laws bearing no relationship with the objective mentioned in the two clauses of Article 39 of the Constitution.

31. His Lordship Beg, J. has observed that the question whether the law is really for the purpose of giving effect to the principles enshrined in Clauses (b) and (c) of Article 39 of the Constitution would still be justiciable wherever the law passed would come up before the Court. A colourable piece of legislation with a different object altogether, but merely dressed up as a law intended for giving effect to the specified principles of would fail to pass the test laid down by the first part.

32. His Lordship Dwiwedi, J. has observed that Article 31C does not take away the Court's power to decide the legal question of the law's relevancy to the principles specified in Article 39(b) and (c) as well as factual question of the

law's efficacy to sub-serve the common good or to prevent common detriment. His Lordship has further observed that the Court can test the ends as well as the means of law.

33. It can thus clearly be seen that even according to the opinion expressed by each of the Hon'ble Judges of the Apex Court taking a majority view in the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the question as to whether the enactment has nexus with any of the principles in Clauses (b) and (c) of Article 39 of the Constitution is open to judicial scrutiny. If the legislation is found to have nexus with the principles enumerated in Article 39(b) and (c) of the Constitution, it will get protection under Article 31C of the Constitution. However, if it is found that legislation under the garb of getting protection under Article 31C of the Constitution is, in effect, intended for some other purpose, then the Court is not precluded from taking out the protection under Article 31C of the Constitution and test its validity on other permissible grounds.

34. A similar enactment, which was a subject matter of challenge before this Court, being Maharashtra Central India Spinning, Weaving and Manufacturing Company Limited, the Empress Mills, Nagpur (Acquisition and Transfer of Undertakings) Act, 1986 came to be challenged before the Apex Court in the case of Rashtriya Mill Mazdoor Sangh Vs. State of Maharashtra and Others, on the ground that protection under Article 31C of the Constitution was not available. The Apex Court rejecting the said contention has observed thus:

"4) The provisions contained in the Act have to be appreciated in the above background. At the outset, it may be stated that the challenge based on Article 14 or Article 19 would not be available by virtue of Article 31-C if the enactment is for giving effect to the policy of the State towards securing the directive principle specified in clause (b) of Article 39 of the Constitution. A declaration to this effect is contained in the Act itself.

5) However, as held in Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, judicial review is not excluded to examine the nexus between the impugned law and Article 39. In our opinion, the permissible judicial scrutiny to this extent reveals that the enactment undoubtedly is for effectuating the directive principle in clause (b) of Article 39 towards securing that the ownership and control of the undertaking are so utilised as best to subserve the common good. The declaration made to this effect in the Act is fully supported by the undisputed facts mentioned in the Statement of Objects and Reasons and the Preamble. The alternative to the nationalisation of this industry in the manner it is done by this Act is liquidation and unemployment of all the employees of the undertaking. The Act ensures continuance of the undertaking as a productive unit and continuation in employment of as many as possible. It was stated at the bar that more than fifty per cent of the employees have been retained in service after nationalisation of the undertaking. There cannot be any doubt that the requisite nexus of the Act with Article 39(b) is clear and duly established. This

being so, the Act is immune to challenge on any ground based on Article 14 or Article 19 by virtue of Article 31-C."

It can thus be seen that the Apex Court has observed that the Act ensuring continuance of undertaking as a productive unit and continuation in employment of as many persons as possible would have requisite nexus with Article 39(b) of the Constitution.

35. The Apex Court in the case of *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, has approved the principles laid down in the case of *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, . The Apex Court in the case of *Ranganatha Reddy* has held that Part IV, especially Article 39(b) and (c) is a futuristic mandate to the State with a message of transformation of the economic and social order. Firstly, such change calls for collaborative effort from all the legal institutions of the system: the legislature, the judiciary and the administrative machinery. Secondly and consequentially, loyalty to the high purpose of the Constitution, viz. Social and economic justice in the context of material want and utter inequalities on a massive scale. His Lordship Krishna Iyer has further observed that the said requirement compels the Court to ascribe expansive meaning to the pregnant words used with hopeful foresight, not to circumscribe their connotation into contradiction of the objectives inspiring the provision.

36. The Constitution Bench of the Apex Court in the case of *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, has held that the word "distribution" used in Article 39(b) of the Constitution must be broadly construed so that a Court may give full and comprehensive effect to the statutory intent contained in Article 39(b) of the Constitution. It has further been held that it should not be construed in a purely literal sense so as to mean only division of a particular kind or to particular persons. It has further been held that the words apportionment, allotment, allocation and classification clearly fall within the broad sweep of the word "distribution".

37. In the background of the above legal position, we have to consider validity of the statute in question.

From the perusal of the Preamble itself, it will be seen that the undertaking was engaged in the manufacturing, production and distribution of printed lithographic material. The Preamble further mentions that the said undertaking was closed down from 17/5/1979 throwing about 460 employees out of employment. It has further been mentioned that vide order dated 23/8/1980, management of the undertaking was taken over by the Central Government under the provisions of the DDR Act and the DCVL was appointed as the Authorised Person to manage the undertaking. The Preamble further provides that for the purpose of securing optimum utilization of the available facilities for manufacture, production and distribution of the printed engraved lithographic material by the undertaking, its continuance, proper management and investment of large amount is necessary.

It further provides that it was, therefore, expedient to acquire the said undertaking to ensure that the interests of the general public and employees of the said undertaking were served by continuance by the undertaking of the manufacture, production and distribution of aforesaid articles, which are essential to the needs of the economy of the State and to provide for the matters connected therewith or incidental thereto.

In view of the avowed object of continuing the production, which was closed down on account of bickerings between the partners and providing employment to the employees, who were rendered unemployed, in our considered view, the Act would directly have nexus with Clause (b) of Article 39 of the Constitution.

38. In that view of the matter, we find that the Act, which has been enacted with the aforesaid purpose, would have nexus with a policy as underlined under Clause (b) of Article 39 of the Constitution and the said Act would be entitled to protection under Article 31C of the Constitution. However, as has been held by the Apex Court consistently, each and every provision of the Act must be found to have nexus with policy of the State as contained in Clause (b) or (c) of Article 39 of the Constitution. As such, it will be necessary to examine each and every provision of the said Act, to find out whether it is entitled to protection of Article 31C of the Constitution.

39. Since we uphold the validity of the Act, we do not find vesting of the property of the industrial undertaking, which is directly concerned with functioning of the industrial undertaking, to the State Government, as illegal. As the Act is entitled to protection under Article 31C of the Constitution, it will not be permissible for us to go into the question of sufficiency or otherwise of the compensation as provided in Sections 7 and 8 of the Act. Once it is held that the Act is entitled to protection under Article 31C, the question of compensation becomes irrelevant unless the amount paid is proved to be illusory. From the affidavit filed by the State Government, it is revealed that the compensation has been arrived at by taking book value of the assets as shown in the balance-sheet of the dissolved firm after giving effect of depreciation.

40. The Apex Court in the case of Maharashtra State Electricity Board Vs. Thane Electric Supply Co. and others, was considering the contention that paying compensation fixed as the same equal to the depreciated book value of the assets of the undertaking to be taken over could not get protection under Article 31C of the Constitution. The Apex Court rejected the said contention. The Apex Court held that enactment had a nexus with Article 39(b) of the Constitution and, therefore, question of adequacy of compensation and being violative of Articles 14 and 19 of the Constitution could not be gone into.

It can thus clearly be seen that the Apex Court itself has upheld the payment of compensation on the basis of depreciated book value, which has been done in the present case. If the enactment is found to have nexus with the directive principles under Article 39(b) or (c) of the Constitution and as such, entitled to

protection under Article 31C of the Constitution, then question of adequacy of compensation becomes irrelevant.

41. In that view of the matter, we find that challenge to validity of Sections 7 and 8 of the Act on the ground of inadequacy of compensation deserves to be rejected.

42. That leads us to consider validity of sub-section (1) of Section 4 and sub-section (1) of Section 5 of the Act. By deeming provision of sub-section (1) of Section 4, all the properties of the proprietors are deemed to be the properties of the undertaking. It is not disputed that the said properties are not having any nexus with the business that is carried on by the undertaking. Apart from that, the learned single Judge of this Court in Civil Revision Application Nos. 666/1980, 679/1980 and 753/1980 vide judgment and order dated 15/12/1980 has held that the properties of the proprietors, namely, Dhanwatey chambers, Dhanwatey chambers annexe building, residential house and godowns in the front side are not connected with the factory of the undertaking. It could thus be seen that the said properties are not at all concerned with the functioning of the undertaking. The purpose of the Act is to continue production activities of the undertaking and to provide employment to its employees. The said objective can be said to have nexus with Article 39(b) of the Constitution. However, by no stretch of imagination, the properties which are not having any direct or indirect nexus with the production activities of the undertaking can be said to have nexus with any of the objectives or goals as enshrined in Clause (b) or (c) of Article 39 of the Constitution. In any case, the respondents have suffered a verdict from this Court that the said properties do not have any nexus with the functioning of the undertaking. In that view of the matter, we find that sub-section (1) of Section 4 of the Act, which by deeming provision, covers all the properties of the petitioners unconnected with activities of the undertaking, is not entitled to protection of Article 31C of the Constitution and, therefore, challenge to the same being violative of Article 14 of the Constitution can be examined by this Court.

43. There is another ground for holding so. From perusal of the Act itself, it could be seen that compensation as provided under Section 7 is only for the property of the undertaking. As already discussed hereinabove, the undertaking is defined to mean industrial undertaking, known as "Shivraj Fine Art Litho Works, Nagpur", belonging to the proprietors. The compensation provided under Section 8 is for deprivation of the proprietors of the management of their undertaking. It could thus clearly be seen that the aforesaid properties, which are not connected with the industrial undertaking, are sought to be acquired by the State Government, by virtue of deeming provision provided under sub-section (1) of Section 4 of the Act without paying any compensation. Perusal of the affidavit filed by the State Government reads thus:

"15)

(ii) The value of the assets which have been declared by the High Court as non-business assets and which are in the possession of the petitioner have been deducted from the book value of the fixed assets on the date of take over to arrive the amount for acquisition of fixed assets vested in the State Government.

(iii)

(iv)

(a)

Thus, the total depreciated value of the fixed assets as indicated by the DCVL was Rs. 14.62 lakhs. Out of these fixed assets, the goodwill had to be deducted as it had lost its value. Similarly, the value of the building which is a non-business asset and not in possession of DCVL had to be deducted. After deducting these assets, the value of fixed assets was Rs. 10.35 lakhs."

It can thus be seen from the affidavit of the State Government itself that while determining the compensation, value of the assets, which have been declared by the High Court as non business assets and which are in possession of the petitioners was deducted from book value of the fixed assets. It can thus be seen that sub-section (1) of Section 4 of the Act provides for acquisition of the properties, which have no nexus with the purpose of the enactment, without paying any compensation.

44. As held by the Apex Court in various judgments, each and every part of the statute must satisfy that it has nexus with the object to be achieved under Article 39(b) and (c) of the Constitution in order to get protection under Article 31C of the Constitution. As already discussed hereinabove, we have held that subsection (1) of Section 4 of the Act, which by a deeming provision, provides for acquisition of the properties of the petitioners, which have no relation with the undertaking, would not be entitled to protection under Article 31C of the Constitution. If the said provision does not have protection under Article 31C of the Constitution, then it can be challenged on the ground of being violative of Article 14 of the Constitution. As held by the Apex Court in a catena of cases, acquisition of property with no compensation is not permissible in law.

45. The Apex Court in the case of K.T. Plantation Pvt. Ltd. and Another Vs. State of Karnataka, has observed thus:

"189) Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and

purpose of the statute and host of other factors.

192) At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the Government to establish validity of such law. In the latter case, the Court in exercise of judicial review will test such a law keeping in mind the above parameters."

46. The Apex Court in the case of *Rajiv Sarin and Another Vs. State of Uttarakhand and Others*, has observed thus:

"81) We are of the considered view that the decision of this Court in *Ganga Devi and Others, etc. Vs. State of U.P.*, is not applicable in the present case inasmuch as this Court in *Ganga Devi* never dealt with a situation of unexploited forest and the interpretation of actual income was done in the peculiar facts and circumstances of the said case. The said case does not deal with a situation where there could be such income possible to be derived because it was unexploited but there could be no income derived immediately even if it is used or exploited. Therefore, the said case is clearly distinguishable on facts.

82) A distinction and difference has been drawn between the concept of "no compensation" and the concept of "nil compensation". As mandated by Article 300A, a person can be deprived of his property but in a just, fair and reasonable manner. In an appropriate case the Court may find "nil compensation" also justified and fair if it is found that the State has undertaken to take over the liability and also has assured to compensate in a just and fair manner. But the situation would be totally different if it is a case of "no compensation" at all.

83) As already held a law seeking to acquire private property for public purpose cannot say that "no compensation" would be paid. The present case is a case of payment of "no compensation" at all. In the case at hand, the forest land which was vested in the State by operation of law cannot be said to be nonproductive or unproductive by any stretch of imagination. The property in question was definitely a productive asset. That being so, the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring forests on the date of vesting. Even otherwise, the Revenue Authority can always make an estimation of possible income on the date of vesting if the property in question had been exploited by the appellants and then calculate compensation on the basis thereof in terms of Sections 18(1)(cc) and 19(1)(b) of the KUZALR Act."

It can thus be seen that the Apex Court has held that as mandated by Article 300-A of the Constitution, a person can be deprived of his property, but in a just, fair and reasonable manner. It has further been held that in an appropriate case, the Court may find nil compensation also justified and fair if it is found that the

State has undertaken to take over the liability and also has assured to compensate in a just and fair manner. The Apex Court has further held that situation would be totally different, if it is a case of no compensation at all. In the present case, we are of the considered view that if sub-section (1) of Section 4 of the Act is to be upheld, it will be a case of no compensation and would result in illegal deprivation of properties without awarding any compensation.

In that view of the matter, sub-section (1) of Section 4 of the Act will have to be held as violative of Article 14 of the Constitution.

47. That leads us to decide validity of subsection (1) of Section 5 of the Act. The effect of sub-section (1) of Section 5 of the Act is that every liability except the liability specified in sub-section (2) of the proprietors in respect of any period prior to the appointed day, will be the liability of the proprietors and shall be enforceable against them and not against the State Government or against the Corporation.

48. While considering validity of sub-section (1) of Section 5 of the Act, it will be relevant to refer to the scheme under Chapter VI of the Act. The said Chapter provides that State Government for the purpose of disbursing amount payable under Section 7 and 8 to the proprietors, shall appoint a Commissioner of Payments. Section 15 of the Act provides that an amount as prescribed under Sections 7 and 8 shall be deposited by the State Government in favour of the Commissioner. It has further been provided that insofar as liabilities of proprietors are concerned, the Commissioner shall entertain the claims. The amount in respect of such claims shall be paid by the Commissioner to the person or persons to whom the amount is due from the proprietors. Section 22 provides that if any balance remains with the Commissioner, the same shall be disbursed to the proprietors. It can thus be seen that though Sections 7 and 8 provide for compensation, the same is not payable to the petitioners as the said amount is to be deposited with the Commissioner and the liabilities of the proprietors are required to be settled from that amount. A conjoint reading of sub-section (1) of Section 5 and Chapter VI of the Act would lead to a situation that though compensation is provided under Sections 7 and 8, the same would not be paid to the petitioners and at the same time, all the liabilities would continue to be fastened on the petitioners. The net effect of it would be acquisition of the undertaking at no compensation.

49. As held by the Constitution Bench of the Apex Court in the case of K.T. Plantation Pvt. Ltd. and Another Vs. State of Karnataka, , there is a distinction between no compensation and nil compensation. The Apex Court has held that while acquiring property for public purpose, State cannot say that no compensation shall be paid. It has further been held that there may be a law awarding nil compensation in cases where State undertakes to discharge liabilities charged on the property on the acquisition.

50. It can thus be seen that if sub-section (1) of Section 5 and Chapter VI of the

Act are permitted to go together, the resultant effect would be of no compensation. However, if Chapter VI of the Act is to be saved so that the liability charged on the property is on the State, then sub-section (1) of Section 5 of the Act cannot remain on the statute book inasmuch as the effect would be of no compensation. However, if sub-section (1) of Section 5 goes and compensation under Sections 7 and 8 of the Act is permitted to be appropriated in accordance with Chapter VI, to take care of the liabilities of the petitioners, then the case would fall under nil compensation and not no compensation. In that view of the matter, we find that if sub-section (1) of Section 5 is permitted to remain on the statute book, it would permit acquisition of the undertaking with no compensation and as such, it would be violative of Article 300-A of the Constitution of India. In that view of the matter, sub-section (1) of Section 5 of the Act will also have to be held as unconstitutional.

51. In the result, the validity of the Shivraj Fine Art Litho Works (Acquisition and Transfer of Undertaking) Act, 1984 except sub-section (1) of Section 4 and sub-section (1) of Section 5 thereof is upheld. It is further held and declared that sub-section (1) of Section 4 and sub-section (1) of Section 5 of the said Act are ultra vires the Constitution of India. Rule is made absolute in the aforesaid terms. No order as to costs.