

(1972) 12 CAL CK 0015

In the Calcutta High Court

Case No : Civil Revision No's. 2190-93 of 1961, 18 (w) , 36 (w) , 462 (w) , 507 (w) and 553-559 (w) of 1968

Sk. Bafatulla Mukhtear and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-12-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 154, 154(2), 166(3), 245

Rules of High Court at Calcutta Appellate Side, 1957 — Rule 1, 9

West Bengal Estates Acquisition Act, 1953 — Section 44(4), 5(5), 5A, 5A(1), 5A(3)

Citation : AIR 1973 Cal 148 : 77 CWN 171 : (1975) 2 ILR (Cal) 99

Hon'ble Judges : Salil Kumar Datta, J;S.C. Ghose, J;A.K. Janah, J

Bench : Full Bench

Advocate : Ranjit Kumar Banerjee, Samares Kumar Nandi and Ors, for the Appellant; S.C. Das Gupta, N.G. Das, Nripen Bhattacharjee and Ors., for the Respondent

Judgement

Salil Kumar Datta, J.—These rules, arising under Articles 226 and 227 of the Constitution, have been referred by the Chief Justice to the Special Division Bench as at present constituted for disposal, under Rule 1 (ii), Chapter II of the Appellate Side Rules, primarily on the requisition of a Division Bench for considering inter alia the vires of Section 5A of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954).

2. Mr. Ranjit Kumar Banerjee, learned Advocate appearing for the petitioners in C. R. Nos. 2190-93 of 1961, submitted, as the hearing commenced, that the present reference to the Special Bench was not a proper reference, as the Bench hearing these rules had taken a view different from the view taken earlier by Division Bench in Ambujakhya Mukherjee v. State of West Bengal, TLR (1966) 1 Cal 495 and accordingly the reference should have been made to a Full Bench. He referred to the decision in Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, in which it was observed:

"If one thing is more necessary in law than any other thing, it is the quality of certainty. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion.

It is the uniform practice in all High Courts in India that if one Division Bench differs from an earlier view on a question of law of another Division Bench, a reference is made to a larger Bench. In Calcutta High Court a rule to this effect has been in existence since 1867.".

The same view was taken in *Jaisri Sahu Vs. Rajdewan Dubey and Others*, .

3. Rules of the High Court at Calcutta, Appellate Side, inter alia provided in Chapter VII, Rule 1 that whenever one Division Bench shall differ from another Division Bench upon a point of law or usage having the force of law, the case shall be referred for decision by a Full Bench, unless the point has been decided by a pre-Constitution decision of the Judicial Committee of the Privy Council, or of the Federal Court of India or of the Supreme Court of India. If therefore, the Division Bench, which heard the rules DOW before us, differed on a point of law or usage having the force of law from the decision of the Division Bench which decided *Ambujakhya's* case ILR (1966) 1 Cal 495, it was incumbent on the latter Bench to refer the matters before it to a Full Bench for decision. It would however appear that the said Division Bench did not differ either expressly or impliedly from the earlier decision referred to above. Certain aspects on the points at issue were urged at the hearing of these rules which were not placed before the earlier Division Bench, including a subsequent decision of the Supreme Court. As the points raised are of constitutional importance involving also interpretation of a "troublesome" section of the Act, the Bench itself exercised its power under Chapter II R. 1 (ii) of the said Rules, which inter alia provide as follows:--

"..... on the requisition of any Division Bench, or whenever he thinks fit the Chief Justice may appoint a Special Division Bench, to consist of three or more Judges, for hearing of any particular appeal or any particular question of law arising in an appeal, or of any other matter."

As we have noted above there was no difference of view between the two Division Benches on any point of law or usage having force of law, but in view of the contentions since raised, which in that form were not raised in the earlier Bench, the referring Bench felt on account of the constitutional importance of the question, that the matter should be reconsidered by a Special Division Bench and reference was made accordingly. Occasion for reference to a Full Bench accordingly did not arise in the circumstances.

4. Mr. Banerjee next argued that even so the present Special Division Bench is a Bench of co-ordinate jurisdiction with a Division Bench of two Judges so that it will not be possible for this Bench to differ from the decision in the earlier

Division Bench deciding Ambujakhya's case, if such contingency arises. It is hard to accept this contention, as under the said Rule provision is made for reference on the requisition of a Division Bench to a Special Division Bench of three or more Judges for hearing any particular appeal or question of law in an appeal or any other matter. If a Special Division Bench of three or more Judges which is a larger Bench always, is to have co-ordinate jurisdiction with a Division Bench there will be no meaning or point in making provision for a reference to a Special Division Bench by a Division Bench. Further, under Rule 9, Chapter VII, Bench constituted under Rule 1 (ii) of Chapter II, is to be deemed to be a Full Bench. The question will arise, even on the said contention, only if this Bench has occasion to differ from the decision in Ambujakhya's case. Accordingly, as at present advised, we overrule Mr. Banerjee's above objection and proceed with consideration of the matters under reference.

5. On May 5, 1953, was published in the Calcutta Gazette Extraordinary, the West Bengal Estates Acquisition Bill, 1953. The statement of objects and reasons of the bill is as follows:

"The question of abolition of the Zamindari system has been agitated for many years in this country. The Land Revenue Commission which was set up in 1938 recorded its opinion by a majority that the Zamindari system was no longer suited to the conditions of the present time and it recommended that the interests of all classes of rent-receivers should be acquired on reasonable terms so that the actual cultivators might become tenants holding directly under the Government. The Bengal Administration Enquiry Committee, 1945, which examined the question mainly from the administrative point of view expressed its opinion that the present system of land tenure was outmoded and was an obstacle to the maximum utilisation of the land and water resources of the country.

The Agrarian Reforms Committee also was of a similar opinion.

This Government has considered the problem in the light of the opinions referred to above and decided to bring forward the present Bill with the following objects, namely:--

- (i) to eliminate the interests of all Zemindars and other intermediaries by acquisition on payment of compensation;
- (ii) to permit the intermediaries to retain possession of their khas lands upto certain limits and to treat them as tenants holding directly under the State;
- (iii) to acquire the interests of Zemindars and other intermediaries in mines; and
- (iv) to provide for certain other necessary and incidental matters."

The bill was soon thereafter introduced in the West Bengal Legislative Assembly and ultimately became the law in the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954) with the assent of the President first published in

Calcutta Gazette on February 12, 1954.

6. Sections 4(1), 5 and 6 of Chapter II of the Act, which contains provisions for acquisition of estates and of the rights of intermediaries therein, provide as follows:--

Section 4. "Notification of vesting estates and rights of intermediaries:

(1) The State Government may from time to time by notification declare that with effect from the date mentioned in the notification all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from encumbrances.

* * *

Section 5. Effect of notification -- (T) Upon the due publication of a notification u/s 4, on and from the date of vesting -- (a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from encumbrances;

Section 6. Right of intermediary to retain certain lands. (I) Notwithstanding anything contained in Sections 4 and 5, an intermediary shall, except, in the cases mentioned in the proviso to Sub-section (2) but subject to the other provisions of that subsection be entitled to retain with effect from the date of vesting-

(a) land comprised in homesteads

(b) land comprised in or appertaining to buildings and structures

(c) non-agricultural land in his khas possession not exceeding fifteen acres in area and including any land retained under Clause (a).

Provided that the total area of land retained by an intermediary under clauses (a) and (c) shall not exceed twenty acres as may be chosen by him:

(d) agricultural land in his khas possession, not exceeding twenty five acres in area, as may be chosen by him:

"Intermediary" in Section 2(i) "means a proprietor, tenure-holder, under-tenure-bolder or any other intermediary above a raiyat or a non-agricultural tenant"

7. The notification u/s 4 had been duly published and in view of provisions of Sub-section (2) of Section 4, all intermediary interest vested in the State latest on or before the first day of Baisakh 1362 B. S. corresponding to April 15, 1955.

8. Section 49 as amended with retrospective effect, provides that Chapter VI which by its Sections 49 to 52 contain provisions for acquisition of interests of raiyats and under-raiyats is to come into force on such date as the State Government by notification may appoint. Section 52 as amended with

retrospective effect provides:

"On the issue of a notification u/s 49, the provisions of Chapters II, III, V and VII with such modifications as may be necessary, apply mutatis mutandis to raiyats and under raiyats as if such raiyats and under raiyats were intermediaries and the land held by them were estates and a person holding under a raiyat or an under-raiyat were a raiyat for the purposes of Clauses (c) and (d) of Section 5."

9. By notification No. 6804L Ref. dated April 9, 1956, the Governor appointed April 10, 1956 as the date on which the provisions of Chapter VI of the Act came into force in all districts of West Bengal.

10. On the day (February 13, 1954) following the day when the West Bengal Estates Acquisition Act, 1953 became the law of the land, the West Bengal Government published an amendment Bill as it considered necessary to introduce a new section in the said Act with the object to obtain powers for the State Government:

(i) to enquire into any case of transfer of land made between the 5th day of May, 1953 and the date of vesting if there are prima facie reasons for believing that such transfer was not bona fide and was made with a view to defeating the purposes of the Act;

(ii) if the transfer be not found to be bona fide, to cancel it; and

(iii) if the transfer be bona fide, to allow the transferee to retain the land transferred to him; and to take into account such land in calculating the land which the transferor may retain under the Act."

11. Reservation of such powers was considered necessary as following the publication of the West Bengal Estates Acquisition Bill, 1953 on May 5, 1953 there was a spate of transfers of land by interested persons as it appears to near relatives as also to others. The transfers, it was apprehended, were made and were also likely to be made with the object of increasing the amount of retainable land or increasing the amount of compensation payable under the Act. To examine such transfers so that the objects of the Act might not be thereby defeated, the West Bengal Estates Acquisition (Amendment) Act, 1954 was passed by the West Bengal Legislature providing for powers in the State Government to scrutinise them and the President's assent was first published in Calcutta Gazette, Extraordinary on April 23, 1954. By its Section 2 it was provided that new sub-section as 5A after Section 5 was to be inserted and was to be deemed always to have been inserted. The said section, to which there has been minor amendment in Sub-section (6), is the subject-matter of consideration in this reference and it will be proper to set out the same:

Section 5A. "(1) The State Government may after the date of vesting enquire into any case of transfer of any land by an intermediary made between the 5th day of May, 1953 and the date of vesting, if in its opinion there are prima facie reasons for believing that such transfer was not bona fide.

(2) If after such enquiry the State Government finds that such transfer was not bona fide, it shall make an order to that effect and thereupon the transfer shall stand cancelled as from the date on which it was made or purported to have been made:

Provided that, subject to such cancellation, nothing in this sub-section shall be deemed to affect any rights which the transferor or the transferee may otherwise have against each other.

(3) If after such enquiry the State Government finds that the transfer was bona fide, it shall make an order to that effect and thereupon the following consequences shall ensue, namely:--

(i) the land shall, without prejudice to any rights which the transferor or the transferee may have against each other, be deemed to be the land of the transferee for the purpose of this Act;

(ii) if any such land or any part thereof is retained by the transferee under the provisions of this Chapter, such land or such part thereof may be taken into account in calculating the land which may be retained by the transferor under this Chapter as if such land or such part thereof had never been transferred and were retained by the transferor or chosen by him as land to be retained by him.

(4) The State Government may delegate all or any of its powers under this section to such officers in its service as it may deem fit.

(5) The procedure to be followed in such enquiry shall be such as may be prescribed:

Provided that-

(i) no order shall be passed in an enquiry held under this section except after giving the transferor and the transferee an opportunity of being heard;

(ii) in conducting such enquiry the State Government and any officer to whom any powers have been delegated under subsection (4), shall have all the powers of a civil court for the purposes of taking evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents and shall be deemed to be a civil court within the meaning of Sections 480, 481 and 483 of the Code of Criminal Procedure, 1898.

(6) An appeal against any order passed by the State Government under Sub-section (2) or Sub-section (3), or passed under any of those sub-sections as read with Sub-section (4) by an officer to whom powers have been delegated under Sub-section (4), if preferred within sixty days of such order (or within sixty days from the date of appointment of the Special Judge, whichever is later), shall lie to a Special Judge (being a person who is or has been a District Judge or an Additional District Judge) appointed by the State Government for the purpose of this section and such Special Judge shall dispose of the appeal according to the prescribed procedure.

(7) In this section,--

(i) a transfer shall be held to be not bona fide if it was made principally or partially with the object of increasing the amount of land which a person may retain under this Chapter or principally or partially with the object of increasing the amount of compensation payable under Chapter III or Chapter IV;

(ii) a transfer in favour of one or more of the following relatives of the transferor, that is to say,--

a wife, a husband, a child, a grandchild, a parent, a grand-parent, a brother, a sister, a brother's son, a sister's son, a daughter's husband, a son's wife, wife's brother or sister, or a brother's wife, made between the 5th day of May, 1953 and the date of vesting shall be presumed to be not bona fide until the contrary is provided:

Provided that no such presumption shall be made in respect of transfer of land by an intermediary if the aggregate area of such land owned by the intermediary at any time between the 5th day of May, 1953 and the date of transfer did not exceed twenty acres in extent in the case of non-agricultural land and twenty-five acres in extent in the case of agricultural land;

(iii) "transfer" means a transfer by sale, mortgage, lease, exchange or gift;

(iv) "transferor" and "transferee" include the successors in interest of a transferor or a transferee."

12. To complete the narration of relevant events, the two following notifications u/s 5-A(4) had been issued and they are in force.

13. They are:

"No. 6786-L. Ref. -- 9th April, 1956. --In exercise of the power conferred by subsection (4) of Section 5A of the West Bengal Us tales Acquisition Act, 1953 (West Bengal Act 1 of 1954), the Governor is pleased to delegate to the officers mentioned below within their respective jurisdiction all the powers of the State Government u/s 5A of the said Act:--

(1) Settlement Officers.

(2) Charge Officers.

(3) Assistant Settlement Officer!.

(4) Settlement Kanungos.

By order of the Governor, S. Banerjee, Secretary to the Govt of West Bengal.
Erratum.

No. 7128-L. Ref.-- 5th June 1962. -- In Notification No. 6786-L. Kef. dated the 9th April, 1956, published at page 750, Part I of the "Calcutta Gazette" of the 10th April, 1956, in respect of delegation of powers of the State Government u/s

5A of the West Bengal Estates Acquisition Act, 1953 to certain Officers-

In item (4), for "Settlement Kanungos", read "Revenue Officers".

By order of the Governor, N. Ray Choudhury, Secy."

14. Proceedings u/s 5A were thereafter started by the appropriate authorities and the aggrieved parties moved this Court at various stages of proceedings challenging inter alia the constitutional validity of the provisions of the section. A Division Bench of this Court consisting of P. B. Mukharjee, J., (as his Lordship then was) and Laik, J., examined the arguments advanced at length at the bar in ILR (1966) Cai 495 and by separate judgments came to the following decision:

(i) The challenge to the form of the order initiating proceeding which is that "a transfer may not be bona fide", was held to be not a substantial objection, as such opinion being a tentative opinion, it could not be said positively that it was not bona fide. Accordingly the form of order is unexceptionable and abundantly satisfies the requirement of Section 5-A(1) of the Act.

(ii) The contention that formation of opinion u/s 5-A(1) is not a "Power" but a "function" and "duty" which could not be delegated, is an unsubstantial plea, as "power" is as much a "duty" and "function" and is nevertheless so because it involves a function or duty.

(iii) Power u/s 5A is a quasi-judicial power and not executive power. Article 154 of the Constitution has no application: even if Article 154 covers power u/s 5-A(1), there could be a valid delegation under its Sub-section (4).

(iv) The contention that Government is vested only with executive power under Article 154 which by implication excluded it from acquiring any judicial or quasi-judicial power was not acceptable as there was no vesting of judicial powers as such in the Indian Constitution and there is no rigid separation of judicial power from the executive and the legislature while Article 50 is far from vesting of judicial power in any particular judicial organ.

(v) There is no discrimination between bona fide transferors against whom enquiry u/s 5-A(1) is held and such transferors against whom no such enquiry is held. Transfer not prima facie bona fide and transfers which are prima facie bona fide do not belong to the same class and Article 31-A saves Section 5-A(3).

(vi) Section 52 as amended with retrospective effect expressly declares that the lands held by raiyats and under-raiyats are estates and by this statutory provision, an "estate" is created and declared which clearly comes within Article 31-A(2)(a) of the Constitution and accordingly Section 5A is protected by Article 31A of the Constitution.

(vii) For transfer of land found bona fide, transferor has already got full value of transfer while for loss of land retained by him when the transferred land is taken in consideration, for whatever is lost he will be entitled to compensation from Government.

(viii) Publication of the Record of rights cannot conclude and determine the liability and obligations u/s 5A, and order u/s 5A is not liable to objection under proviso to Section 44(1) and u/s 45A the order u/s 5A is to be given effect to. The plea that after final publication of record of rights no proceedings u/s 5-A(3) can be started is unacceptable. Act provides for revision of record of rights after final publication.

15. In the view that was taken as aforesaid the rule challenging the constitutionality of Section 5A was discharged.

16. Section 5A again came up for consideration before another Division Bench of this Court consisting of B. N. Banerjee and K.L. Roy, JJ., in C. R. No. 2190-93 of 1961 S.K. Bafatulla Mukhtear v. State of West Bengal. The form in the order initiating Section 5A proceedings contained the following words i.e., that "the transfer may not be bona fide one" and not that "such transfer was not bona fide". Mr. Prafulla Kumar Roy, learned Advocate appearing for the petitioners contended before the said Bench that the opinion initiating proceeding u/s 5A must be objectively formed and the reasons must be strong enough to establish the belief that a particular transfer was not bona fide and a mere suspicion would not be enough to initiate such proceeding. The Bench was of opinion that this contention in this form was not advanced in Ambujakhya's case ILR (1966) Cal 495. It was further contended with reference to Article 154 of the Constitution that while executive powers of the State Government is vested in the Governor and is exercisable by him either directly or through his officers, u/s 5A the function, of the judicial tribunal is conferred on the Governor which is impermissible under the Constitution and to that extent Section 5A was ultra vires. It was further contended that the earlier Division Bench repelling the above contention had not the advantage of reading the decision State of Madhya Pradesh v. Bharat Singh, AIR 1967 SC 1170 "emphasising upon the distribution of executive and judicial powers". As according to the referring Bench the function u/s 5A is judicial function to be exercised largely with the formalities of the exercise of judicial powers how far and to what extent this judicial power could be invested in the Governor is a point worthy of consideration. Further contention was that the delegation of such power by the Governor to his subordinate officer is not saved by Article 154(2)(b). It was observed by that Bench that this aspect of the matter was not considered in Ambujakhya's case and deserved consideration. Though that Bench did not expressly or impliedly differ from the decision in Ambujakhya's case, in view of the points of constitutional importance raised by Mr. Roy involving interpretation of Section 5A of the Act, it was felt that the matter deserved to be decided by a Special Bench. Accordingly in exercise of the powers under Chapter 2, Rule 1 (ii) of the Appellate Side Rules a requisition was sent to the Chief Justice to constitute a Special Bench to decide the following questions of law:

(a) Whether the form of the order made by the Assistant Settlement Officer on January 19, 1959, hereinbefore quoted was in accordance with or in substantial

compliance to Section 5-A(1) of the West Bengal Estates Acquisition Act? If it is not is the proceeding started under such an order invalid?

(b) Is Section 5A of the West Bengal Estates Acquisition Act ultra vires the Constitution of India inasmuch as it invests judicial power in the State Government?

(c) Is the delegation of power by the State Government to the Revenue Officers under Sub-section (4) of Section 5A ultra vires Article 154(2)(b) of the Constitution?

17. On the said requisition the Chief Justice constituted this Bench, referring to it not only the points of reference referred to above in the said rules but also the other rules mentioned above involving similar questions and entire cases have been referred to for decision of the Special Bench.

18. The main contention raised on behalf of the petitioners is that Section 5A of the West Bengal Estates Acquisition Act, 1953 (I of 1954) is ultra vires the Constitution of India inasmuch as it invests judicial power in the State Government which is the executive organ of the State. We have no rigid separation of powers between the different organs of the State in our Constitution as in the Constitutions of the United States of America and the Commonwealth of Australia. Even so, separation of powers and functions between the three organs of the Government -- Legislative, executive and judiciary -- is inherent in our Constitution. Article 154 provides that the executive power of the State shall be vested in Governor and thereby it excludes the vesting of judicial and quasi-judicial powers in the executive. Exercise of powers u/s 5A confers on the State Government the functions of a Court of Law or of judicial organ of the State which is impermissible, as one branch of the Government is not competent to exercise the function of either of the branches. Article 50 also provides as a directive principle of State policy for separation of the judiciary from the executive in the public services of the State.

19. In the Constitution of the United States of America it is provided that all legislative powers therein granted shall be vested in the Congress of the United States while the executive power shall be vested in the President of the United States. It is further provided that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

20. In the Commonwealth of Australia Constitution Act, 1900 it is provided that the legislative power of the Commonwealth shall be vested in a Federal Parliament while the executive power is vested in the Queen exercisable through the Governor General as Queen's representative. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court to be called "the High Court of Australia" and in such other Federal Courts as Parliament creates and in such other Courts as it invests with federal jurisdiction.

21. Referring to the above provisions. Mr. Ranjit Kumar Banerjee, learned Advocate for the petitioners in the rules under reference by the Division Bench, has contended with great emphasis that although there is no rigid and express separation of powers, such separation is inherent in our Constitution also. The judiciary in the democratic set up under our Constitution has great role to play and on it principally lies the duty and responsibility of securing the rule of law against vagaries and excesses of the executive or its arbitrary actions. While independence and supremacy of the union judiciary are secured by provisions of Chapter IV of Part V of the Constitution, in cases of States in Part VI they are secured by provisions of Chapter V relating to High Courts and Chapter VI about subordinate courts, the control over which has been vested in effect in High Court. There is no provisions in the Constitution vesting powers of the judiciary in the executive, so that it is patent that separation of powers therein has in effect been provided for and any provision in any statute vesting judicial powers in the executive as provided in Section 5A will be violative" of the Constitution as amounting to usurpation and encroachment of the powers of the judiciary.

22. In the complexity of modern social conditions and expanding activities of the Government, it is no longer possible to maintain a rigid separation of powers. In our Constitution while there is no rigid separation of powers, there is also no provision therein prohibiting conferment of judicial and quasi-judicial powers in the Government. The practice in modern times has been to set up, by law, independent tribunals vested with judicial powers of the State to adjudicate specified disputes of importance between the subjects or between the State and its subjects. Very often even the Government is invested with the judicial powers of the State to adjudicate such disputes. We may refer in this connection to Section 111(5) (unamended) of the Companies Act, 1956 or Section 36 of the Central Excises and Salt Act, 1944. In *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , the Court was considering an appeal against the order passed on appeal by the Central Government u/s 111(5) (unamended) of the Companies Act. The section invests the Central Government to decide a dispute as an appellate authority against refusal or failure of the Board of Directors to register a transfer or transmission of shares in the Company. The Government is required, in deciding the appeal, to follow the Companies (Appeal to Central Government) Rules, 1957 framed for the purpose. It provides for a memorandum of appeal, which initiates the proceedings, accompanied by affidavit and documentary evidence in support and also representations by parties in writing accompanied by affidavit and documentary evidence. There is thus a lis or dispute between the contesting parties relating to their civil rights and the Central Government is invested with powers to determine the dispute the proposal and objection in light of evidence, and not on grounds of policy or expediency. The decision manifestly stands on objective tests on the issue as to whether directors are acting oppressively, capriciously or corruptly or in some way mala fide upon respective contentions and rights of parties. The decision by the Central Government which has a binding force, directly affects the rights of

parties as the Company under the law is required to give effect to the decision forthwith. It was held that as the Central Government exercised the judicial powers of the State to adjudicate rights of parties in civil matters when there is a lis between contesting parties, it acts as tribunal, and not as executive body, and thus subject to the appellate jurisdiction of the Supreme Court, In Travancore Rayon Ltd. Vs. Union of India (UOI), it was held that the Central Government by Section 36 of the Central Excises and Salt Act is invested with the judicial powers of the State for adjudication of the dispute and is required to set out a speaking order indicating judicial consideration of such dispute as such order is subject to supervisory jurisdiction of High Court under Article 227 and of the appellate jurisdiction of the Supreme Court under Article 136.

23. Section 5A of the West Bengali Act I of 1954, on the other hand, is concerned with an enquiry as to whether any transfer of land within a certain period amounts to defeating the purposes of the Act, and the consequences following the findings. The proceeding here is initiated not at the instance of any party interested in the transaction but by the executive itself in implementing the policy of legislation and the provisions of the Act. The enquiry, in essence, is to examine, for the purpose of the Act, if the transfer is "bona fide" as defined in the section and parties have been given opportunity to adduce evidence in support of the "bona fide" character of the transaction. There is thus no lis between the parties to the transaction in the enquiry and the State Government is not required to decide rights between the transferor and the transferee and the decision in the enquiry, it is expressly provided, will not affect the rights the parties otherwise may have against each other. There is no scope for any representations by the parties of their respective cases or rights nor is the decision directly capable of execution. For all these reasons it is not possible to hold that in the exercise of functions u/s 5A, the State Government in any way exercises judicial functions or acts as a Tribunal or otherwise usurps the functions of the judicial organ of State. Assuming that u/s 5A, the State Government is invested with the judicial powers, in absence of any rigid separation of powers or any provisions in respect thereof in our Constitution, it will not be possible to hold, in view of the modern practice prevailing in other countries including ours and also of the above authorities, that conferment of such powers in the State Government is in any way unconstitutional or ultra vires the Constitution.

24. Apart from exercising judicial functions by Government as conferred by statute, there may be cases in which Government is required to exercise quasi-judicial functions in discharge of its executive powers. In Halsbury's "Laws of England" Simonds Edns., Vol. 7, Article 409, it is stated:

"409. The executive: Although the legislative, executive and judicial powers are formally distinct, it is not the case that legislative functions are exclusively performed by the legislature, executive functions by the executive, or the judicial functions by the judiciary. Executive functions are incapable of comprehensive definition, for they are merely the residue of the functions of the Government

after legislative and judicial functions have been taken away.

In the performance of these functions, public authorities are bound to issue orders which are not far removed from legislation and to make decisions affecting personal and proprietary rights of individuals, which, while not strictly judicial, are quasi-judicial in character. Discretionary action of both these types must now be considered normal on the part of the executive."

25. We shall now test the validity of Section 5A considering its provisions as exercise of the executive power of the State. As has been noted in Halsbury, in a modern State it is not possible that the different organs of the State will perform the only functions in its exclusive jurisdiction and the executive has often to exercise powers involving quasi-judicial functions. In *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, the Supreme Court has observed:

"It cannot however be assumed that the legislative functions are exclusively performed by the Legislature, executive functions by the executive and judicial functions by the judiciary alone. The Constitution has not made an absolute or rigid division of functions between the three agencies of the State. To the executive exercise of functions legislative and judicial are often entrusted. For instance power to frame rules, regulations and notifications which are essentially legislative in character is frequently entrusted to the executive. Similarly judicial authority is also entrusted by legislation to the executive authority (*Harinagar Sugar Mills Ltd.'s case supra*). In the performance of the executive functions, public authorities issue orders which are not far removed from legislation and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character. In addition to those quasi-judicial, and quasi-legislative functions, the executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment of legislative, executive and judicial characteristics. In the complexity of problems which the modern government has to face and the plethora of parliamentary business to which it inevitably leads, it becomes necessary that the executive should often exercise powers of subordinate legislation. (See Halsbury Vol. 7, Article 409). It is indeed possible to characterise with precision that an agency of the State is executive, legislative or judicial, but it cannot be predicated that a particular function exercised by any individual agency is necessarily of the character which the agency bears."

26. The functions of the executive, apart from maintenance of public order, conduct of military operations, management, supervision and control of social service, State properties and nationalised industries, and the like, also include initiation of appropriate legislation and also implementation and enforcement of such and existing laws according to the procedure laid down in relevant statutes or rules framed thereunder. In enforcing and implementing the law the executive has often to exercise powers involving quasi-judicial functions and make decisions affecting the personal and proprietary rights of individuals. Such

determination will not however be an exercise of the judicial functions of the State within the exclusive jurisdiction of the judiciary and it will be an exercise of the executive powers all the same though involving quasi-judicial functions as exercise of such powers are incidental to the performance of the appropriate functions of the executive, though a duty is cast on it to conform to the norms of judicial procedure in performing such acts in exercise of its executive functions.

27. The West Bengal Estates Acquisition Act, 1953 provides for vesting in State of all estates and rights of every intermediary in such estates including land held by raiyats and under-raiyats and their interests therein. The State Government has been given certain powers u/s 5A providing for its enquiry of transfer of any land made during the period commencing from the date of the publication in the Gazette of the relevant bill, culminating in the said Act, till the date of vesting, if there are prima facie reasons for believing that such transfer was not made bona fide but with a view to defeating the purposes of the Act. Further power has also been given to cancel a transfer if it is not found bona fide, and, if found bona fide, to allow the transferee to retain the land and take such land into account in calculating the land the transferor is entitled to retain. The exercise of these powers by the executive basically and in essence is not making a final or binding determination of any question of title or rights between the parties concerned but is only for implementing and enforcing the provisions of the Act. The exercise of such power is thus an executive function of the State as being essential and incidental to the performance of its functions for implementing the provisions of the Act though exercise of such powers involves exercise of quasi-judicial functions.

28. It will be a far cry to suggest that exercise of such powers will involve an encroachment of the functions of the judiciary which is the judicial organ of the State. The judiciary finds expression of its powers through the ordinary hierarchy of Courts established by the Constitution and relevant laws. The functions of Courts, as has been held in judicial decisions, consists in authoritative and binding determination of disputes as to rights and liabilities of contesting parties on the basis of existing law. As observed by Griffith, C. J., in *Huddart, Parker and Co., Proprietary Ltd. v. Noorhead*, (1909) 8 Cal LR 330 at p. 357, it is

"The power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

It was also observed by Isaacs, J., in the above decision that the exercise of judicial power entailed the power "to impose liability or affect the rights". In *Queen v. Kirby Ex parte Boiler makers' Society of Australia*, (1955-56) 94 Cal LR 254. affirmed by the Privy Council, 1957 AC 288, though the appeal was held incompetent otherwise, it was held that the conferment of power on the arbitral court constituted by the Conciliation and Arbitration Act 1904-1952 to order

compliance of the order or award violated and to punish for contempt of its powers and authorities provided therein, being essentially judicial powers, are invalid.

29. In *British Imperial Oil Co. Ltd. v. Federal Commissioner of Taxation* (1925) 35 CLR 422, it was held that the provisions in empowering the Board of Appeal under the Income Tax Assessment Act, 1922-23, to decide an appeal from the order of the Commissioner, both on question of law and fact and further providing that the order of the Board was to be final and conclusive on all parties amounted to conferment of judicial power to the Board equating it with courts and hence unconstitutional. The Act was amended as a result and the Board of Review as renamed by amendment was shorn of judicial powers referred to above limiting its powers to review of orders of the Commissioner. In the decision in *Shell Co. of Australia Ltd. v. Federal Commr. of Taxation*, (1930) 44 CLR 530 (PC) referred to by the learned Advocate for the petitioners, it was held that no judicial power could be said to have been conferred on the Board after removal of the provisions about conclusive-ness and finality of the order from Board to Court.

30. The judicial powers, reserved exclusively to the judicial organ of the State, according to judicial decisions, thus connote that such authority must have power to declare what the law is and to apply the law for its observance and make a binding declaration of rights and obligations of the parties in dispute before it on the basis of law in force. In arriving at the decision the discretion vested in such authority is circumscribed by objective standards or tests. Further such decisions should be directly enforceable and lastly it is also to be examined if the legislature intended that such authority should be equated with judiciary. These characteristics of the judicial powers are not mutually exclusive nor do they individually decide the issue, and for proper appreciation all relevant factors and attending circumstances should be taken into account.

31. In the context of the above propositions Section 5A has to be examined. As we have seen, the section provides for implementation of the provisions of the Act. The Act, as the preamble indicates, provides for acquisition of estates and rights of intermediaries therein and of certain rights of raiyats and under-raiyats in lands comprised in estates. By Section 5A the State Government is required to examine transfers which *prima facie* appear to be intended for defeating the purposes of the Act and certain consequences are to ensue on basis of such findings. This does not amount to a binding determination of the rights of the parties interested and the aggrieved party is not precluded thereby from moving courts under the laws of the land for appropriate reliefs. Further the decision of the State Government cancelling the transfer, it is expressly provided, will not affect any rights of the transferor or the transferee against each other. It will also appear that the orders by themselves passed by the State Government under this section are not directly enforceable or executable under other provisions of the Act. The above provisions appear to be a vital step for implementing the

objectives of the Act against transfers of land intended for defeating the purpose of the said statute and for certain other consequences in respect of transfers in furtherance of the objectives under the Act.

32. It has however been contended by Mr. Balai Chandra Roy, learned Advocate for some of the petitioners that by subsection (5) Proviso (ii) of Section 5A, the State Government and its delegated officer have been vested with powers of civil courts for certain purposes. They have been given expressly powers to punish for contempt of their orders and initiate proceedings for contempt before a Magistrate for violation of their orders and they shall be deemed to be a Civil Court within the meaning of Sections 480, 481 and 482 of the Code of Criminal Procedure. Such powers, it is contended, are peculiar and appertain only to the judiciary and thereby the said authorities have been equated to the judiciary or courts. As we have seen, the impugned statutes in the Australian decisions foundered on the conferment of powers to punish for contempt in the authority created by the said statutes. This argument, though attractive, is not tenable as the power to punish for contempt is not provided for violation of any decision by the State Government or its delegated authority u/s 5A, but it is only for the purpose of enforcing production of evidence in the custody or control of the parties in furtherance of the objects of the Act which envisages great social reforms, as otherwise such evidence may not be made available by the parties thereby defeating the purpose of the Act. Neither the conferment of such power nor the history of legislation of the Act or its provisions indicate that the powers of the judiciary are ever intended to be vested in the State Government or its delegated officer. Viewed whether as the conferment of judicial functions of the State or as investing of quasi-judicial powers in the executive, in absence of any specific provision or implied prohibition in the Constitution prohibiting conferment of such power, or as discussed hereinafter of any encroachment on the powers of the judiciary or jurisdiction of courts of law, it is not possible to hold that Section 5A is ultra vires the Constitution of India for investing judicial or quasi-judicial powers in the State Government.

33. Our attention has been drawn to the decision of Chatterjee, J., in *Hiralal Boyed v. State of West Bengal* ILR (1968) 2 Cal 202, in which it was held that as the liability was created by Section 5A and the remedy was also provided therein, the particular remedy viz., appeal against such order as provided in Sub-section (6) of Section 5A is the only remedy available and no suit shall ordinarily lie unless the statutory tribunal violated the provisions of the Act or the principle of judicial procedure as was held in *Secy, of State v. Mask and Co.*, AIR 1940 PC 105. It however appears that there is no express exclusion of jurisdiction of Civil Courts to challenge the orders u/s 5A, and by Sections 46 and 58 of the Act, Civil Court's jurisdiction has been taken away in regard to other matters. In a written constitution like ours, it would certainly be open to the aggrieved party also to challenge the vires of the impugned provisions in a properly constituted suit in a Civil Court and the particular remedy available in the Act for appeal will not afford a suitable or complete remedy. In fact no liability is created by the

impugned provisions for which it could be said that a remedy has been provided against any decision under the section, as has been provided in the rent Acts regarding tenancies in urban areas.

34. Before we leave [his point, it is necessary to consider the decision in AIR 1967 SC 1170, referred to by the referring Bench. It was observed in this said decision:

"Our federal structure is founded on certain fundamental principles:

(1) the sovereignty of the people with limited Government authority i.e., the government must be conducted in accordance with the will of the majority of the people. The people govern themselves through their representatives, whereas the official agencies of the executive Government possess only such powers as have been conferred upon them by the people; (2) There is distribution of power between the three organs of the State---Legislative, executive and judicial -- each organ having some check direct or indirect on the other; (3) the rule of law which includes judicial review of arbitrary executive action."

It was further observed that we adopted in our Constitution not the continental system but the British system

"under which the rule of law prevails. Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority".

35. As we have already noticed, there is no rigid separation of powers in our Constitution and in the complexity of problems which modern government has to face, there is constant overlapping and investment of powers and functions of one organ of State to its other organs. Such conferment of powers and functions we are concerned with, are conferred on the executive by the people acting through their representatives in legislatures by statute and there is no express or implied prohibition in our Constitution against such conferment or investment of powers. In respect of the said provisions against the rule of law by judicial review against orders thereunder has been amply secured by providing appeal under Sub-section (6) and while reference for interference to the High Court under Article 227 or appeal to the Supreme Court under Article 136 of the Constitution is always available to the aggrieved party while the jurisdiction of Civil Courts has also not been excluded.

36. The next contention urged on behalf of the petitioners center round Article 154 of the Constitution. It is contended that the executive power of the State is to be exercised by the Governor, by him directly or through officers subordinate to him as provided in the said Article while under Article 163(I) the Governor in the exercise of his functions is to be advised by his Council of Ministers. Article 166(3) again provides that the Governor shall make rules for the convenient transaction of business. Mr. Axun Dutt drew our attention to the Rules of Business framed by the Governor under Article 166(3) and for interpretation of

the rules, the General Clauses Act, 1897 has been made applicable which also applies to the Constitution. u/s 3 sub-section (60) of the Act the State Government means the Governor and the business of the Government under the said rules is to be transacted through departments mentioned in the First Schedule of the Rules. Such departments shall ordinarily consist of the Secretary or Joint Secretary and officers subordinate to him and under the charge of a Minister, while powers u/s 5A are not those which the Governor himself is required to exercise in his discretion. Accordingly it is firstly contended that the delegation of judicial or quasi-judicial powers to the officers in service of the State Government as provided in Sub-section (4) of Section 5A is not supported by law or accepted principles of jurisprudence. Secondly such delegation is in violation of Article 166(3) of the Constitution.

37. The answer to these contentions will be found in the provisions of the section itself. As referred to in the *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , the power vested in the Central Government u/s 111(5) (unamended) of the Companies Act, 1956 to decide the appeal was held that be a judicial function of the State and the order on behalf of the Central Government was passed by a Deputy Secretary to the Government, obviously as a delegated authority. Section 637 of the Companies Act provides for delegation by the Central Government of its powers and functions under the said Act which includes the powers and functions u/s 111(5), to such authority or officer as may be specified by notification in official gazette. In the above case though the question of delegation of power was not specifically raised, the Supreme Court in deciding the case did not consider such delegation of the judicial power to be in any way unconstitutional nor is there any statutory provision prohibiting delegation. When judicial power of the State is vested in the Government by statute there must be in the nature of things a delegation to some officer or authority. The delegation of the judicial power is provided under the statute to be made by notification in the Companies Act, and in the Act we are concerned with, the delegation of power under the section even if accepted as judicial power is provided in Sub-section (4) followed by notifications we have quoted above.

38. If the power in the impugned section involves, as it appears to us, exercise of quasi-judicial function vested in the executive, it remains and continues to be an executive power of Government, for exercise of which in normal course, the Rules of Business of the Government referred to above are to govern the procedure under Article 154(1) and Article 166(3). In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, it was observed:

"The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for convenient transaction of business of the State Government apply also to quasi-judicial acts provided those

rules conform to the principle of judicial procedure." In our case the procedure for enquiry under I Sub-section (1) of Section 5A has been laid down in Sub-section (5) and Rule 3-A of the Rules framed under the Act, which amply conform to the norms of judicial procedure. The Rules of Business framed by the Governor of the State and referred to above would be otherwise applicable but for the provisions of Sub-section (4), which we shall now consider. Article 154(2) provides

"Nothing in the article shall

(a)

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor."

In the Act before us, as we have noted, subsection (4) of the Act provides that the State Government may delegate all or any of its powers under this section to such officers in its service as it may deem fit. This is a conferment of executive powers by the State Legislature through a statute in terms with Article 154(2) (b). In respect of the executive powers and their delegation u/s 5A, the Rules of Business will thus have, in view of the specific provisions in the statute, no application. The delegation of powers u/s 5A thus is neither invalid in law nor violative of Article 166(3) of the Constitution which in the above situation has no application.

39. A point was made in that u/s 5A, the delegation is to be made to officer in the service of the State Government while Article 154(2)(b) speaks of conferment of power on any authority. An officer in service of the State Government on delegation of powers under the above sub-section is clothed with legal right to exercise powers under the Act and thus becomes an authority, in addition, to discharge the function provided therein apart from his being a Government servant. A distinction was also sought to be made between "function" and "power" which, in the context of the relevant laws before us, appear to be wholly unsubstantial.

40. At this stage it will be convenient to consider some other allied objections against legal and constitutional validity of Section 5A. It is contended by Mr. Dutt that the concluding portion of Sub-section (1) makes the State Government not only the sole judge of its powers but also the way in which such powers should be exercised. Further formation of opinion envisaged in subsection (I) cannot be delegated. Sub-section (4) again provides for uncanalised and unchartered powers of delegation which brings it within the vice of excessive delegation.

41. As to the contention of Mr. Dutt, it would appear that the conditions precedent for enforcement of powers u/s 5-A has been laid down in express words in Sub-section (1). The guidelines have been set out in Sub-section (7) while procedure for enquiry has been laid down in Sub-section (5) and Rule 3-A of the Estates Acquisition Rules, 1954, providing for hearing on notice to all

parties interested with opportunity to adduce evidence by them and decision on the question on a consideration of such materials. The procedure amply satisfies the essential and requisite norms even of a judicial enquiry to be held by the State, Government involving exercise of judicial or quasi-judicial functions as laid down in respect of administrative tribunals in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, . There is also an appeal provided For against any order as may be passed u/s 5-A(1) before a Special Judge having status and experience of a District Judge, providing a further check and balance against any possible misuse of power.

42. As to delegation, in the nature of things, whenever any power is to be exercised by Government, it has to be exercised through a limb of Government under the Rules of Business or an authorised agency provided by statute, when the satisfaction or application of mind by the Governor is not necessary in respect of the exercise of such powers under the Constitution since this is not an item of business with respect to which the Governor, is, by or under the Constitution, required to act in his discretion. Pro-visions for such delegation under the Companies Act in Section 637, as we have seen, have been accepted without demur even if the conferment of the powers is accepted as one of the judicial functions of the State and in the present case also, the conferment has been on similar terms by Sub-section (4). If the power conferred by Sub-section (1) of Section 5A is accepted as one of quasi-judicial power on the executive. Article 154(2)(b) provides that such delegation may be made by competent legislature. In this case the delegation is secured by Sub-section (4), though it could otherwise be delegated to a limb of Government as held in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, we have noted above. Accordingly delegation of power by subsection (4) far from being ultra vires of Article 154, is in terms with the provisions of the Article.

43. It has been further contended that the initiation of proceedings is impermissible under the Act after final publication Of the record-of-rights. Chapter V of the Act provides for publication of the record-of-rights under the Act and u/s 44(4) every entry therein shall be presumed to be correct until proved by evidence to be incorrect. It is contended that after final publication is made an intermediary is entitled to retain possession of the land under Sub-section (1) of Section 6 and he shall hold land directly under the State as tenant under terms and conditions as may be prescribed subject to payment of such rent as may be determined under the provisions of the Act and as entered in the finally published record-of-rights. Accordingly, it is contended, the final publication of the record-of-rights attaches a finality in respect of land comprised therein, so that after such publication no proceeding u/s 5A can be started which obviously will have the effect of disturbing the conclusiveness thereof.

44. It will be necessary, to examine the relevant provisions of this Act for testing this contention. Sections 44(4) and 45A provide as follows:

"44. (4). Every entry in the record-of-rights finally published under subsection (2) including an entry revised under Sub-section (2) (a), made u/s 42A or corrected u/s 45 or 45A shall, subject to any modification by an order on appeal under Sub-section (3), be presumed to be correct until it is proved by evidence to be incorrect.

45-A. Any Revenue Officer specially empowered by the State Government in this behalf may correct any entry in any record-of-rights it is necessary in his opinion to do so in pursuance of an order u/s 5A.

It is obvious from the above provisions that whenever there is an order u/s 5A, any entry in the record-or-rights relating to such land will have to be corrected if necessary to bring it in conformity with such order and the presumption of correctness attaches to such entries in the record-of-rights finally published as revised by order u/s 45A and accordingly such revision follows the final publication.

45. The next contention raised on behalf of the petitioners relate to the form of the order u/s 5A. The form of the order impugned is in the following terms:

"Perused the relevant records and connected papers, I am of opinion that there are prima facie reasons for believing that the transfer may not be a bona fide one. An enquiry will therefore be held u/s 5A of the Act into the case of transfer. Issue notices"

The relevant Sub-section (1) on the other hand provides that the State Government may enquire into any case of transfer "if in its opinion there are prima facie reasons for believing that such transfer was not bona fide". It was contended before the referring Bench as also before us that regard being had to the adverse consequences to be suffered by the transferor whether the transfer is found to be "not bona fide" or "bona fide", the opinion must be objectively formed and the reasons must be strong enough to establish the belief that a particular transfer was not bona fide and not merely suspicion that the transfer may not be bona fide.

46. Sub-section (7) of Section 5A in clause (i) sets out the conditions for holding a transfer made within a specified period not bona fide if it is made partially or principally with the object of increasing amount of land an intermediary is entitled to retain or for increasing compensation payable under the Act. Under Clause (ii) certain transfers to relatives mentioned therein within the said period are to be presumed not bona fide until contrary is proved unless the land held by the intermediary is within the ceiling prescribed. These are objective tests or pre-conditions for the initiation of any enquiry under Sub-section (1). On the above materials the authority has to form an opinion for initiation of the proceeding which in the nature of things must be tentative as there is always an element of probability in it. That being the position, though opinion formed should be above mere suspicion or apprehension, the form of the order that the transfer "may not be bona fide" it being expression of a tentative opinion, appears to be

unexceptionable. Being a matter of subjective satisfaction on the existence of the pre-conditions, formation of such opinion is not otherwise justiciable unless such act is palpably absurd as no reasonable man even would form such opinion, as was held in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, in following words:

"Though an order passed in exercise of power under a statute cannot be challenged on ground of propriety or sufficiency it is liable to be quashed on the grounds of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

The form of the order as quoted above is therefore in accordance with Section 5-A(1) and is unchallengeable in absence of any attack on the formation of the opinion itself on grounds referred to above.

47. The next contention requiring consideration relates the retrospective operation of the Act and the consequences ensuing transfer found bona fide. Under subsection (3) of Section 5A if transfer is found "bona fide", by Clause (i), such land is to be deemed to be the land of the transferee. Under Clause (ii) if such land or its part is retained by the transferee the same is to be taken into account in calculating the land to be retained by the transferor as if such land was never transferred and chosen by him as his retained land. It has been contended with great emphasis on behalf of the petitioners that the finding that the transfer of land is "bona fide" is a finding that the transfer was not intended for defeating any of the purposes of the Act that is neither principally or partially with the object of increasing the amount of land the transferor is entitled to retain nor principally or partially with the object of increasing the amount of compensation payable under the Act. In this state of affairs, it is obvious that such "bona fide" transfers are outside the ambit of enquiry contemplated under Sub-section (1) of Section 5A. Such transfers being thus outside the operation of the above sub-section, there is no occasion for any consequence following therefrom. Further it is impermissible in law to give retrospective operation to the provisions of subsection (3), which have the effect of affecting vested rights of the parties in respect of and arising from transfers during the period and particularly during the period prior to the publication of the bill for insertion of the impugned Section 5A. Mr. Chandra Nath Mukherjee, learned Advocate for petitioners in C. R. No. 506-W of 1968 contended further relying on the decision in *Thakur Raghubir Singh and Others Vs. The State of Ajmer (Now Rajasthan)*

and Others, that the provisions relating "bona fide" transfers formed no integral part of the Act as its purpose is only to re-open transfers made with the purpose of defeating the purposes of the Act and such provisions are thus violative of Article 31-A(1)(a) and are unconstitutional. The consequences ensuing transfers, it is further contended, would have the effect of antedating vesting contrary to the provisions of the Act, and further the relevant provisions are inconsistent with the other provisions of the Act and whatever be the nature of any transaction by the impugned provisions the transferor's property is eliminated.

48. Mr. Sachindra Chandra Dai Gunta, learned Government Pleader, submitted that even though a transfer may be held as "bona fide" under the statute, it may yet be defeating the purpose of the statute. He cited by way of illustration the case of a zamindar who transfers by way of sale within the prohibited period 90 acres of his khas land to several transferees retaining 10 acres for himself not with purpose mentioned in Sub-section (7) (i). Even then such transfers will defeat the purposes of the Act as it will deprive the State from vesting the excess land which the transferor had but for the transfers.

49. As was observed in *Thakur Raghbir Singh and Others Vs. The State of Ajmer (Now Rajasthan) and Others*, there can be no dispute that the legislature is competent to take away vested rights by means of retrospective legislation, but, as observed in *United Provinces v. Atiqua Begum*, AIR 1941 FC 16 at p. 37 and also in *Rafiquennessa Vs. Lal Bahadur Chettri (Dead) through his Representatives and Others*, , the extent of such retrospective character is to be ascertained from the wordings of the statute or by clear implication. So far as the Act we are concerned with which is within the legislative competence of the State legislature there is and can be no doubt that its provisions expressly intend to cover and affect any transfer which took place between the date of publication of the relevant bill till vesting in respect whereof proceeding it initiated and found on enquiry to be not "bona fide" or "bona fide", even though thereby the Vested rights of the parties, it could be said, were materially interfered with.

50. The point then comes up as consideration is whether the provisions relating "bona fide" transfer forms an integral part of the statute so as to save such provisions from the vice of unconstitutionality. In *Thakur Raghbir Singh and Others Vs. The State of Ajmer (Now Rajasthan) and Others*, the Court was considering a legislation for abolition of intermediaries' interest and a provision therein, providing for cancellation of all prior leases within a specified period, granted not in normal course of management but in anticipation of such legislation, was upheld. The relevant statute came into force on June 23, 1955 while the date of vesting of intermediary interest therein provided was August 1, 1952 and all leases granted on or after June 1, 1950 were made subject to cancellation if found to have been granted for avoiding vesting. It was observed:

".....The provision (for cancellation of lease) is not an independent provision; it is merely ancillary in character enacted for carrying out the objects of the Act more effectively. The intention of the legislature was to give power to the Collector

after the estates vested in the State Government to scrutinise leases of this kind made after 1st June, 1950, which was apparently the date from which such legislation was under contemplation and to see whether the leases were such as a prudent land-owner would enter into in the normal course of management. Such leases would be immune from cancellation; but if the Collector found that the leases have been entered into, not in normal course of management, but designedly to make whatever the land-owners could before the estate came to be transferred to the State Government, he was given the power to cancel the same, as they would obviously be a fraud upon the Act. Such cancellation would subserve the purposes of the Act, and the provisions for it would therefore be an integral part of the Act, though ancillary to his main object, and would thus be protected under Article 31-A(1)(a) of the Constitution."

51. On the above authority, it would appear in the Act under our consideration the provisions for prior transfers found not "bona fide" and thus intended for defeating the purposes of the Act, are well within the objectives of the Act. The Act is for abolition of all types of intermediary interests in land and such provisions thus form an integral part of the Act and are thereby protected under Article 31-A(1)(a) of the Constitution. This is so even though retrospective operation was in effect given to the impugned provisions affecting prior transfers of land.

52. The real bone of contention is in regard to consequences ensuing on transfers found "bona fide". The objects and reasons of the Act, as we have seen, are to eliminate all interests of zamindars and other intermediaries. In anticipation of such legislation, there have been a spate of transfers of land by large numbers of intermediaries, as the large number of "Big Raiyat" cases indicate. If now such intermediaries are allowed to retain land calculated on exclusion of land transferred by them within the prohibited period, it would obviously frustrate the purposes of the Act by taking out lands comprised therein from the operation of the Act. It may be that such transfers are "bona fide" under the tests laid down in Section 5A but that would not alter the over-all position as the State in such event would be thereby deprived of land once owned by such intermediary beyond the ceiling and transferred since the time the proposal for acquisition of estates became public. What the legislation seeks to achieve is to maintain the "bona fide" transfers which will enable the transferee to retain the land and to take into account such land if retained by the transferee in calculating the amount of land retainable by the transferor. Otherwise the position would be that while the transferred lands are retained by the transferees, the transferor would also retain the lands belonging to them within the ceiling after excluding the lands transferred by them in the meantime during the prohibited period when the acquisition of estates by Government had been already in the air. Such acts obviously will amount to serious impediments in securing the objects under the Act for acquisition of interests of zamindars and intermediaries, and frustrate the urgent social reforms which the Act intends to achieve. Viewed in this context, the provisions are ancillary for carrying out the purposes of Act and are not

independent or extraneous provisions for acquisition of land. The said provisions thus form integral part of the Act and accordingly are protected by Article 31-A(1) (a) as laid down by the above authority even though the transfer prior to vesting are affected. In equity also, as observed by P. B. Mukherjee, J. (as he then was) no prejudice is caused to the transferor as he got his consideration money for the transferred land and for land vested in State after taking in account the transferred land he would be entitled to compensation. For these reasons it appears that the impugned provisions are not invalid or unconstitutional and it held accordingly.

53. The allied contention is that the impugned provisions are inconsistent with either provisions of the Act itself. u/s 4 the State Government by notification may declare that all estates and rights of every intermediary in each such estate shall with effect from the date of notification vest in State. Section 5 provides upon such publication of notification on and from date of vesting all estates and rights of intermediaries in the estates shall vest in State, while Section 6 provides the rights of the intermediaries to retain certain lands with effect from date of vesting. All the provisions relate to a state of affairs as on the date of vesting, and rights of intermediaries regarding calculation of land owned by them for purposes of retention are to be determined with effect from the said date. It is accordingly not permissible, it is contended, to subject the intermediary to further restrictions with reference to prior transfers found bona fide" when the material date is the date of vesting.

54. We have already seen that the provisions regarding consequence ensuing "bona fide" transfers form an integral part of the Statute for carrying out the purposes of the Act and the Legislature is fully competent to make such provisions. Even if the material date is the date of vesting, the Legislature thought it fit to extend and cover the operation of the impugned provisions to prior transactions. There is no inherent or other illegality in such provisions and accordingly there is no inconsistency between the said provisions and other provisions of the Act, while it is not for the Court to question the wisdom of the Legislature in providing for the same. Even if such provisions are discriminatory and constitute an unreasonable restrictions offending right to hold property, though such proposition we do not accept, they are saved by the combined effect of Articles 31A and 31B of the Constitution.

55. Thus brings us to a further consideration of the impugned provisions which in some respects are apparently inconsistent with the rights guaranteed by Part III of the Constitution. Mr. Soumendra Chandra Bose, learned Advcoate for the State in C. R. No. 36W of 1968, on this aspect has drawn our attention to the same, though, he submitted, the petitioners cannot take any advantage therefrom. Sub-section (1) of Section 5A give power to the State Government to enquire into any transfer of any land if in its opinion such transfer prima facie does not appear to be "bona fide." Thus if transfer prima facie appears to be "bona fide" such transfer will be the outside operation of section. The transfer which is found

prima facie not "bona fide" comes under the operation of the sub-section and different and serious consequences will follow whether the transfer is ultimately found "bona fide" or not "bona fide" on initiation of the proceeding. So that on the chance of a prima facie opinion by the State Government or its delegated authority persons belonging to the class of transferors would be subject to different consequences leading to discrimination among them. Similarly again if an intermediary holding for instance 200 acres of land sells to eight persons the said land in portions, each transfer being within ceiling without retaining any land for himself, all transfers would be "bona fide" as they would not defeat the purpose of the Act and the transferor would be entitled to retain the benefits of sale. If however the transferor sells 175 acres of land to one person and retains 25 acres for himself, such transfer even if held "bona fide"; different consequences, more prejudicial than those visiting on the transferor of the entire land as mentioned above, would visit this transferor. These inevitable consequences in the Act, Mr. Bose submitted it may be contended, would result in abridgement of rights guaranteed in Part III of the Constitution in the same class of transferors. But in view of the inclusion of the Act in the Ninth Schedule to the Constitution, by the Constitution (Seventeenth) Amendment Act, 1964, the said Act is no longer open to attack for any inconsistency or abridgement of the rights conferred by Part III of the Constitution. The decision in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, while holding that Parliament will have no power since the date of the judgment to amend any provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein, on the doctrine of prospective overruling upheld the validity of Constitution Amendment Acts.

56. In the premises we answer the points of reference as follows:

(a) The form of the order made by the Assistant Settlement Officer on January 19, 1959, quoted in the order of reference is in substantial compliance of Section 5-A(1) and the proceeding started thereunder is valid.

(b) Section 5A of the West Bengal Estates Acquisition Act 1953 is not ultra vires the Constitution as it does not invest judicial powers in the State Government.

(c) The delegation of power by the State Government to the Revenue Officers under Sub-section (4) of Section 5A is valid in law and far from being ultra vires Article 154(2)(b) of the Constitution, the delegation in Sub-section (4) is in terms with the provisions of the said Article. We further hold

(a) that the power invested on the Government by Section 5A is not a judicial power or power exercisable by the judicial organ of the State, but it is an executive power of the Government involving exercise of quasi-judicial functions.

(b) There is no excessive or uncanalised delegation of power in Section 5A.

(c) Proceeding u/s 5A after final publication Record-of-rights is valid in law as the presumption of correctness attaches to entries therein on final publication as

revised by order u/s 5-A.

(d) Provisions of Sub-section (iii) of Section 5-A are integral parts of the Act and are valid and otherwise also protected by Articles 31A and 31B of the Constitution and there is no inconsistency between the said provisions and other sections of the Act.

57. We will now proceed to decide the individual rules.

C. R. Nos. 2190-93 of 1961.

Sk. Bafatulla Mukhtear V. State of West Bengal and others.

58. These rules under Article 227 of the Constitution arise out of a common order passed in connected appeals by the Judges, Special Tribunal under the Estates Acquisition Act confirming the order passed by the Assistant Settlement Officer, Gazole in the connected cases. Four cases u/s 5A of the Act were initiated by the Settlement Officer and it was held that the transfers made on January 25, 1955 by the transferor Sk. Bafatulla Mukhtear in favour of the transferees were bona fide, but as the transfers of agricultural land exceeded 25 acres, the entire quantity of agricultural land retained by the transferor u/s 6 vested in the State. The Judge, Special Tribunal, on consideration of contentions raised by the transferor dismissed the appeals and against this decision the above rules were issued.

59. Mr. Ranjit Kumar Banerjee appearing for the petitioners raised various constitutional points as also points of law challenging inter alia the vires of Section 5A of the Act and he did not address the Court, as he could not, on facts. The legal and constitutional points urged by him as also by the learned Advocates have been dealt with above and in view of our conclusion in regard to the same these rules fail and are discharged without however any order as to costs in the circumstances. All interim orders are vacated.

C. R. No. 462W of 1968.

Dilip Kumar Chowdhury and others T. District Judge, Burdwan and others.

59. The petitioners in this rule claim that that by a deed of family settlement their father settled lands with them on January 29, 1950 and the petitioners since then had been in possession of the respective lands settled with them enjoying the usufructs separately. This settlement was again confirmed by a registered document executed on January 6, 1954. Thereafter the settlor filed a Return in "B" form for retention of the properties he wanted to retain. Proceeding u/s 5A was started and it was held by order passed on December 22, 1964 that the transfer was not bona fide. On appeal the appellate tribunal set aside the said order and remanded the case back to the Revenue Officer for fresh enquiry. The officer-in-charge who thereafter made the enquiry held that the transfer termed as settlement was made by the settlor on January 6, 1954 for the purpose of retaining land in excess of ceiling, and, accordingly it was held

that the transfer was not bona fide. It was further ordered that the said transfer stood cancelled. Against this decision, an appeal was taken before the District Judge, Burdwan as the appellate authority under the Act. The said tribunal by order dated July 31, 1967 held that the transfer of agricultural lands comprised in the said document was not bona fide but the transfer of lands in respect of bastu, bhiti, garden, tank and danga should be excluded from the portion of the order u/s 5A. The appeal was allowed accordingly in part and the order of the officer was directed to be modified in the light of the above findings. The petitioners being aggrieved by the said order moved this court in Constitutional Writ Jurisdiction and obtained the above rule.

60. Mr. Balai Chandra Roy, learned Advocate appearing for the petitioners, urged the same constitutional and other points challenging inter alia the vires of Section 5A of the Act and did not address us on merits. For the reasons we have already given this rule also fails and is discharged. All interim orders are vacated. There will be no order for costs.

C. R. No. 36W of 1968.

Tarapada Bhowmick and another T. State of West Bengal and others.

61. In this rule the petitioner claims that he had been in possession of the lands formerly owned by Bankim Chandra Bhowmick on the basis of a nirupanpatra of 1951 when possession of the lands covered by the said deed was made over to him. The said nirupanpatra could not be registered and it was re-executed on May 27, 1955 and registered thereafter. Bankim Chandra Bhowmick, the transferor filed a Return in "B" form in respect of the lands retained by him. Enquiries were started by the Revenue Officer, Mahisadal who held that the transfer was not bona fide. An appeal was taken before the District Judge, Midnapore Who allowed the appeal and held that the transfer was bona fide. It appears that consequent actions were taken u/s 5-A(3)(ii) of the Act and the proceeding was started and notices were served on the parties concerned and also the transferees to enquire if the transferees wanted to retain the lands. It was found that the transferees wanted to retain such lands and the Revenue Officer in the circumstances ordered that the transferred lands be taken into account in calculating the lands to be retained by the transferor as if such lands had never been transferred. Further steps were taken in the Big Raiyat Case No. 43 notifying the interested parties that the agricultural lands retained by the transferor and on his death by his heirs would vest in the State. No one appeared before the Revenue Officer who on consideration of the relevant materials held that as the quantum of land transferred exceeded 25 acres of agricultural lands all other agricultural lands retained by the transferor's heirs vested in the State. Against this order the petitioner moved this Court in Constitutional Writ Jurisdiction and obtained the above rule.

62. At the hearing no one appeared on behalf of the petitioner. But the grounds in the petition challenging the constitutional validity of Section 5A have been

dealt with above. In the view taken as above this rule fails and is discharged without however any order as to costs. All interim orders are vacated.

C. R. No. 507W of 1968. Sm. Indra Kumari Devi and Ors. v. State of West Bengal and Anr.

63. According to the petitioners case one Uma Sankar Sukul was the head of the Mitakshara joint family and possessed agricultural and non-agricultural lands in the Police Station, Malhurapur. In 1951 a dispute arose between his eldest son and the members of the joint family. By an agreement dated May 2, 1951 between the members of the joint family, the dispute regarding allotment of the joint family property was referred to the arbitrators appointed for the purpose. They made an award on May 18, 1951 which was accepted by the parties. This award was filed in the Court of Special Judge at Jaunpur and a decree was passed thereon in 1954 as stated by Mr. Mukherjee learned Advocate appearing for the petitioner. On the basis of the award the petitioners got separate allotments of agricultural lands and they had been in separate and exclusive possession thereof while the land have also been recorded accordingly in the final record-of rights at retained land. The Revenue Officer and Assistant Settlement Officer, Sonarpur started an enquiry u/s 5A. The petitioner contended that they were not served with any opinion leading to proceeding u/s 5A nor the Respondent No. 2 disclosed his authority to initiate the proceeding and enquire about transfer of land in respect of whereof the enquiry was initiated. On the above contentions the petitioners without appearing before the respondent No. 2 moved this Court in Constitutional Writ Jurisdiction for quashing the above proceeding and a rule was issued with an interim order staying further proceeding. Mr. Mukherjee has contended that there has been no transfer of land in respect of the lands in dispute and no opinion as required under the Act has been formed. He has raised other objections contending that the joint family stood disrupted in 1951 and as such the proceeding u/s 5A was without jurisdiction and not maintainable in law.

64. The petitioners took an extraordinary step in moving this Court without appearing before the authority u/s 5A and in view of the interim order no further step could be taken in the above proceeding. As we have held that the provisions of Section 5A are valid it is necessary and proper that the petitioners should now appear before the authority to substantiate on merit their contentions made before us. The rule is accordingly discharged and all interim orders are vacated.

65. As desired by Mr. Mukherjee we give liberty to the petitioners, though it is not really necessary, to urge the points on merits as have been urged in this rule. C. R. No. 18W of 1968. Kalasashi Ghosh and others v. State of West Bengal and others.

66. The petitioners in this rule are transferees of rayati sthitiban lands belonging to their father Basanta Kr. Ghosh on the basis of transfer deeds dated September 11, 1954. Proceedings were initiated u/s 5A and notices were issued accordingly

but by an order passed by this court in C. R. No. 575 of 1960 the order of the Revenue Officer passed in the proceedings was quashed as he was not delegated with requisite powers u/s 5A(4). Liberty was given to the State of West Bengal to proceed in accordance with law. Thereafter cases u/s 5A were started against the petitioners by Assistant Settlement Officer, Habra who by order dated June 9, 1965 held that the transfers were not bona fide. An appeal was preferred against the decision and the appellate tribunal set aside the above order and sent the cases back on remand for hearing after giving the opportunity to parties to adduce evidence. Thereafter by order dated November 20, 1967 the Revenue Officer and Assistant Settlement Officer respondent No. 3 found that the impugned transfers were not bona fide. Against this order the petitioners without filing any appeal moved this Court in Constitutional Writ Jurisdiction and obtained the rule and an interim order was also issued restraining the State from taking any action on the basis of the impugned order. Mr. Arun Dutt urged the constitutional points as also points of law in support of the rule which have been dealt with by us above and we have not been addressed on the merits of the application. For these reasons this application also fails and the rule is discharged. All interim orders are vacated. There will be no orders for costs.

C. R. No. 553W of 1968.

Angur Bala Ghosh and Ors. v. State of West Bengal and Ors.

67. The petitioner Amarendra Nath Ghosh (since deceased) was served with notice on 16-9-67 u/s 57 of the West Bengal Estates Acquisition Act in connection with B. R. Case No. 123/67 by Revenue Officer, Diamond Harbour "C" Camp, requiring him to furnish particulars of all lands in his khas possession and also to file "B" form for lands he wanted to retain. The petitioner filed a petition stating that he was served earlier with a similar notice and he supplied all particulars of land he had namely 26.72 acres agricultural lands in his khas possession besides 2 acres of bastu lands. The petitioner at the time filed a "B" form retaining 25 acres of land, surrendering the excess land to Government. The finally published record of rights indicated the said position. The petitioner accordingly prayed for withdrawal of the notice.

68. Instead of withdrawing the laid notice, the Revenue Officer started proceeding u/s 5A of the Act being 5-A Case No. 25/67 and the petitioner was asked by notice to be present at the office of the Revenue Officer and to produce relevant papers in respect of plots mentioned therein with the registered deed of family settlement dated 4-12-53 by one phruba Charan Ghosh deceased in favour of the petitioner, his son, transferring 25.60 acres of land. It further appears from the record of proceeding that on perusal of the records put up before him, the Revenue Officer by order dated 15-12-67 recorded that he was of opinion that there were "prima facie reasons for believing that the transfer may not be a bona fide one" and accordingly he proceeded to hold an enquiry directing issue of notice on the successors of the transferor since deceased and the transferee, the petitioner also on bargadars and other interested parties and

fixing 27-12-67 for appearance with necessary papers for proving that the transfer was bona fide. The case was adjourned from time to time till 24-1-68.

69. The petitioner stated that the transferor was pious man and on attaining the age of 70 years, he lost interest in worldly affairs and by the impugned deed of family settlement he gave his lands in favour of his heirs, namely two sons, and in life interest to his other dependants his wife, three daughters, two of whom are widows and two widowed maternal aunts dependant on him, while some lands were given to deities. The petitioner's name had been finally recorded in the record-of-rights and he had been in possession of the lands on payment of rent for over twelve years enjoying the usufructs thereof. The petitioner further contended that Section 5A of the Act infringed Article 19(1)(f) of the Constitution. It was further contended that the proceedings u/s 5A was not maintainable as the deed of family settlement was really a deed of partition and it is not a transfer as contemplated in Sub-section (7), Clause (IV).

70. On these allegations the petitioner moved this Court under Article 226(I) of the Constitution praying for issue of a writ in the nature of mandamus directing the respondents to cancel the order initiating proceedings u/s 5A and the notice dated 16-12-67 issued on the petitioner in pursuance thereof and also a writ in the nature of certiorari quashing the proceedings. On this application, the above rule was issued on 31-1-68.

71. The rule has been opposed by the respondents who has filed an affidavit-in-opposition, stating that as the document was a gift within the prohibited period and in the attendant state of affairs, the proceeding u/s 5A was validly initiated. The petitioner by his affidavit in reply reiterated the allegations in the petition. During pendency of the rule, the petitioner having died his heirs has been substituted.

72. For the reasons noted above the substituted petitioners are not in a position to challenge the constitutional validity of Section 5A and the proceeding thereunder. We have also seen that the question whether a deed of settlement is a gift or otherwise depends on the interpretation of the document itself and the attending circumstances and the further question as to whether the transfer is bona fide also depends on evidence as would be adduced by the interested parties at the enquiry u/s 5A.

73. The petitioner thus can have no relief in this application and the rule thus fails and is discharged without any order as to costs. All interim orders, if any, are vacated.

C. R. No. 554W/68.

74. The petitioner in this rule Is Sm. Kalitara Ghosh, daughter of the transferor late Dhruba Charan Ghosh. The petitioner obtained land in life interest on the basis of the same deed of family settlement mentioned above in C. R. No. 553W/68 and proceeding u/s 5A Case No. 18 of 1967 was initiated against him

by an order of the Revenue Officer dated 15-12-67. On the similar facts and on the same grounds the petitioner prayed for similar writs and for reasons mentioned above the rule fails and is discharged without costs and interim orders if any are vacated.

C. R. No. 555W/67.

75. The petitioner in this rule is Anandi Nath Ghosh the other son of the transferor kite Dhruba Charan Ghosh. He obtained land on the basis of the same deed of family settlement mentioned in C. R. No. 553W/68 and proceeding u/s 5A being 5-A Case No. 24 of 1967 was initiated against him by an order of the Revenue Officer dated 15-12-67. On similar facts and on the same grounds the petitioners prayed for similar writs and for reasons mentioned above the rule fails and is discharged without costs and interim orders if any are vacated.

C. R. No. 556W/67.

76. The petitioner in this rule Sm. Sarala Bala Ghosh is a daughter of the transferor Late Dhruba Charan Ghosh. She obtained land in life interest on the basis of the same deed of family settlement mentioned in C. R. No. 553W/68 and proceeding u/s 5A being 5-A Case No. 20 of 1967 was initiated against her by order of the Revenue Officer dated 15-12-67. On similar facts and on the same grounds the petitioner prayed for similar writs and for reasons mentioned above the rule fails and is discharged without costs and interim orders if any are vacated.

C. R. No. 557W/67.

77. The petitioner in this rule Jharimoni Dasi is an aunt of the transferor, late Dhruba Charan Ghosh and was one of his dependants living in his family. She obtained some land in life interest on the basis of the same deed of family settlement mentioned in C. R. No. 553W/67 and proceeding u/s 5A being 5-A Case No. 22 of 1967 was initiated against him by an order of the Revenue Officer by order dated 15-12-67. On similar facts and on the same grounds and on the additional ground that she was not a transferee as defined in subsection (7) of Section 5A, Clause (ii), she prayed for similar writs. For reasons mentioned above and also for the further reason the question as to whether the impugned transfer is hit by Clause (i) of subsection (7) of Section 5A can only be decided at the enquiry on evidence, the rule fails and is discharged without costs and interim orders if any are vacated,

C. R. No. 558W/67.

78. The petitioner in this rule Sm. Tarangini Dasi is an aunt of the transferor late Dhruba Charan Ghosh and was one of his dependants living in his family. She obtained some land in life interest on basis of the same deed of family settlement mentioned in C. R. No. 553W/68 and proceeding u/s 5A being 5-A Case No. 21 of 1967 was initiated against him by an order of the Revenue Officer by order dated 15-12-67- On similar facts and on the same grounds and on the

additional ground that she was not a transferee as defined in Sub-section (7) of Section 5A, Clause (ii).

She prayed for similar writs. For reasons mentioned above and also for the further reason that the question as to whether the impugned transfer is hit by Clause (i) of Sub-section (7) of Section 5A can only be decided on the enquiry on evidence, the rule fails and is discharged without cost and interim orders if any are vacated. C. R. No. 559W/67.

79. The petitioner in this rule Sm. Chapala Bala Ghosh is another daughter of the transferor late Dhruba Charan Ghosh. She obtained some land in life interest on basis of the same deed of family settlement mentioned in C. R. No. 553W/68 and proceeding u/s 5A being Case No. 19 of 1967 was initiated against him by an order of the Revenue Officer dated 15-12-67. On similar facts and on the same grounds she prayed for similar writs. For reasons mentioned above the rule fails and is discharged without costs and interim orders if any are vacated.

Ghose, J.

80. I agree.

A.K. Janah, J.

81. I agree.