
(1991) 01 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 8371 of 1984-F

Smt. Elizebath Samuel Aaron and Others	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 245, 300A, 31C
Industries (Development and Regulation) Act, 1951 — Section 2, 20
Mines and Minerals (Development and Regulation) Act, 1957 — Section 2

Citation : AIR 1991 Ker 162 : (1992) 75 CompCas 377 : (1991) 2 ILR (Ker) 113

Hon'ble Judges : V.S. Malimath, C.J; T.L. Viswanatha Iyer, J; K. Sukumaran, J

Bench : Full Bench

Advocate : M.I. Joseph, for the Appellant; C.M. Devan, General, T.D. Rajalakshmy, U.K. Ramakrishnan, E.V. Nayanar and C.R. Natarajan, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—This original petition under Art. 226 of the Constitution essentially challenges Sections 3 and 7 of the Super Clays and Minerals Mining Company (Private) Ltd. (Acquisition of Undertakings) Act, 1983, Kerala Act 3 of 1984, (for brevity the Act), and seeks a declaration that the said Act is unconstitutional, though the prayers, as they are, are couched in inartistic language. The original petition is filed in the following circumstances.

2. There are three petitioners of which the second petitioner is the Company, The Super Clays and Minerals Mining Company (Private) Limited (hereinafter referred to as the Company). Petitioners I and 3 are two of its shareholders, the first petitioner Smt. Elizebath Samuel Aaron claiming to be its single largest shareholder. The main object of the Company is to mine china clay, purify and supply the same to various industries for the manufacture of fire bricks, refractories lining bricks, china ware etc. The Company commenced its operations in 1973, but soon ran into great financial difficulties, which constrained the

management to declare a lay-off on January 13, 1975 for the period up to March 2, 1976. The Company was employing about 600 workers. The declaration of lay-off led to labour unrest consequent on the Company's failure to pay the lay-off compensation. At the third annual general body meeting of the Company held on November 22, 1975, it was resolved to request the Government to take over the Company and to restart production, to avoid complete deterioration of its assets. A true copy of the minutes of the said general body meeting is Ext. RI(a).

3. After lengthy discussions, Government decided to declare the industrial undertaking of the Company as a relief undertaking u/s 3 of the Kerala Relief Undertakings (Special Provisions) Act, 1961 (Act 6 of 1962) (Relief Undertakings Act, for short) for a period of two years. Government accordingly issued notification on March 2, 1976 declaring the industrial undertaking of the Company as a relief undertaking under the said Act. Simultaneously another notification was issued declaring moratorium on certain liabilities of the Company. The management of the Company was taken over and entrusted to the Kerala State Industrial Enterprises Ltd., a Government Company, as its agent. The Board of Directors of the Company also passed resolution Ext. Rf(b) on March 4, 1976 regarding handing over of the management to Government. The notification under the Relief Undertakings Act was extended from time to time up to March 1, 1984. It is said that under the management of the Kerala State Industrial Enterprises Ltd., the Company started making marginal profits. Petitioners 1 and 2 then challenged the extension of the notification under the Relief Undertakings Act, made in 1981 and subsequently, by filing a writ petition O.P. No. 1817 of 1981, despite the fact that all the shareholders had joined together in requesting the Government to take over the Company (vide Ext. RI(a)), at the third annual general body meeting held on November 22, 1975. The original petition was dismissed by a Division Bench of this court by judgment dated March 23, 1983, a true copy of which is produced and marked as Ext. PI. The judgment is also reported as *Mrs. Elizabeth Samuel Aaron Vs. State of Kerala and Others*, Inter alia, this court found that the main object of the Company was to produce crude china clay and to purify and supply the same to various industries. This court rejected the contention of the petitioners that "the Company must be deemed to be an undertaking engaged in ceramic industry because it produces purified clay". Consequently it was held that Section 20 of the Industries (Development and Regulation) Act (Central Act 65 of 1951) (Industries Regulation Act, in brief) did not apply as to interdict the State of Kerala from taking over the control or management of the Company under the Relief Undertakings Act. It was further held that the State Legislature was not denuded of all its powers to legislate in respect of any matter affecting mines and minerals once a declaration is made u/s 2 of the Mines and Minerals (Regulation and Development) Act (Central Act 67 of 1957) (Mines & Minerals Regulation Act for easy reference). We are referring to these findings, as the very same contentions as those raised earlier have been repeated before us in this original petition as well. The Super Clays and Minerals Mining Company (Private)

Ltd. (Acquisition of Undertakings) Ordinance No. 38 of 1983 was thereafter promulgated by which the undertakings of the Company, the right, title and interest of the Company in relation to its undertakings, and its liabilities in relation to the undertakings, save as expressly provided, stood transferred to and vested in the Government on the "appointed day". The Ordinance was replaced by an Act of the same name by Act 3 of 1984, which was deemed to have come into force on November 5, 1983, which was the "appointed day" referred to earlier. Therefore, the undertakings of the Company with the liabilities other than those expressly provided, stood vested in the Government on November 5, 1983. Section 7 of the Act provided for payment of an amount of Rs. 10,43,245.97 to the Company for the transfer to, and vesting in, the Government of its undertakings and its right, title and interest in relation to the undertakings. It was specified in Sub-section (4) of the section that the liabilities of the Company in relation to its undertakings which have vested in Government u/s 3, and not specified in the schedule, shall be discharged by the Government as and when they fall due for payment. The enactment of the Act led to the filing of this original petition for the reliefs mentioned above.

4. There is a counter-affidavit filed on behalf of the State of Kerala in which the circumstances leading to the assumption of management under the Relief Undertakings Act and enactment of the Act in question have been set forth in extenso.

5. Petitioners challenge Sections 3 and 7 of the Act. One of the grounds on which these provisions are challenged is that the Act relates to a field occupied by the Central legislations, the Industries (Development and Regulation) Act, 65 of 1951 and the Mines and Minerals (Regulation and Development) Act, 67 of 1957 and in view of the declarations made by Parliament as envisaged in Entries 52 and 54 of List I to the Seventh Schedule of the Constitution, (the Union list), the State Legislature is incompetent to enact the law in question. A Division Bench of this court, of Kochu Thommen J., and Fathima Beevi J. felt that there was conflict between the decisions of two Division Benches of this Court having a bearing on the case in Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd., Mavoor and Another Vs. Government of Kerala and Another, and Mrs. Elizabeth Samuel Aaron Vs. State of Kerala and Others, The case was accordingly referred for decision to a Full Bench.

6. Sri M. I. Joseph, counsel for the petitioners, broadly formulated two points in support of the original petition. Firstly, it is contended that the Act violates Article 300A of the Constitution. It is stated that the petitioners are being deprived of their property without the authority of a valid law. The law adumbrated by Article 300A must be one which provides for adequate compensation to the owner of the property. The amount specified in Section 7 of the Act is fixed arbitrarily and is illusory, compared to the amount of over Rs. 71 lakhs determined by an Advocate Commissioner deputed by this Court as the value of the undertaking of the Company. Payment of adequate compensation is implied in the very concept of "acquisition of property" in Entry 42 of List III of the Seventh Schedule to the

Constitution (the Concurrent List). Since the Act does not satisfy this test, it is invalid as offending Article 300A of the Constitution. Secondly it is contended that the Kerala State Legislature did not have the competence to enact the law in question, because of the declarations made by Parliament in Section 2 of the Industries Regulation Act and Section 2 of the Mines and Minerals Regulation Act -- legislations covered by Entries 52 and 54 of the Union List. We shall elaborate this contention when we deal with this point.

7. We must, even at the outset mention that on a plea raised by the Advocate General that the Act is entitled to the protection under Article 31C of the Constitution, counsel for the petitioners categorically submitted that what he was canvassing was not violation of Article 14 or 19 of the Constitution, but only violation of Article 300A for the reason referred to earlier, and therefore, the question of the legislation being protected under Article 31C did not arise. The Advocate General had apparently raised this plea based on the allegations of violation of Arts. 14 and 19 contained in the original petition. However, and since it has been clarified before us by counsel for petitioners that he is confining his challenge to one under Article 300A it has become unnecessary for us to deal with Articles 14 and 19. We may state however that we are at one with the learned Advocate General that the Act is entitled to the protection of Article 31C.

8. The long title and preamble to the Act set forth the reasons why it is being enacted, in these terms:

"An Act to provide for the acquisition and transfer of the undertakings of the Super Clays and Minerals Mining Company (Private) Limited, with a view to securing the proper management of such undertakings so as to subserve the interests of the general public by ensuring the continued production and distribution of china clay which is essential to the needs of the economy of the State, and for matters connected therewith or incidental thereto.

Preamble.-- WHEREAS the Super Clays and Minerals Mining Company (Private) Limited has at present the ownership of, and control over, a significant portion of the china clay produced in the State and Marketed and distributed in India;

AND WHEREAS the production of china clay by the Company had stopped from the year 1975 resulting in fall in production of the china clay which is essential to the needs of the economy of the State;

AND WHEREAS the Company was not in a position to pay wages to its workers in consequence of which it declared a lay-off with effect from the 13th January, 1975, resulting in the unemployment of about six hundred workers directly employed in the undertakings of the Company;

AND WHEREAS the Government of Kerala with the consent of the shareholders of the Company took over the management of the Company and declared the Company as a relief undertaking under the provisions of the Kerala Relief Undertakings (Special Provisions) Act, 1961 (6 of 1962), with effect from the 2nd

March, 1976, and entrusted the management of the Company to the Kerala State Industrial Enterprises Limited which is a Government Company;

AND WHEREAS it is expedient in the public interest to acquire the undertakings of the said Company to ensure that the interests of the general public are served by the continuance, by the undertakings of the Company, of the production and distribution of china clay which is essential to the needs of the economy of the State."

It is manifest from the above that it was intended to claim protection for the Act under Article 31C -- though strangely enough, this point highlighted by the Advocate General at the hearing before us, did not find reflection in the State's counter-affidavit, dated February 13, 1985, for that matter, neither did the petitioners plead how the Act was taken out of the purview of Article 31C, despite the considerable stress which they had laid on violation of Arts. 14 and 19 in the original petition.

9. Article 31C gives protection in respect of a law giving effect to the policy of the State relating to all or any of the principles laid down in Part IV of the Constitution. It is obvious from the provisions of the Act that it is one falling under Clause (b) of Article 39, to secure that the ownership and control of china clay are distributed as best to subserve the common good. It is now established by the decisions of the Supreme Court in *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, and *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others*, that there is "distribution" within the meaning of Article 39(b) when the legislative measure is one of nationalisation, and that such a law is eligible for, and entitled to the protection under Article 31C. The Act is therefore saved from any challenge under Article 14 and 19 under Article 31C of the Constitution. We are not dilating, or entering into any elaborate discussion on this point, as petitioners did not join issue on the question and contended themselves by limiting their challenge to Article 300A without reference to Articles 14 and 19.

10. Reverting to the contentions of the petitioners, the first point based on Article 300A is developed by counsel, stating that though the right of property has ceased to be a fundamental right after the deletion of Article 19(1)(f) and Article 31 by the 44th Amendment, the right to be adequately compensated for the deprivation of property continues to subsist under Article 300A of the Constitution. Counsel submits that when Article 300A enjoins that no person shall be deprived of his property save by authority of law, the law spoken of must be a valid law. The legislative authority for a law relating to requisitioning of property is traceable to Entry 42 in the concurrent list reading "acquisition and requisitioning of property". Every person has a natural right for compensation for deprivation of his property. The very word "acquisition" implies payment of compensation. Any law which does not provide for this natural right by providing for payment of adequate compensation is not a valid law, and therefore, will not satisfy the requirements of Article 300A. In other words, the submission is that

adequate compensation is still a sine qua non of Article 300A and if a law does not make provision for such compensation, it is not a valid law for the purpose of that Article and it must therefore be deemed invalid. The submission is that though Article 31 has vanished from the fundamental rights Chapter, the same effect is achieved by the simpler Article 300A. Counsel placed considerable reliance on the decision of the High Court of Bombay in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, where it was held (at page 379):

"In our judgment, it would be difficult to conclude that by deletion of Article 31 from Part III of the Constitution the Parliament intended to confer absolute right on the legislature to deprive the citizen of his property by mere passing of a legislation without complying with the requirement that the deprivation is for a public purpose and on payment of amount which is not illusory. The doctrine of eminent domain really recognises the natural right of a person to hold property, and if that right can be taken away by the legislation without satisfying the two requirements, then the entire concept of rule of law would be redundant. The introduction of Article 300A in the Constitution while deleting Article 31 clearly indicates that the Parliament intended to confer a right on the citizen to hold property and which could not be deprived without authority of law. In our judgment, in spite of deletion of Article 31, the constitutional obligation to pay adequate amount to the expropriated owner is not taken away."

11. Counsel for the petitioners attempted to support his arguments based on Article 300A with reference to Article 21 and the decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . The submission was that no law will be valid unless it is fair, just or reasonable. Any law which does not provide for adequate compensation is neither fair nor just nor reasonable and therefore liable to be struck down on that ground.

12. The learned Advocate General for the State, however, contended that the decision in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, lies in the face of the constitutional history leading to the deletion of Article 31(2) and the introduction of Article 300A as a mere truncated constitutional right. He points out that the very object of deleting Article 31(2) was to do away with the necessity for payment of compensation/ amount, adequate or otherwise, for the deprivation of property. He also points out that the question of fairness, justness or reasonableness of the enactment arises only if it is tested in the light of Articles 14 and 19 of the Constitution and not otherwise. There is no such challenge in this case. He relies on the decisions of the Supreme Court in *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others*, and of this court in *Sukapuram Sabhayegam v. State of Kerala (1989) 2 KLT 511* and *P. Sankaranarayanan Nambiar and Others Vs. Union of India (UOI) and Others*, as a complete answer to the contentions of the petitioners.

13. The Advocate General also pointed out that the allegation that the amount paid u/s 7 was illusory had no factual basis as the State had undertaken to

discharge considerable liabilities of the Company as was evident from Sub-section (4) of Section 7. There is therefore no factual foundation either for the challenge to the Act.

14. Article 31(2) of the Constitution, as originally enacted, required inter alia, that any law relating to acquisition of property should either provide for compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given. In *The State of West Bengal Vs. Bela Banerjee and Others*, the Supreme Court read the word "compensation" as meaning a just equivalent of what the owner had been deprived of and that the question whether compensation as so understood had been provided, and the owner fully indemnified for what he loses, was justiciable.

15. Parliament then intervened with the 4th Amendment by amending Article 31(2), adding a rider that laws for acquisition or requisitioning of property of the nature contemplated by the Article shall not be called in question on the ground that the compensation provided by that law was not adequate. The evident object of the amendment was to shield such legislation from challenge in courts on the ground of inadequacy of the compensation, on the basis of the exposition of the law in *Bela Banerjee*.

16. Even earlier, and before *Bela Banerjee The State of West Bengal Vs. Bela Banerjee and Others*, Parliament had precluded such challenges to agrarian and other nationalisation laws by introducing Articles 31A and 31B by the First Amendment.

17. The debate regarding the immunity of laws relating to acquisition from challenge on the ground of inadequacy of compensation continued, and in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, the court held that the Constitution guarantees a right to compensation, that is the equivalent in money of the property expropriated. Thus, in effect, the adequacy of the compensation and the relevancy of the principles laid down by the legislature for determining the amount of compensation virtually became justiciable. All this arose mainly because Article 31(2) still spoke of "compensation". Since this was the offending word, Parliament stepped in again with the 25th Amendment by which the word "compensation" was substituted by the word "amount", thereby doing away with the concept of compensation altogether. The objects and reasons for the amendment are stated thus:

"Article 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by the law is not adequate.

In the *Bank Nationalization* case, the Supreme Court has held that the Constitution guarantees right to compensation, that is, the equivalent in money

of the property compulsorily acquired. Thus, in effect, the adequacy of compensation and the relevancy of the principles laid down by the legislature for determining the amount of compensation have virtually become justiciable inasmuch as the court can go into the question whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for loss of property.....

The word compensation is sought to be omitted from Article 31(2) and replaced by the word "amount"....."

18. The 25th Amendment was reviewed by the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, and this decision was understood as holding that though the adequacy of the "amount" fixed by the legislature was not justiciable, the court could still interfere where the amount fixed was illusory or where the principles laid down by the legislature for fixing the amount were not relevant, or having a reasonable relationship with the value of the property acquired or requisitioned.

19. It was in this background that the 44th Amendment came in doing away with right to property from the fundamental rights Chapter, by deleting Articles 19(1) (f) and 31 altogether, and conferring a truncated constitutional right by the incorporation of Article 300A. This Article reproduces Sub-clause (1) of Article 31 and omits in toto the other clauses thereof, including Clause (2).

20. We have only sketched briefly the constitutional history leading to the introduction of Article 300A and have not dealt with the matter at length, as the same has been set forth in detail and considered in the judgment of the Division Bench in *Sukapuram Sabhayogam v. State of Kerala* (1989) 2 KLT 511, to which one of us, the Chief Justice, was a party, and with which we are in agreement.

21. The legislative history behind the deletion of Article 31 and the introduction of Article 300A eloquently shows that Parliament intended to do away with the concept of a just equivalent or adequate compensation in the matter of deprivation of property, and to provide only a limited right, namely that no person shall be deprived of his property save by authority of law. In other words, the limited constitutional protection intended to be continued (not as a fundamental right) was only that there should be a law authorising and sustaining any deprivation of property, and that none shall be so deprived by mere executive fiat. Article 300A does not provide for anything more. It does not go further and provide that the law should provide for compensation and either fix the amount, or at least specify the principles on which the compensation is to be fixed and given. Evidently, Parliament intended to shield all such legislation for acquisition or requisitioning of property from challenge on any of the grounds on which they could be challenged as per the various decisions of the Supreme Court -- on the ground that the compensation was inadequate or illusory or that the principles laid down for fixing the compensation were irrelevant or irrational. If this were not the intent of the series of constitutional amendments, and if this

were not achieved thereby, one wonders why Parliament should have undertaken all the exercise and effaced Article 31(2) altogether from the Constitution. The whole exercise becomes meaningless and without any purpose. It was not as if Clause (1) of Article 31 by itself did service for what was provided in Clause (2) thereof and provided for compensation. It had never been understood or held to be so. That will be the effect if we accept the argument of counsel for the petitioners that Article 300A has the same effect as that afforded by Clauses (1) and (2) of Article 31, including payment of compensation despite the absence of a provision similar to Clause (2) of Article 31 in Article 300A. The purpose of the various amendments will stand defeated if we go by the exposition of Article 300A suggested by counsel, and hold that Article 300A envisions payment of adequate compensation or just equivalent to the owner for the deprivation of his property. Article 300A does not sustain a challenge to any legislation on the ground of inadequacy or illusory nature of the compensation. This is all that we are concerned with in this case.

22. In *Sukapuram Sabhayogam v. State of Kerala* (1989) 2 KLT 511, referred to earlier, it was observed,

"Article 300A enshrines the constitutional protection to private property. Right to property is no longer a fundamental right, but only a constitutional right. It can be deprived without the consent of the owner and against his will, but the mandate of the Constitution is that it can be deprived only by authority of law. Article 300A cannot be construed as declaration of the right of the State to deprive any person of his property, but has to be understood as a limitation on the power of the State to take away private property. Deprivation of property can thus be done only according to law. Without law, there is no deprivation of property. Deprivation of property without the sanction of law has no constitutional support. No law, no deprivation is the principle of Article 300A. Article 300A uses only the expression deprivation of property. Deprivation of property, by any mode is comprehended in this provision. Deprivation may be acquisition, deprivation may be otherwise than through acquisition. Demolition of a building to prevent damage to life and property, destruction of decomposed food articles for preservation of public health, destruction of obscene literature for the promotion of public morality are some forms of deprivation which do not require any payment of compensation. To say, therefore, that one form of deprivation under Article 300A compels payment of compensation and another form dispenses with compensation is to judicially dissect the constitutional provision, a judicial exercise which is not called for. Article 300A therefore, does not compel that the law which authorises deprivation should also provide for compensation."

We are in agreement with this view. In this view of the matter, there is no question of invalidating the Act on the ground that the compensation fixed is inadequate or illusory.

23. For the reasons aforesaid, we are unable to agree with the view of the High

Court of Bombay in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, that despite the deletion of Article 31 the obligation to pay adequate amount to the owner of the property still survives. Apart from what we have stated earlier for taking a contrary view, we are also not able to discern any reason stated in the decision why the obligation to pay an adequate amount should be read into provisions of Article 300A, or why the purpose of deletion of Article 31(2) which contained specific provisions for payment of amount should be ignored. Absolutely no reasons are suggested for engrafting a deleted non-existent provision into Article 300A. If the intention of Parliament was that Article 31(2), either in its original or amended form, should find reflection even in the constitutional right introduced by the 44th Amendment, nothing prevented them from incorporating the same in Article 300A. On the other hand, what Parliament chose to do was only to transform Article 31(1) as Article 300A, and omit Article 31(2) in its entirety from the Constitution. It is not for this Court to overlook the long constitutional history of amendments, and resuscitate the excised Clause (2) of Article 31 by implication when Parliament has itself chosen to give the go-by to the right, either as a fundamental right, or as a constitutional right.

24. We may also note that the Supreme Court has in *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others*, observed that even though Article 31 had not been deleted (at the time of the 42nd Amendment) (at p. 138).

"Its content had been cut-down so much, so that even under a law providing for acquisition of property which did not have the protection of 31-C the adequacy of the "Amount" determined was not justiciable and all that was necessary was that it should not be unreal or illusory. By then the Constitution had done away with the idea of a just equivalent or full indemnification principle and substituted therefore the idea of an "Amount" and rendered the question of the adequacy or the inadequacy of the amount non-justiciable."

Even the attenuated operation of Article 31(2) referred to above was done away with by the 44th Amendment by deleting it altogether from the Constitution.

25. The fact that the legislation is one falling under Entry 42 of the Concurrent List, for "acquisition" of property does not mean that it should provide for payment of compensation/amount, or that the absence of provision for adequate compensation will render it invalid under Article 300A. Entry 42 is only a legislative entry delimiting the power of the legislation to enact a law in question. The scope of a legislative entry is only to delineate the extent of the legislative power, and not to impose limitations which are otherwise not imposed by any of the other provisions of the Constitution. We are unable to read the word "acquisition" as implying an obligation to pay adequate compensation, particularly when it flies in the face of the various constitutional amendments referred to earlier.

26. We are therefore of the view that the contention of the petitioners that

Article 300A posits payment of adequate compensation for the deprivation of property is bereft of any substance and that this contention is only to be rejected.

27. In this view that we have taken, we are not going into the contention raised by the learned Advocate General that the amount provided in the Act is adequate and not illusory: It is unnecessary for us to go into this question.

28. Nor are we impressed with the further plea that the Act has to fail as not fair, just or reasonable. The concept of fairness, justness or reasonableness arises only in the context of Article 14 of the Constitution. No doubt the rule of law embodies the principle of justness and fairness. But that does not imply that a statute otherwise competent becomes invalid on mere concepts of fairness, justness or reasonableness. This point is covered by the decision of the Division Bench of this Court in *P. Sankaranarayanan Nambiar and Others Vs. Union of India (UOI) and Others*, The observations in paragraph 24 of the judgment are apposite. We are extracting the same as we are in agreement with them:

"When Article 31C insulates any challenge under Article 14 of the Constitution, there can be no attack on the further ground that any provision is not "just, fair and right". As we understand the decisions of the Supreme Court, this principle that a provision shall be "just, fair and right" is a concept within the four corners of Article 14 and not outside Article 14. If Article 14 has no application, there can be no reliance to any principle of "just, fair and right" to challenge any statutory provisions. If a direct challenge under Article 14 cannot be made, there cannot be an indirect challenge on the ground that the provision is not "just, fair and right". The effect of a constitutional guarantee under Article 31C cannot be nullified by importing any principle based on the theory that a provision is not "just, fair and right."

29. We may also refer to the observations of the Supreme Court in paragraph 15 of the decision in *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, in which the Supreme Court reversed the decision of the Bombay High Court referred to earlier in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, on a different point. The Court observed:

"We next proceed to consider a contention lacking in merit which has unfortunately been accepted by the High Court namely that the Act infringes Article 300A of the Constitution. Article 300A was not in force when the Act was enacted. Article 31(1) of the Constitution which was couched in the same language was however in force. Article 31C gave protection to the Act even if it infringed Article 31. Let us assume that the action of acquiring private properties should satisfy now Article 300A also because the proceedings to acquire the land started in the instant case after Article 300A came into force. Let us also assume that a law should be fair and reasonable and not arbitrary and that a law should also satisfy the principle of fairness in order to be effective and let us also assume that the said principle of fairness lies outside Article 14. We are

assuming all these without deciding these questions, since the action can be upheld even if all these assumptions are well founded. What is it that is being done now in the instant case? Certain vacant lands lying inside a municipal area are being acquired for providing housing accommodation afterpaying an amount which is computed in accordance with a method considered to be a fair one by Courts. The purpose for which the lands are acquired is a public purpose. The owners are given opportunity to make their representations before the notification is issued. All the requirements of a valid exercise of the power of eminent domain even in the sense in which it is understood in the United States of America where property rights are given greater protection than what is required to be done in our country are fulfilled by the Act. Yet the High Court, with respect, grievously erred in holding that even assuming that the provisions in Chapter V of the Act are protected from challenge under Articles 14 19 and 31 of the Constitution due to the applicability of Article 31C of the Constitution still the impugned provision of the Act are required to be struck down as the said provisions are neither just nor fair or reasonable."

These observations also dispel any challenge to a law as not being just, fair or reasonable, without Article 14 being available to sustain the challenge.

30. We now come to the second point about legislative competence. The contention of the petitioners is that by virtue of the declaration made by the Parliament in Section 2 of the Industries Regulation Act and Section 2 of the Mines and Minerals Regulation Act, the entire field relating to the industry in question is occupied by these Parliamentary legislations under Entries 52 and 54 of the Union List and there is no residual field left for any State legislation. We shall take up the matter with reference to each of the declarations separately.

31. Entry 52 of the Union List reads,

"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

This Entry bars State legislation in so far as it relates to industries declared by Parliament to be expedient in public interest. The declaration by Parliament is in Section 2 of the Industries Regulation Act which is as under:

"2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule,"

The declaration relates only to the industries specified in the First Schedule to this Act. Counsel for the petitioners states that the undertaking of the second petitioner falls within item 34(4) "Ceramics -- china ware and pottery". He also refers to Section 20 of the said Act as per which it shall not be competent for any State Government, after the commencement of the Act, to take over the management or control of any industrial undertaking under any law for the time being in force.

32. The very operation of the Industries Regulation Act and the alleged bar

created thereunder depends on the scope of Item 34(4) of the First Schedule to the said Act. We have to examine whether the said item comprehends within it the undertaking of the Company. It was admitted before us that the Company is not engaged in the manufacture of any chinaware or pottery. It is also the admitted case that the Company is engaged only in the mining of chinaclay, purifying it and then supplying it to industries producing chinaware, firebricks and the like. An industry engaged in the production of china-clay is not specifically within Item 34. Counsel for the petitioners attempted to tide over this difficulty with the plea that production of the raw materials, utilised in the manufacture of chinaware and pottery is integrally connected with the said process of manufacture, and therefore, Item 34(4) must be deemed to comprehend within it the Company's china-clay industry as well.

33. The industries comprised in the First Schedule to the Industries Regulation Act are those engaged in the manufacture or production of any of the articles mentioned under each of the headings or sub-headings therein. The submission is that production of the raw materials necessary for any of these industries is also part of the scheduled industry. We are unable to agree. The Schedule comprehends within it only those industries which are engaged in the manufacture or production of specified articles and no more. Industries engaged in production of raw materials for a scheduled industry are not engaged in the production of the articles mentioned in the Schedule. It is not possible to read more into the Schedule than what is actually mentioned therein, especially when it has an impact on the legislative field available for the States by virtue of Entry 52 of the Union List. The declaration in Section 2, and the Schedule, have to be construed strictly and confined to the frontiers specifically set therein.

34. A similar contention was repelled by the Supreme Court in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, - The industry concerned was the sugar industry which was one included in the First Schedule. The State of Uttar Pradesh having passed an enactment to regulate the supply of sugar cane to factories, a raw material for the sugar industry, the question arose whether declaration in the Industries Regulation Act regarding the sugar industry precluded the State legislation. The Court observed (at pp. 700 and 702-03):

"These provisions were evidently intended to control the scheduled industries and if the sugar industry was one of the scheduled industries the control thereof involved the development and regulation of the sugar industry and the registration and the licensing as also investigation into the affairs of the undertakings which were engaged in the production or manufacture of sugar. It did not involve the regulation of the supply and purchase of sugarcane which though it formed an integral part of the process of manufacture of sugar, was merely the raw material for the industry and as such not within the purview of the Act.

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Raw materials for the manufacture or production of the article or class of articles in the scheduled industry would certainly not be within this sphere and they would not be able to control the prices or regulate the distribution thereof within the meaning of Section 16. These articles or class of articles relateable to the scheduled industry, therefore, were finished products and not raw materials for the manufacture or production of the articles or class of articles in the scheduled industry. They were finished products of a cognate character which would be manufactured or produced in the very process of manufacture or production in the course of carrying on that scheduled industry.

The raw materials would certainly not be included within this category and sugarcane which is the raw material for the manufacture or production of sugar could, therefore, not be included in the category of the articles or class of articles relateable to the sugar industry. Section 18-G, therefore, did not cover the field of sugarcane and the Central Government was not empowered by the introduction of Section 18-G by Act 26 of 1953 to legislate in regard to sugarcane.

The field of sugarcane was not covered by Act 65 of 1951 as amended by Act 26 of 1953 and the legislative powers of the Provincial Legislatures in regard to sugarcane were not affected by it in any manner whatever. If the two fields were different and the Central legislation did not intend at all to cover that field, the field was clear for the operation of State legislation and there was no repugnancy at all between Act 65 of 1951 and the impugned Act."

The contention of the petitioner that the industrial undertaking of the Company engaged in the production of chinaclay is within the purview of the declaration made by Parliament has therefore to fail.

35. It was further held by the Supreme Court in *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, that the control assumed by the declaration in Section. 2 of the Industries Regulation Act was not something abstract, total or unfettered or unrelated to the provisions of the said Act, and therefore, it was only reasonable to hold that to the extent, the Union acquired control by the declaration, the State's power to legislate in respect of the declared industry so as to encroach upon the field of control occupied by the Industries Regulation Act was taken away. It was also held that this Act, generally speaking, did not deal with the ownership of industrial undertakings in the declared industries, but was primarily concerned with development and regulation of the declared industries.

36. The impugned Act provides for acquisition of the Company's undertakings by which the right, title and interest of the Company in the undertaking is transferred to and vested in the State. Since the Industries Regulation Act is not concerned with ownership of an industry but only with the development and regulation thereof, as held by the Supreme Court, the State is not denuded of its powers to enact the legislation in question. What is barred is only legislation regarding development and regulation of a scheduled industry, to the extent the

field is covered by the Industries Regulation Act. The impugned Act deals with ownership and not with development and regulation of any industry. Therefore even apart from the fact that the chinaclay industry of the Company is not a scheduled or declared industry, in any view of the matter, the Act in question does not trench upon any field occupied by the Industries Regulation Act or the declaration in Section 2 thereof.

37. For the reasons stated above, Section 20 of the Industries Regulation Act interdicting taking over of control or management of undertakings is also not attracted to this case.

38. We shall now take up the second limb of the argument based on Entry 54 of the Union List and the declaration made by Parliament in Section 2 of the Mines and Minerals Regulation Act. Entry 54 is in these terms:

"Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Section 2 aforesaid which contains the declaration reads:

"2. Declaration as to expediency of Union control. It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

The declaration is specific that the Union takes under its control only the regulation of mines and the development of minerals and that too, "to the extent hereinafter" provided in the Act. What the Mines and Minerals Regulation Act provides is only the regulation of mines by making general provisions regarding prospecting and mining operations, grant of leases, licensing, supervision and control. It only regulates the working of the mines in whomsoever hands they may be. It does not deal with acquisition of a mine or with the ownership and control thereof, though every owner of a mine will have to subject himself to the regulations under the Act, regarding its operation, the prospecting, the mining and the like. The Mines and Minerals Regulation Act thus operates in a field totally different from the field in which the impugned Act operates, namely acquisition of an undertaking and therefore dealing with ownership. For this reason alone, it has to be held that the declaration under the Mines and Minerals Regulation Act does not operate so as to bar the State legislature from exercising its powers to legislate for acquisition of any mine under Entry 42 of the Concurrent List. The field occupied by the impugned Act is not one occupied by the Central legislation.

39. It must also be noted that the declaration under the Mines and Minerals Regulation Act operates only to the extent provided in the Act. In the absence of any provision in the said Act relating to acquisition of mines, the field was still open for the State legislature to enact the impugned Act. What is covered by a

Parliamentary declaration alone is within the sphere of Parliament and the rest are within the sphere of the State Legislature. The latter stands excluded only if, and to the extent, covered by any declaration by Parliament.

40. This limb of the petitioners' case is also therefore bereft of any substance.

41. Counsel for the petitioners referred to the decision of the Supreme Court in *State of West Bengal Vs. Union of India*, in which it was held that Parliament has legislative competence to enact a law for compulsory acquisition of land vested in or owned by the State. It was therefore contended that acquisition of an industry or mine also is within the legislative competence of Parliament, and that the State Legislature is deprived of its powers to enact the law in question. We do not see how such a result ensues. The Act is one coming within the State's legislative competence under Entry 42 of the Concurrent List. This field is not occupied by any Central legislation on the subject covered by the impugned Act. Parliament may also legislate on the subject, but so long as Parliament has not legislated on any topic, the field remains unoccupied for the State legislature to deal with the subject. If Parliament also chooses to legislate in the field, the question will have to be adjudged with reference to the principles of repugnancy and Article 254 of the Constitution. Such a contingency has not arisen here as Parliament has not chosen to legislate in the field as pointed out by us earlier. The decision of the Supreme Court is not therefore of any assistance to the petitioners.

42. Learned Advocate General has a contention that this original petition is barred by *res judicata* by reason of the earlier decision *Ext. P-I* reported in *Mrs. Elizabeth Samuel Aaron Vs. State of Kerala and Others*. He also submits that the various factual aspects of the matter stand concluded by the said decision. We do not find it necessary to go into this question or to rest our decision thereon as the original petition is doomed to failure even on the merits. But, we must state that we do not *prima facie* find any substance in the contention of the Advocate General having regard to the fact that the previous decision was one rendered based on the power of requisition while the instant legislation is one based on the power of acquisition. The previous judgment operates in a different field. But, we refrain from going into the question and leave it open as it is unnecessary in the view we have taken.

43. It was contended by the learned Advocate General that the acquisition was made acceding to the request made by all the shareholders of the Company in general meeting to take over its undertakings, and therefore the petitioners are estopped from challenging the Act. We are not going into this question as well, as it is unnecessary in the view we have taken.

44. No other grounds are raised in the original petition. It is devoid of any merit. It is accordingly dismissed, without however any order as to costs.

45. In our opinion, no substantial question of law of general importance which needs to be decided by the Supreme Court arises for consideration in this case.

Our decision rests entirely on the principles laid down by the Supreme Court. Hence leave to appeal to the Supreme Court prayed for is refused.