

(1981) 03 CAL CK 0024
In the Calcutta High Court
Case No : Civil Rule No. 4983 (W) of 1977

Smt. Krishna Kamalini Debeya

APPELLANT

Vs

Junior Land Reforms Officer, Khandaghosh and Others

RESPONDENT

Date of Decision : 30-03-1981

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 20
West Bengal Land Reforms Act, 1955 — Section 14J, 14K, 18, 19, 20

Citation : AIR 1982 Cal 83 : 85 CWN 825

Hon'ble Judges : Manasnath Roy, J

Bench : Single Bench

Advocate : Ashoka Kumar Sen Gupta and S.P. Mitra, for the Appellant; K.M. Yusuf, for the Respondent

Judgement

Manasnath Roy, J.—The present petitioners in the Rule, which was obtained on 28th July 1977, with the corresponding interim order for maintaining of status quo, are the heirs of the original petitioners and were substituted by an order dated 29th Jan, 1981, as the original petitioner died on 28th Nov. 1980, leaving them, as her heirs and legal representatives.

2. In the Rule, an order of vesting under the provisions of West Bengal Land Reforms Act 1955 (hereinafter referred to as the said Act), has been challenged.

3. It is the case of the petitioners that the family of the original petitioner Smt. Krishna Kamalini Debeya, since deceased, consisted of herself and her mother-in-law, Smt. Nanibala Debeya, besides five members of the family of her brother Shri Gopi Nath Goswami, one foster daughter, two whole-time servants and one whole-time maid-servant, The members of the said brother's family have been stated to include the brother, his wife, their two daughters and a son.

4. Admittedly, the husband of the erstwhile petitioner, Smt. Krishna Kamalini Debeya, died in or about 1342 B. S., leaving behind the mother, the widow and two unmarried daughters, who have since been given in marriage and have been

substituted in the manner as mentioned hereinbefore, in place and stead of the original petitioner. It is the case of the petitioners that the original petitioner was holding and possessing 14.95 acres of lands, including agricultural and non-agricultural, apart from danga lands and lands comprised of home-stead and orchard, as per the finally published Record of Rights u/s 44(2) of the West Bengal Estates Acquisition Act 1954, Such holdings, according to petitioners, were within the ceiling limit under the said Act. It has also been stated that those lands were and are out of the D. V. C. command at present and as such, the question of irrigation by canal water would not arise. It has been stated that a notice dated 30th Dec. 1974, from the Sub-divisional Land Reforms Officer, Sadar, Burdwan and Revenue Officer, under Chap. IIB of the said Act, purported to be issued in connection with case No. 17, Khandaghosh 1974, directing the petitioner to furnish a return in Form 7A, and such return was filed. Thereafter, time was prayed for by the erstwhile petitioner, through her letter dated 12th Jan. 1975, stating inter alia amongst other relevant facts and also intimating the authorities concerned, that she along with her mother-in-law never possessed landed properties in excess of the ceiling limits as prescribed under the law. The petitioners have stated that in response to such answer, no further notice was served in connection with the connected case No. 17 but a memo dated 25th June 1976, was received from the Settlement Officer. Khandoghose, being Respondent No. 3, directing to show cause by 5th of July 1978, as to why suitable measures should not be taken, as per the provisions of Section 14T (4) of the said Act and the lands in excess of the family ceiling, as may be determined after due enquiry, should not be declared vested in the State and taken possession of by or in the manner as prescribed. It is the case of the petitioners that in compliance with the said memo, a list of total lands in the possession of the erstwhile petitioner and the brother Shri Gopi Nath Goswami and so also disclosing the names of the members of the family, were submitted and thereafter, the original petitioner came to learn from the Junior Land Reforms Officer concerned being Respondent No. 1, that several plots of lands were vested in the State of West Bengal, out of her total lands, The petitioners have stated that for such vesting, no notice was ever duly and properly served and as such, an objection, through a petition dated 18th Oct. 1976, to the Charge Officer, Settlement Charge Office, Burdwan, being Respondent No. 2, was filed.

5. It has been claimed that thereafter, it was learned that again, another ex parte order of vesting was passed by the Settlement Officer concerned, without giving any opportunities to the petitioners, to exercise option in respect of the lands to be retained and without giving any opportunities of being heard. Such order has been claimed to have been made, ignoring the actual facts and without any enquiry as to the members of the family, As such, it has been stated that the erstwhile petitioner, filed another application, praying for exercise of option for the lands to be retained in her possession and she on or about 28th Apr. 1977, received a memo of that date, directing her to depute a representative in the

Circle Office at Khandoghosh on 29th Apr. 1977, These facts, the petitioners have stated, would prove that the concerned order was not issued by the Revenue Officer under Chap. IIB of the said Act. It has been stated that on 29th Apr. 1977, the representative, as directed, was sent but the officer concerned did not consider the documents as produced, but acted on his own motion. The petitioners have further stated that from a reference to a communication dated 19th Oct. 1976, from the Sub-divisional Officer Right Bank Irrigation Sub-division, Sheriha, Burdwan, it would appear that all the mouzas of Jaitinpur, Salon. Pandua and Taldanga were out of D. V. C. Command at that time and as such, the question of irrigation by canal water would not arise. This communication was addressed to Shri Gopi Nath Goswami. It has been stated that thereafter, the Junior Land Reforms Officer, Respondent No. 1, came to the village and threatened the erstwhile original petitioner, not to cultivate the lands, so purported to be vested, without giving any list of the vested lands and further threatened her that those lands would be distributed very soon. It has been claimed that such order of vesting of the lands in question, was bad in law and against all principles of natural justice, inasmuch" as the order of vesting was passed ex parte and without hearing the objections as filed and the documents as produced. It has also been claimed that the Settlement Circle Officer concerned, acted illegally and arbitrarily, in not taking the erstwhile petitioner's mother-in-law, as a member of her family and further acted illegally and arbitrarily, in passing the order of vesting of the erstwhile petitioner's lands, inasmuch as the said order was made without any enquiry as to the members of the family, It has also been claimed that the said officer, further acted illegally and arbitrarily. In taking into account all the lands as irrigated, in contravention of the provisions as contained in the said Act,

6. It has further been stated that the erstwhile petitioner took every step to get the copy of the ex parte order of vesting, but she could not get the same, as the officials concerned refused to entertain any application for such copy. However, an unofficial copy has been annexed in Annexure-H and the petitioners have stated that such copy of the vested lands was procured by them with great strain, The erstwhile petitioner was admittedly, found to be the only and sole surviving member of the family and the findings by the Settlement Circle Officer concerned, have been claimed by the petitioners, to be arbitrary and illegal, apart from being contrary to law. It should be noted here that although the erstwhile petitioner, initially claimed the members of the family to be eight, but at the time of hearing, Mr. Sen Gupta, in his usual fairness contended that the family would not be composed of eight, but the same should have been treated as consisting of two viz., the erstwhile petitioner and the mother-in-law.

7. The affidavit-in-opposition, which is dated 3rd Oct 1977, has been filed on behalf of Respondent No. 3, by Shri Monish Chandra Chowdhury and it has been stated there, that the lands in question might be out of the D. V. C. command, but they are irrigated by deep tubewell and such fact was also claimed to be confirmed by one Shri Subhol Chandra Mukherjee, son-in-law of Gopi Nath

Goswami, who incidentally was the brother of the petitioner. It has been claimed that the Settlement Circle Officer, Khandoghosh, duly asked the original petitioner to appear at the hearing on 5th July 1976 and Sarbashree Subol Chandra Mukherjee and Gopi Nath Goswami, attended the hearing and submitted a statement of the total quantum of lands, plot by plot, noting as to which plots get irrigation facilities and which under the deep tubewell system, It has also been stated that those representatives also filed a statement of family members numbering two, and as such", claimed that no land as stated in the statement, stood vested. The deponent has stated further that according to the report of the Halka Officer, Sasangu, the erstwhile petitioner's family was consisting of one. It has also been stated that the Settlement Circle Officer concerned, conducted a local enquiry and on such enquiry, the statements of the erstwhile petitioner, about the members of her family, proved to be false and as such, the said officer, vested the lands which were in excess of the ceiling, providing for one member and allowed retention of lands to her in accordance with law. It has further been stated that on the basis of the erstwhile petitioner's petition dated 26th Mar. 1977, the officer as mentioned above, fixed the case for review on 29th Apr. 1977. It is the case of the answering Respondent that even after due and proper notice, none appeared on the date of the hearing of the review case and as such, the said review matter was also decided ex parte, allowing the erstwhile petitioner, to retain all ceiling lands to which she was entitled, out of the plots specifically mentioned for retention of lands in her petition dated 26th Mar. 1977, It has been claimed that Gopi Nath Goswami appeared on 4th May 1977 and not on 29th Apr. 1977 as claimed, and he was also allowed to choose the lands on behalf of the original petitioner and thereafter, the vested land statements, already sent to the J. L. R. O. Khandoghosh, was corrected as per the option. In view of the aforesaid facts, the Respondents have claimed that there is no illegality or any irregularity or any violation of principles of natural justice, for which any interference at this stage, should or need be made.

8. The affidavit-in-reply to the affidavit-in-opposition as mentioned hereinbefore, was dated 26th Feb. 1981 and the deponent of the same was Shri Subol Chandra Mukherjee and the said deponent practically denied the material allegations contained in the affidavit-in-opposition and he reiterated the statements as contained in the petition. Apart from denying the material allegations as contained in the affidavit-in-opposition, the deponent has further required the Respondents to prove their allegations as contained in the affidavit-in-opposition.

9. Mr. Sen Gupta, claimed and contended firstly, that in view of the communication in Annexure "G" to the petition, which shows and establishes that the question of irrigation by canal water, in respect of the lands in question did not arise, the claims of the answering respondents that the lands are getting water through deep tubewell, should not be allowed to be agitated or canvassed. He, on a reference to Sections 14K and N of the said Act, contended that the erstwhile petitioner would have been entitled to 6.17 acres of lands. He of course, stated that he could not follow how and under what calculation, 7.05 acres of

land was allowed to be retained. The calculations as mentioned above, were put forward by Mr. Sen Gupta, taking the lands as in irrigated areas. He then claimed, that even if the lands are considered to be in non-irrigated area, then the petitioners would be entitled to 8.64 acres. The petitioners were allowed to retain 7.05 acres and Mr. Sen Gupta claimed that such retention which was allowed, was not according to the choice as furnished. At this stage. Mr. Yusuf stated that since, even after due notice, the erstwhile petitioner had not taken any steps to represent her case at the review stage, so the choice of lands had to be made by the officer concerned ex parte. But. Mr. Yusuf, in his usual fairness, stated that if such opportunities are asked for by the petitioners and also granted by this Court, then the Respondents concerned would be prepared to re-hear the case of the petitioners now and allow them to retain lands up to 7.05 acres according to their choice.

10. It was secondly, contended by Mr. Sen Gupta that the officer concerned, was wrong in holding the family of the erstwhile petitioner to be one and not consisting of two and his elimination of the widow mother-in-law, for considering the members of the family, was improper. It was claimed and contended by Mr. Sen Gupta that since u/s 20 of the Hindu Adoptions and Maintenance Act, 1956 which is to (and is referred to hereinafter as the said 1956 Act) the following effect: Maintenance of children and aged parents :--

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or he: legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property,

Explanation :-- In this section "parent" includes a childless stepmother; the husband of the petitioner No. 1, had an obligation to maintain his aged or infirm parents, so, even if the word parents are not mentioned in Section 14K of the said Act, but the members of the family, for computing the ceiling area, they or any of them, if alive should also be considered as a member of the family and such obligation to maintain those aged and infirm parents, was cast on the erstwhile petitioner viz. the widow of their son and as such, the family in the instant case, should have been composed, not only of the widow but also of the widow mother-in-law and as such, the same should have been directed to be consisting of two. Mr. Sen Gupta further contended that if the family was allowed to be consisting of two, then the ceiling area as granted, would have been more. In this connection, Section 14K (c) which lays down that "family" in relation to a Raiyat shall be deemed to consist of (1) himself and his wife, minor son,

unmarried daughter, if any, (2) his unmarried adult son, if any, who does not hold any land as a Raiyat, (3) his married adult son, if any, where neither such adult son nor the wife nor any minor son or unmarried daughter of such adult son holds any land as a Raiyat, (4) the widow of his predeceased son, if any, where neither such widow nor any minor son or unmarried daughter of such widow holds any lands as a Raiyat, (5) minor son or unmarried daughter, if any, of his predeceased son, where the widow of the said predeceased son is dead and any minor son or unmarried daughter of such predeceased son does not hold any land as Raiyat, but shall not include any other person, with the Explanation and proviso thereunder, will have to be considered. Admittedly, the relations as mentioned u/s 14K (c) have not included the parents and in this case widowed mother of the Raiyat. Thus, the question to be answered is as to whether the widowed mother of the deceased Raiyat, should be considered as the member of the family, on the basis of the requirements of Section 20 of the Hindu Adoptions and Maintenance Act. Under that section, every Hindu has been burdened with the maintenance of some person or another at some stage of his or her life and under the said section of the Hindu Adoptions and Maintenance Act, it would mean when property passes without any distinction, liabilities which are concomitants to it, must also pass. Under that section, apart from the liabilities of a husband to maintain his wife, a person must maintain his children, till the age of minority, whether such children are born by grace or nature, he or she must maintain his or her daughter till marriage and when the married daughter becomes a widow, the liability revives. The said section also requires that he or she as mentioned therein must maintain the aged and the infirm parents, if such parents are unable to maintain themselves out of their own earnings or other property, The said Section 20 as mentioned, also casts a liability on the son and the daughter, to maintain their aged and infirm parents, who are unable to maintain themselves out of their own earnings or other properties. Under the old Hindu Law, every male Hindu was under a legal obligation to maintain his aged parents and such liability was not dependent on the possession of property by the son. The dependants have also been defined in Section 21 of the Hindu Adoptions and Maintenance Act, 1956. While on this question, the provisions of Section 14J of the said Act, which lays down that provisions of Chap. IIB shall have effect notwithstanding (anything) to the contrary contained elsewhere in "the said Act or in any other law for the time being in force, will have to be considered. Before that, it must also be remembered that those provisions in Chapter IIB have been found to be intra vires by the Supreme Court in the case of Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, .

11. Section 14J, as mentioned hereinbefore, contains that the provisions of Chap. IIB, shall have effect notwithstanding anything to the contrary contained elsewhere in the said Act or in any other law for the time being to force. The words "notwithstanding anything contained in any other law for the time being in force," have been determined in the case of Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, , to prevent reliance on any other law to the contrary. It

has also been observed in the case of Rai Bahadur Kanwar Raj Nath and Others Vs. Pramod C. Bhatt, Custodian of Evacuee Property, that the provisions are obviously intended to repel a possible contention that Section 12 in that case, does not by implication repeal statutes, conferring rights on lessees and cannot prevail as against them and have been inserted *ex abundanti cautela*. In that case, it has of course been observed further that those words cannot be construed as cutting down the plain meaning of the operative portion of the section. The word "notwithstanding" means "without prejudice."

12. Mr. Sen Gupta, of course relied on the determinations in the case of Jugal Kishore Saraf v. Raw Cotton Company Ltd., AIR 1955 SC 376, wherein, it has been observed that the cardinal rule of construction of statutes is to read the statute literally. The words used by the legislature will have their ordinary, natural and grammatical meaning. If, however, such a reading, leads to absurdity and the words are susceptible to another meaning, the Court may adopt the same, But, if no such alternative construction is possible, the Court must adopt ordinarily the rule of literal interpretation, Thus, it was submitted by Mr. Sen Gupta that when Section 20 of the Hindu Adoptions and Maintenance Act, has cast an obligation to maintain the infirm parents who could not maintain themselves out of their own earnings or other properties, so even in spite of the provisions of Section 14J of the said Act, it was the obligation in this case on the Raiyat, since deceased, and thereafter, the erstwhile petitioner, Smt. Krishna Kamalini Debeya, to maintain the widowed mother of the Raiyat.

13. While on non obstante clause, it should first be ascertained what the enacting part of the section provides on a fair construction of the words used, according to their natural and ordinary meaning and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing law which is inconsistent with the new enactment. The enacting part of the statute, must, where it is clear, be taken to control the non obstante clause as observed in the case of Thangia v. Hanuman Bank Ltd. AIR 1958 Mad 403, that where both cannot be read harmoniously, for even apart from such clause, a later law abrogates earlier laws, clearly inconsistent with it. The words of statute, as observed in the case of Attorney General v. Milne (1914) A. C. 765, must *prima facie*, be given their ordinary meaning or literal meaning. The Courts in proper cases, can call before it persons to show what the meaning of a particular word should be in a specialised document, but the Courts have no such power in interpreting the statute. Hence the legislature usually annexes an interpretation clause and in other cases General Clauses Acts, to supply the Court with a meaning of the words in a statute, if there is one rule of construction for statutes and other documents, it is that, nobody should imply anything in them, which is inconsistent with the words expressly used. In terms of the determinations in the case of The New Piecegoods Bazar Co. Ltd., Bombay Vs. The Commissioner of Income Tax, Bombay, , the primary duty of the Court, in interpreting a statute is to give effect to the intention of the legislature as expressed in the words used by it, and no outside consideration can be called in

it, to find out the intention. In terms of the determinations in the case of *State of West Bengal Vs. B.K. Mondal and Sons*, , which was made on a reliance on the determinations in the case of *Ramanandi v. Kalawati*, AIR 1928 PC 2, where there is a positive enactment of the Indian Legislature, the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law or of the English law, upon which it may be founded. So, in terms of the determinations of the Supreme Court in the case of *Tirath Singh Vs. Bachittar Singh and Others*, , it is only when the language of a statute, in its ordinary meaning and grammatical construction, leads to manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it, which modifies the meaning of the words and even the structure of the sentence. On the basis of the observations in the case of *Kanwar Singh Vs. Delhi Administration*, , the Courts can depart from dictionary meaning of the word and give it a meaning which will advance the remedy and suppress the mischief. It further provided that the Courts do not have to act on conjecture or surmises. A construction should be adopted in accordance with the policy and the object of the statute. What is sometimes called the Golden Rule, appears to be modification of the rule of literal interpretation. Thus, in the case of *Beacky v. Smith* (1836) 2 M and W 191, such rule has been observed to be very useful one in the construction of a statute. It has also been observed in the case, that adherence to the ordinary meaning of the words used, and to the grammatical construction, should be made, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case, the language may be modified, so as to avoid such inconvenience, but no further. As mentioned, earlier statutes, like documents must be read as a whole and all the parts made consistent with one another, if possible, and a construction to avoid absurdity, should be adopted by the Courts, whenever possible, It should also be noted that a non obstante clause is used in a provision to indicate that, that provision should prevail despite anything to the contrary in any other provision. In this matter, reference may be made to the determinations of the Nagpur High Court, in the case of *Vasant Rao Mangroo v. Election Commission of India* AIR 1953 Nag 237.

14. In the case of *Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others*, , it has been observed that the definition of "family" in Section 14K (c), is more realistic than the definition of the terms in similar laws, for imposition of ceiling on agricultural holdings enacted in other States. It has also been observed that the definition is much wider, and far more generous and humane, because it takes into consideration the existence of a widowed and divorced daughter. It has further been observed that the legislature on a correct perspective, has enlarged the definition of a family to the maximum possible extent, and provides for as many as nine members. It has further been observed in that case, that normally, the father of a raiyat would be entitled to a separate ceiling area of his own

determined u/s 14M. On a reference to such determinations, Mr. Sengupta contended that the Supreme Court has not ruled out the possibilities of the case of a family, consisting of two members viz, the widow and the widowed mother of the Raiyat, rather, on implications of the findings, have accepted that such exceptional cases, however few in number, may be possible viz. the widowed mother of the Raiyat, whom the Raiyat, under the law as mentioned above, was obliged to maintain, should be maintained by the widow of the Raiyat, as on the death of the Raiyat, the obligation to maintain his widowed mother and that too out of the estate, devolved on the widow. It was also contended that if such construction is not given, then the position may be awkward and embarrassing, both for the widow and widowed mother of the Raiyat, as the widowed mother, can bring proceedings against the widow of the Raiyat, for fulfilment of the obligations u/s 20 and Section 21 of the said 1955 Act and at the same time, she may also be refused to be maintained by the widow of the Raiyat out of the estate and as such to have the obligations, as involved or cast upon, to be frustrated. Mr. Sengupta also contended that thus on reasonable interpretation, the word "himself" as used in the section, should be held to be including the old and infirm parents and as in this case, the widowed mother.

15. While on the question of interpretation and construction of the section, Mr. Sengupta submitted that the construction must not only be agreeable to justice and reason, but the construction as given or made, should try to avoid possibility of any injustice, apart from contending that the construction must not be absurd or doing away with the obligation, which was fastened on the Raiyat in this case and if possible, every endeavour should be made to avoid any loss to any innocent person or to protect such person, from any illegality. In support of his submissions as mentioned above and to augment them, Mr. Sengupta referred to relevant passages in Maxwell on the Interpretation of Statutes (Twelfth Edition). It is true that such construction to a statute or the terms of the same, should be endeavoured to be granted, which would be agreeable to justice and reason and there is a presumption against doing something, which would be inconvenient and unreasonable, apart from the fact, that such construction should be sought to be avoided, which would bring about unreasonable and inconvenient results. It is also true that possible injustice, on the basis of interpretation, should also be sought to be avoided. That apart, every endeavour is to be done, to see that no absurdity results, on the basis of the interpretation or meaning as made or given to a statute or the words used therein and there is also a presumption that while interpreting a section or its terms, the obligations as devolved on the basis of other statutes or enactments, must not be interfered with and as mentioned hereinbefore, in terms of the determinations in the case of *Brown v. Roberts* (1955) 1 QB 1, so also of those in *Good-fellow v. Johnson*. (1966) 1 QB 83, that whenever possible, the words of an Act, should be construed, so as not to involve innocent persons in illegality. Mr. Sengupta claimed that if interpretations contrary to the above and as contended by him, are given, that would expire the widow of the Raiyat in illegality, as if she refuses to maintain the widowed

mother of the Raiyat, she may bring appropriate action against her, contending that the refusal by her to maintain the widowed mother of the Raiyat viz. her mother-in-law, was illegal, as the said action would be contrary to law.

16. In support of his submission on the rules of interpretation of statutes and the words or phrases used therein, Mr. Sengupta further referred to the determinations in the case of Jugal Kishore Saraf v. Raw Cotton Co. Ltd. (AIR 1955 SC 376) (supra), and more particularly to the determinations that the cardinal rule of construction of statutes is to read the statute literally, that is, by giving, to the words used by the legislature, their ordinary, natural and grammatical meaning. It has also been observed that if, however, such a reading leads to absurdity and the words are susceptible to another meaning, the Court may adopt the same. But, if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. Then, Mr. Sengupta referred to the determinations in the case of Chandra Mohan v. State of Uttar Pradesh AIR 1966 SC 1987, and more precisely to the observations that the fundamental rule of interpretation is the same, whether one construes the provisions of the Constitution or an Act of Parliament viz. that the Court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be, But, if, however, two constructions are possible, then the Court must adopt that, which will ensure smooth and harmonious working of the Constitution and eschew the order, which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law, nugatory. Lastly, reliance was placed by Mr. Sengupta on the determinations in the case of Ramaswamy Nadar Vs. The State of Madras, and particularly to the observations that if, in construing the section, the Court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the construction, which is more in consonance with reason and justice.

17. There cannot be any doubt or dispute regarding the canons of construction of a statute or the terms of the same, the particulars whereof have been referred to hereinbefore by Mr. Sengupta. But, one thing is certain that with the object of achieving such reasonable constructions or effect, the provisions of a statute or the terms of the same, should not be made or felt to be unreasonable. The said Act, was incorporated in 1955 and Chap. IIB, was incorporated with retrospective effect from 15th Feb. 1971 and such incorporation, as indicated hereinbefore, has been found to be in order and authorised. The said 1956 Act, received the assent of the President on 21st Dec. 1956 and the same has codified the existing law for adoption and maintenance among Hindus. In terms of the determinations in Rex Vs. Nain Sukh Das, , every legislation is to be interpreted in a way, so that the aims and object of the same, are promoted and preserved. A Hindu is under a moral and legal duty, to maintain certain relations in certain circumstances and the main circumstances being the denial to that relation, the right to inherit or the right to partake, but not to separately enjoy the property of the family. What exactly constitutes maintenance under Hindu Law is difficult to define, it is certain that the right to residence, expenses of marriage and that of funeral

expenses, fall under the category of maintenance. "Maintenance" has been defined u/s 3(b) of the said 1956 Act and embraces within the ambit, provisions for food, clothing, residence, education, medical attendance and treatment and in the case of an unmarried daughter, the reasonable expenses of her marriage. Section 4 of the said 1956 Act lays down the overriding effect upon Hindu Law and maintenance is a personal obligation and on the death of the person to be maintained, the obligation is no longer attached to the estate, unless a charge has been created specifically by agreement, will or decree of a competent Court,

18. u/s 20 of the said 1956 Act, a Hindu has been saddled with the burden to maintain some persons or another at some stage of his or her life. Apart from the obligation of a husband to maintain his wife, he must maintain his children till the age of minority, the daughter till marriage, and thereafter, if she becomes a widow, apart from maintaining the old and infirm parents, if they are unable to maintain themselves, out of their own earnings or other properties. So, to maintain the old and infirm parents is a qualified obligation under Hindu Law and every Hindu male was under a legal obligation to maintain his aged parents and such liability was not dependent on the possession of property, as observed in the case of Appibai v. Khimji ILR (1936) 60 Bom 455 : (AIR 1936 Bom 1381, by the son. The class of dependants under the said 1956, Act have been defined in section 21. The word dependant, has been used in Sections 18 to 20 of the said 1956 Act. The circumstances in which dependants are required to be maintained, have been enumerated in section 22 of the said 1956 Act. It should be noted that no burden has been placed by statute, on the property inherited by an individual and the liability under the said 1956, Act continues to be a personal one, but may be enforced against the estate in the hands of the heirs and such liability, will be proportional to the estate inherited. The terms of Section 22 will apply only to cases where property passes by intestate succession and not when it passes through a will or by survivorship in a joint Mitakshara family.

19. It should further and also be noted, that Section 14K (c) has defined "family" and has included therein persons whom a Raiyat was obliged to maintain under the said 1956 Act or in law, But, such definition has not included, rather, has excluded the old and infirm parents, who, in terms of the said 1956 Act, were and are required to be maintained by a Raiyat, while alive, and such right could be enforced against the estate in the hands of the heirs, apart from the fact that such liability or obligation, would also be preferential to the estate inherited. Such being the position, the widowed mother of the deceased Raiyat as in this case, was required to be maintained by the widow of the Raiyat, from out of the properties, which she has inherited or would inherit, on the death of her husband, the erstwhile Raiyat. The right of maintenance, as in the provisions of the said 1956 Act, cannot thus be equated with the right of separate ceiling or holding the same. If old and infirm parents, were meant to be maintained or entitled to get a separate ceiling area, then the legislature would not have left them in consideration of the ceiling area of a "family," more particularly when, the other heirs or members, who were and are required to be maintained, have

been included. The definition of "Family" under the said Act and in terms of the determination in the case of Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, has been found to be more realistic than the definition of the terms in similar laws, for imposition of ceiling on agricultural holdings enacted in other States and such definition, in the words of the Supreme Court is much wider, and far more generous and humane and the legislature has, on correct perspective, enlarged the definition of "Family" to the maximum possible extent.

20. The obligation u/s 20 of the said 1956 Act, of a person to maintain the aged and infirm parents amongst others, arises only when they are unable to maintain themselves, out of their own income or properties and to that extent, the obligation ceases to be personal. The Supreme Court, in the case of Kamalammal and Others Vs. Venkatalakshmi Ammal and Another, , has observed, that the liability to maintain may arise either from the existence of a particular relationship, independent of possession of property viz. the liability to maintain the wife, minor sons, unmarried daughters and aged parents or it may arise on possession of property e. g. the liability to maintain a disqualified heir. The obligation to maintain the relations as mentioned above, is personal and legal in character and no doubt arises from the very existence of the relationship between the parties. The obligation to maintain parents and an unmarried daughter extends, in so far as any one of the latter is unable to maintain himself or herself, out of his or her own earnings or other property. There is no evidence available in this case that the widowed mother of the deceased Raiyat was not in a position to maintain herself either of her earnings or the property.

21. In view of the above, and the specific ouster of old and infirm parents, from the purview of the "Family" as u/s 14K (c) of the said Act, read with the intention of the Legislature viz. the non obstante clause in Section 14J. I am of the view, that the constructions as sought to be put forward by Mr. Sengupta, cannot be accepted. The non obstante clause as in Section 14J, would mean, here in this case, to be operating to set aside as no longer valid, anything contained in Sections 18 to 21 of the said 1956 Act, as otherwise, the same would be inconsistent with the said Act. The non obstante clause in Section 14J, in my view, should prevail, despite anything contrary in any other provision. Thus, the arguments advanced by Mr. Sengputa that even in spite of the provisions of Section 14J and specific definition of "Family" as in 14K (c) and even though such definition does not include or speak of parents, they should be maintained by the Raiyat or his heir and as such the parents of the deceased Raiyat, would be entitled to separate ceiling, should fail. I hold as such, as in my view, the right of the parents of the Raiyat to be maintained by him or his heir, on his death, has no relation to separate ceilings to be given to them and such obligations, as mentioned in the said 1956 Act, cannot be equated with the right of having separate ceilings by the parents of the Raiyat.

22. At this stage. Mr. Sengupta contended that if the lands are in irrigated area, then, under the provisions of the said Act, the petitioner would not be entitled to

get 7.90 acres and as such he failed to understand, why such retention of ceiling was allowed. He then contended that if the lands are treated to be in non-irrigated area, then also the appropriate ceiling would be 8.64 and perhaps the lands were considered to be in non-irrigated area. Mr. Sengupta, thus contended that when, taking the lands to be in non-irrigated area, the petitioner was allowed the retention of 7.90 acres and the petitioner, in law would be entitled to 8.64 acres, so in all fairness, the Respondents concerned, should be directed to allow the petitioner the balance of .74 acres (8.64-7.90) and that too in terms of a choice to be exercised by her. Mr. Yusuf, in his usual fairness contended, that such claim of the petitioner, as made now, may be considered, if directed by the Court. The submissions as made by Mr. Sengupta, appeared to me, to be reasonable and considering the fair stand as taken by Mr. Yusuf, even though, I discharge the Rule, I direct the Respondents now to consider the ceiling area of the petitioner, on treating the lands in non-irrigated, area if they really are after giving her the due and necessary option, in accordance with law.

23. The Rule is thus discharged as above. There will be no order as to costs.