
(1987) 12 BOM CK 0025

In the Bombay High Court

Case No : L.P.A. No. 34 of 1986 with L.P.A. No. 84 of 1986

State of Maharashtra

APPELLANT

Vs

Janabai Deorao Khatke and another

RESPONDENT

Date of Decision : 16-12-1987

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(l)(f), 31

Land Acquisition Act, 1894 — Section 23

Maharashtra Land Revenue Code, 1966 — Section 36, 36A

Citation : (1987) 12 BOM CK 0025

Hon'ble Judges : V.A. Mohta, J; M.S. Deshpande, J

Bench : Division Bench

Advocate : A.S. Bobde, A.G., A. M. Tayde and V. V. Naik, Assistant Government Pleaders, for the Appellant; R. R. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

M.S. Deshpande, J.—These two appeals by the State are directed against the judgment of a learned Single Judge of this Court, holding that the provisions of section 5A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter called as "the Restoration Act"), cannot be enforced as being violative of the second proviso to Article 31-All) of the Constitution.

2. In several petitions filed in this Court challenging the action taken by the State in pursuance of section 5-A of the Restoration Act, the contentions raised were that the provisions of that section contravened Article 14 and Article 19(l)(f), and Article 31 (then existing) of the Constitution. The learned single Judge considered those challenge in his judgment, dated 29th/30th March, 1984 in Writ Petitions Nos. 1590 of 1977, 1099 of 1980 and 1444 of 1980 and held that the Restoration Act, prior to its amendment by Maharashtra Act XXX of 1977, was protected by Article 31-A and also by Article 31-B of the Constitution, as it was included in the IXth Schedule. In Writ Petitions Nos. 173 of 1978 and 541 of 1978, reported in 1985 Mh.L.J. 265, which came to be decided by the learned

Single Judge by the impugned common order, it was a common ground that the tribal-transferors were unwilling to cultivate the lands which they had transferred personally and to pay the purchase price as would be determined u/s 3(4) of the Restoration Act and the authorities, therefore, directed u/s 5A(1) of the said Act that the possession of the lands should be taken from the non-tribal/transferees and be vested in the State Government free from encumbrances. The sole contention raised in the petitions filed by the non-tribal transferees was that section 5A(1) as inserted by the Amending Act XXX of 1970 infringes the second proviso to Article 31A(1) of the Constitution.

3. It is necessary to state the background : The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Maharashtra Act No. XIV of 1975) received the assent of the President on 28th April, 1975, and the assent was first published in the Maharashtra Government Gazette, Part IV Extraordinary, on 28th May, 1975. The Act came to be amended by the Maharashtra Act XII of 1977, XXX of 1977 and LVII of 1977. The salient features of the Act are to be found in sections 3 and 4 thereof, which provide for restoration or transfer of lands to tribals in certain cases. "Transfer" in relation to land, as defined in section 2(1)(i), means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July 1974, either by act of parties, or under a decree or order of a Court, or for recovering any amount of land revenue due from such tribal, or for recovering any other amount due from him as an arrear of land revenue, or otherwise under the Maharashtra Co-operative Societies Act, 1960. It is not necessary to set out the provisions of sections 3 and 4 in detail because the validity of the provisions of the Act before its amendment by the Maharashtra Act XXX of 1977 was affirmed by the learned single Judge on 26th March, 1985, and later by the Supreme Court in *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, . Suffice it to say that section 3 enables the Collector, either suo motu or on the application of a tribal-transferor, after making such inquiry as he thinks fit, to restore the lands either sold or exchanged by the tribal-transferor. Sub-sections (2) to (4) contain detailed provisions as to the terms upon which the Collector shall make an order for restoration of lands to tribal-transferors by non-tribal-transferees under sub-section (3). Sub-section 4(a) casts a duty on the Collector to determine the value of the improvements and the manner of payment. Under Clause (b) of sub-section (4), the amount payable by the tribal-transferor for the land restored to him under clause (ii) of sub-section (1) shall consist of an amount equal to 48 times the assessment of the land or the amount of consideration paid by the non-tribal-transferee for acquisition of the land whichever is less plus the value of the improvements, if any, made by the non-tribal transferee therein to be determined by the Collector in prescribed manner. u/s 4, if the lands of a tribal have been purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-tribal transferee, then the Collector in certain cases, where such lands have not put to any non-agricultural

use on or before the 6th day of July, 1974, shall, notwithstanding anything contained in any law for the time being in force, restore the lands to the tribal free from all encumbrances with the rider that if a non-tribal transferee, before 6th day of July 1974, is rendered landless by reason of acquisition of his land, then only half the land so purchased or acquired to be restored to the transferor/tribal. Section 5A, which was inserted by section 6 of the Maharashtra Act XXX of 1977, runs as follows :-

"5A. (1) Where any land (not being land acquired in exchange), which is liable to be restored to a Tribal transferor under sub-section (1) of section 3 cannot be so restored either on account of the failure of the Tribal transferor to give an undertaking referred to in sub-section (3) of section 3 or for any reason to in section 4 cannot be restored to the Tribal by reason of such Tribal expressing, during the enquiry held by the Collector, his unwillingness to refund the purchase price or proportionate part thereof to the non-Tribal transferee, as required by the said section 4, or for any other reason, then, the Collector may, subject to rules, if any made in that behalf, by order in writing direct that the land shall, with effect from the date of the order, be deemed to have been acquired and vest in the State Government free from all encumbrances.

(2) On such vesting of the land, the non-Tribal transferee shall be entitled to receive from the State Government an amount equal to 48 times the assessment of the land, plus the value of the improvements, if any, made by the non-Tribal transferee therein. The provisions of clauses (b) and (c) of sub-section (4) of section 3 shall mutatis mutandis apply for determining the value of improvements and for apportionment of the encumbrances, if any, on the land between the non-Tribal transferee and the persons claiming encumbrances on the land.

(3) The land so vested in the State Government under sub-section (1) shall, subject to any general or special orders of the State Government in that behalf, be granted by the Collector to any other Tribal residing in the village in which the land is situate or within five kilometers thereof and who is willing to accept the land in accordance with the provisions of the Code, and the rules and orders made thereunder and to undertake to cultivate the land personally; so, however, that total land held by such Tribal whether as owner or tenant does not exceed an economic holding within the meaning" of sub-section (6) of section 36A of the Code.

(4) The person to whom land is granted under sub-section (3), shall pay to the State Government the amount referred to in sub-section (2), either in lump sum or in such annual installments not exceeding twelve (with simple interest at 4 1/2 per cent per annum) as the Collector may direct and shall hold the land subject to such terms and conditions as may be prescribed.

(5) Without the previous sanction of the Collector, no land granted under sub-section (3) shall be transferred, whether by way of sale (including sale in

execution of a decree of a Civil Court or of an award or order of a competent authority) or by way of gift, mortgage, exchange, lease or otherwise, such sanction shall not be given otherwise than in such circumstances and on such conditions including condition regarding payment of premium or nazarana to the State Government, as may be prescribed:

Provided, that no such sanction shall be necessary where the land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement on such land.

(6) If sanction is given by the Collector to any transfer under sub-section (5), subsequent transfer of the land shall also be subject to the provisions of sub-section (5).

(7) Any transfer of land, and any acquisition thereof, in contravention of sub-section (5) or (6), shall be invalid; and as a penalty therefor, any right, title or interest of the transferor and transferee in or in relation to such land-shall, after giving him an opportunity to show cause, be forfeited by the Collector, and the land together with the standing crops thereon, if any, shall without further assurance vest in the State Government and shall be disposed of in such manner as the State Government, may, from time to time, direct."

4. The challenge, which was raised and was upheld by the learned Single Judge was under Article 31-A of the Constitution which, so far as material, may be extracted as follows :-

"31-A(1) Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein of the extinguishment or modification of any such rights, or

(b),

(c) -----,

(d) -----,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19:

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

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land,

building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

5. In the view of the learned single Judge, the second proviso to Article 31 -A(1) of the Constitution enacts a condition precedent, insofar as it requires that the State must provide in the law of acquisition the payment of compensation at the rate not less than the market value, before it acquires the land protected thereunder, and thus unless there is a provision for payment of compensation at a rate not less than the market value for the lands covered by the second proviso to Article 31-A(1), the State has no power to acquire such lands. The learned single Judge rejected the contention of the State that by not providing the compensation at a rate not less than the market value, the provisions of section 5A(1) of the Restoration Act would be bad, but the acquisition of the land u/s 5A(2) of that Act should be held good. The learned single Judge, however, after setting aside the orders passed by the authorities below, remanded the proceedings to the Collector for an enquiry into the questions whether the petitioners are cultivating the lands personally and whether their lands sought to be acquired by the State u/s 5A(1) are within the ceiling limit fixed under the ceiling law in the State, with a direction that if these points were found in favour of the petitioners, the authority shall refrain from enforcing the provisions of section 5A(1) against them, otherwise it would be open to the authority to pass appropriate order u/s 5A(1) of the Restoration Act.

6. In these appeals by the State, the learned Advocate General, urged firstly that the premise that the Restoration Act was a measure of agrarian reform is not correct and the State did not want to justify the provisions of section 5A of the Restoration Act under Article 31A, but under Article 31C of the Constitution, because the Restoration Act is a law giving effect to the policy of the State towards securing the principles laid down by clauses (b) and (c) of Article 39 which fall in Part IV of the Constitution, and the Restoration Act cannot, therefore, be called in question in any Court. On the other hand, Shri R. R. Deshpande, the learned Counsel for the respondents, urged that the Restoration Act was a measure of agrarian reform and, therefore, came within the sweep of Article 31A(I)(a) of the Constitution and the respondents, therefore, were entitled to the protection in respect of the market price, by virtue of the second proviso to section 5A(I) of the Restoration Act.

7. In *Kavalappara Kottarathil Kochuni vs. State of Madras*. AIR 1960 SC 1080, it was laid down that Article 31A as amended by Constitution (Fourth Amendment) Act (1955) is concerned with land-tenure. It deals with a tenure called "estate" and provides for its acquisition or the extinguishment or modification of the rights of the land-holder or the various subordinate tenure-holders in respect of their rights in relation to the estate. The object of amendment was to bring about a change in the agricultural economy but not to recognize or confer any title in the whole or a part of an estate on junior members of a family. A law regulating inter se the rights of a proprietor in his estate and the junior members of his

family is not covered by the Article. The Supreme Court pointed out that Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) does not modify any of the rights appertaining to "Janmam Right", but only confers shares in the property on other members of the tarwad. It does not purport to modify or extinguish any right in an estate and the avowed object of it is only to declare particular sthanams to be Marumakkathayam tarwads and the property pertaining to such sthanams as the property of the said tarwads. It declares particular sthanams to have always been tarwads and their property to have always been tarwad property, the result being that the sole title of the sthanam is not recognised and the members of the tarwad are given rights therein and the Act does not effectuate any agrarian reform and regulate the rights inter se between landlords and tenants and, hence, the Act, is not covered by Article 31A as amended. The Supreme Court further observed that the contrary view would enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. It would also enable the State to compel a proprietor to divide his properties, though self-acquired, between himself and other members of his family or create interest therein in favour of persons other than tenants who had none before. Such acts have no relation to land tenures and they are purely acts of expropriation of a citizen's property without any reference to agrarian reform. Article 31A deprives citizens of their fundamental rights and such an Article cannot be extended by interpretation to overreach the object implicit in the Article.

8. It must be noted that in the present case, as in the case of rights of Janmam, the Restoration Act does not modify the rights appertaining to the lands held by tribal or non-tribal tenure-holder, but merely annuls the transfer which was otherwise valid and restores the title to the tribal leaving all the characteristics of the "rights and the estate" intact. Though in *Ranjit Singh and Others Vs. State of Punjab and Others*, the observation in *Kochuni's* case is treated as limited to the facts of that case, in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, the theory of agrarian reform and land-tenure has been adopted unanimously by the Supreme Court. In *Ranjit Singh's* case, a comprehensive meaning is given to the term "agrarian reform" so as to include rural economy, but there the general scheme of the Legislature definitely showed that it was a measure of agrarian reform. In *P. Vajravelu's* case, it was pointed out that the Land Acquisition (Madras Amendment) Act (23 of 1961), which amended section 23 of the Land Acquisition Act, 1894, was conceived and enacted only for the purpose of slum clearance which became the urgent problem for the City of Madras but even then such a slum clearance did not relate to an agrarian reform in its limited or wider sense.

9. In *Ramanlal Gulabchand Shah Vs. The State of Gujarat and Others*, while considering the amended Bombay Tenancy and Agricultural Lands Act (67 of 1948) (as amended by section 35 of the Bombay Act 13 of 1956), it was held that the protection of Article 31B would not be available for carrying the Tenancy Act to new fields unrelated to agrarian reform. In *The Godavari Sugar Mills Ltd.*

Vs. S.B. Kamble and Others, the introduction of sections 28-1AA and 21(5) as amended by Acts 16 and 33 of 1968, 37 of 1969 and 27 of 1970, was construed as a measure of agrarian reform and as such protected by Article 31 -A of the Constitution, because with regard to the lands, which were held by the industrial undertakings for the purpose of producing and providing raw material for the manufacture of goods by those undertakings, the legislature made special provisions in order to ensure that the acquisition of the aforesaid land did not affect adversely the production and supply of the raw material to the undertaking. The object was further to make full and efficient use of the land for agriculture and also if considered necessary to maintain the integrity of the area so acquired in one or more compact blocks. Section 28-1AA was held to be an integral part of a general scheme of the Act to bring about agrarian reform. The Supreme Court observed in para 32 of the report that it is no doubt true that acquisition simpliciter of the land by the State to augment its resources and without specifying the purpose for which it is to be used after acquisition would not get the protection of Article 31 A. A measure, which has the effect of improving the rural economy or promoting rural welfare would be a part of agrarian reform. Although in most of the cases, the agrarian reform would require distribution of surplus land among the poor peasants and landless persons living in the villages, situations might well arise where it would be in the interest of rural economy that any compact area of land instead of being fragmented by distribution should be preserved as one compact block and be cultivated by a State-owned farming corporation. The Court pointed out that the concept of agrarian reform is not static and cannot always be put in a strait-jacket, and with the change of times under the impact of fresh ideas and in the context of fresh situation. the concept of agrarian reform is bound to acquire new dimensions.

10. In the present case, however, it is difficult to see how restoration of land from non-tribals to tribals can be viewed as a measure of agrarian reform. The only basis, on which restoration is contemplated, is that the transferor was a tribal without reference to the non-tribal-transferee's circumstances, and irrespective of the non-tribal himself being a petty landholder who might be rendered landless as a consequence of restoration of the land to the tribal, without regard to the circumstances of the tribal in relation to the non-tribal, because it may be that in certain cases the non-tribal may be more handicapped than the tribal himself, and may himself belong to a weaker section, as happens in one of those appellants' case, where the non-tribal transferee belongs to Scheduled Caste. Though it may be possible to support the Legislation on some other constitutional provisions, it is difficult to see how it can be said to be a measure of agrarian reform.

11. The learned Advocate General referred to the Statement of Objects and Reasons for the Bill that was introduced on 27th March. 1974. not as an aid to interpretation but in order to show the conditions existing when the measure was contemplated, which are as follows:-

""STATEMENT OF OBJECTS AND REASONS :

It was noticed that in a number of cases lands previously held by persons belonging to Scheduled Tribes have been transferred to non-tribals as a result of purchases made or deemed to have been made under the Tenancy Laws or as a result of transfers (including exchanges) validly effected after 1st April 1957 under the provisions of the Maharashtra Land Revenue Code, 1966 or other laws in force in the State. After examining the recommendations of the Committee appointed by Government to examine the difficulties experienced by the Tribal landholders in the administration of certain provisions of the Maharashtra Land Revenue Code, and other laws in force in the State it is considered necessary to provide for restoration of the lands which have gone into the hands of non-Tribals to their original Tribal owners. The Bill seeks to achieve this object."

In the report submitted by the Joint Secretary, Ministry of Labour, Government of India, and the Special Assistant to the Deputy Chairman. Planning Commission, to the Government in 1975, reasons for the justified sense of grievance felt by the tribal population were brought out. The learned Advocate General pointed out that this Report was referred to in para-19 in Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, and even the Supreme Court pointed out that the Restoration Act is a typical illustration of the concept of distributive justice and it (the Restoration Act) was intended and meant as an instrument for alleviating oppression, redressing bargaining imbalance, cancelling unfair advantages, and generally overseeing and ensuring probity and fair dealing. It sought to reopen transactions between parties having unequal bargaining power resulting in transfer of title from one to another due to force of circumstances and also seeks to reconstitute the parties to their original position. The Supreme Court held the Restoration Act to be an illustration of distributive justice and referred to Article 46 in Part IV of the Constitution which provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

12. In *Manchegowda and Others Vs. State of Karnataka and Others*, , to which reference was made on behalf of the respondents, all that was said was that sections 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (2 of 1979) were not violative of Articles 31 and 31A of the Constitution, as the defeasible right of the transferee of the granted lands could not be considered to be property as contemplated in Articles 31 and 31-A. There, the nature of the right of the transferee in the granted land on transfer of such land in breach of the condition of prohibition relating to such transfer, the object of such grant and the terms thereof, also the law governing such grants and the object and the scheme of the present Act enacted for the benefit of the weaker sections of the community, clearly went to indicate that there was no deprivation of such right of property as may attract

the provisions of Article 31 and Article 31A of the Constitution. There is nothing in the report which would indicate that the Supreme Court regarded that Act as a measure of agrarian reform, though it declared void certain transfers which were voidable because of the breach of the conditions of the grant. In fact, paragraph 24 of the report makes this position clear because the title of some of the transferees could not be rendered void, by virtue of the provisions of the Act, without violating the constitutional guarantee, and the provisions of that Act were read down by holding that the Act will apply to transfers of granted lands made in breach of the condition imposing prohibition on transfer of granted lands only in those cases where the title acquired by the transferee was still voidable at the date of the commencement of the Act and had not lost its detestable character at the date when the Act came into force.

13. On behalf of the respondents, support was sought to be drawn from the comprehensive meaning given to the concept of agrarian reform in State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., , where it was held that Kerala Private Forests (Vesting and Assignment) Act 1971, is protected by Article 31A(1) of the Constitution, as it purports to vest jenmam rights to forest lands in Government, and forest lands are "estate" within Article 31A(2) of the Constitution. There the preamble showed that the Government considered the private forests as agricultural lands and should be so utilised as to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State and the provisions were held to be a necessary step to agrarian reform as contemplated by the Act. Krishna Iyer, J., pointed out as under:-

"In ascertaining whether the impugned enactment outlines a blue-print for agrarian reform the Court will look to the substance of the statutory proposal and not its mere outward form. The Court will closely study to see if the legislation merely wears the mask of agrarian reform or it is in reality such. A label cannot salvage a statute from the clutches of constitutional limitations if the agrarian reform envisaged by it is "a teasing illusion or promise of unreality". The Court should not be too gullible to accept a scheme of agrarian reform when it is nothing but a verbal subterfuge, but at the same time the Court should not be so astute to reject such a scheme because it is not satisfied with the wisdom of the scheme or its technical soundness."

14. The question is whether a measure, such as. the Restoration Act here, would fall within the description of a measure for agrarian reform. The concept of agrarian reform was held to be a complex and dynamic one promoting wider interests than conventional reorganisation of the land system or distribution of land. It was intended to realise the social function of the land and includes creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, increasing agricultural production, construction of irrigation systems and adequate drainage and help solve social problems that are found in relation to the life of the agricultural

community. Agrarian reform is thus more humanist than mere land reform, and scientifically viewed covers not merely abolition of intermediary tenures, zamindaris and the like but restructuring of village life itself taking in its broad embrace the socio-economic regeneration of the rural population.

15. Considering the conditions existing when the Restoration Act and the Amending Act XXX of 1977 were thought of, it is difficult to view its provisions in the context of agrarian reform but only in the light of bringing about distributive justice. Restoration of lands was by and large contemplated in the context of the personal rights to the property which the tribals had and which came to be lost because of transfers to non-tribals. Transfers from tribal to tribal as well as non-tribal to non-tribal are not covered by the provisions of the Restoration Act, nor aimed at by the provisions thereof. It will be useful to refer in this context to the observations of the Full Bench of this Court in *Balabhau Manaji Vs. Bapuji Satwaji Nandanwar and Others*, where while considering the right of pre-emption u/s 242(3) of the M.P. Land Revenue Code (2 of 1955), it was said :-

"Article 31-A(I)(a).does not deal with any and every right; it deals with an estate or a right therein and the extinguishment must be of such a right. A right which the owner of a property has to claim substitution for a vendee when adjoining property is sold to a third party without notice to him is not a right in any estate but a right purely personal to the occupant arising only in the event of there being sale. Therefore, article 31 -A has no application to a right of pre-emption. Consequently, section 242(3) of the M.P. Land Revenue Code is saved by Article 31 -A."

16. The learned Counsel for the respondents, however, relied strongly on the view taken by the learned single Judge in Writ Petitions Nos. 1590 of 1977, 1099 of 1980 and 1444 of 1980, decided on March 29/30, 1984, where the State sought to support the validity of the Restoration Act with reference to Article 31-A(I)(a) of the Constitution, and the State's contention, that it was a measure of agrarian reform, was accepted for upholding the provisions of the main Act, without reference to section 5A as introduced by the Amending Act XXX of 1977. Since a reference has already been made to most of the decisions referred to by the learned Single Judge in his judgment in the context of the provisions of the Restoration Act, it is not possible to agree with respect, with the view of the learned Single Judge. In *The Godavari Sugar Mills Ltd. Vs. S.B. Kamble and Others*, , to which a detailed reference has been made, the constitutional validity of amendments of 1968 and 1970 made in the Maharashtra Agricultural Lands (Ceiling on Holdings) Act (27 of 1961), was challenged and it was held that the protection and immunity afforded by Article 31B is restricted to the provisions of the Act or Regulation as they exist including their amendments, on the date the Act or Regulation is included in the ninth Schedule, even though the constitutional amendment by which the Act or Regulation is included in the ninth Schedule refers only to the principal Act and Regulation and not to the amendments thereof. Though the protection or immunity was not held available

to the later amendments, the amendments were held to be a measure of agrarian reform and as such protected by Article 31 -A of the Constitution. The observations, which were made in the context of the particular provisions of the Ceiling Act, which undoubtedly effectuated the object of agrarian reform, cannot uncritically be applied to altogether different provisions to be found in the Restoration Act. It is true that in examining the dominant objective of the Legislation, the question in such cases cannot be considered in isolation or from the preamble of that Act alone and the scheme of the impugned Act along with the enactments with which it is inter-linked or interrelated, would be relevant.

17. Reference was made to the observations made in para- 3 in Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, that the Restoration act is supplemental or incidental to the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws and that similar measures have been undertaken by different States placing restrictions on transfer of lands by members of Scheduled Castes and Tribes for the implementation of the Directive Principles of State Policy enshrined in Article 46 of the Constitution which enjoins that "the State shall promote with special care the educational and economic interest of the weaker sections of the people and in particular of the Scheduled Castes and Tribes and shall protect them from social injustice and all forms of exploitation." These observations, however, cannot help the respondents for contending that because the provisions of the other legislations were measures of agrarian reform, what is supplemental or incidental to those legislations would also be so. As already indicated, the Statement of Objects and Reasons and, the different provisions of the Restoration Act do not bear out this contention. The preamble to the Restoration Act is as follows:-

"WHEREAS by Government Resolution in the Revenue and Forest Department, No. REV. 1070/62448-C, dated the 15th March 1971, the Government of Maharashtra appointed a Committee to inquire into and report to the State Government inter alia on how far the provisions of the Maharashtra Land Revenue Code, 1966, and the relevant tenancy laws have been effective in giving protection to persons belonging to Scheduled Tribes, and to suggest among other things suitable amendments therein, if any, of the existing provisions are found to be inadequate;

AND WHEREAS the said Committee submitted its report to Government on the 7th April 1972;

AND WHEREAS the said Committee inter alia recommended that provision should be made for restoring to persons belonging to Scheduled Tribes the lands which have been duly transferred to other persons;

AND WHEREAS after considering the aforesaid recommendation of the said Committee, the Government of Maharashtra is of the opinion that steps should be taken forthwith for restoring certain lands to persons belonging to Scheduled Tribes; It is hereby enacted in the Twenty-fifth Year of the Republic of India as

follows:"

Though, it is not necessary to mention in the preamble that the Restoration Act was contemplated as a measure of agrarian reform and the Court will have to examine the different provisions of the Act for ascertaining whether it is so, the studied silence with regard to agrarian reform is a factor which the Court must take into account. In fact, when the Restoration Act came to be challenged before the learned single Judge, the attention was not so much directed to the provisions of section 5A as to the other provisions and the validity was sought to be supported on the provisions of Article 31 B and Article 31 -A of the Constitution. The Restoration Act, excluding section 5-A, had been placed in the 9th Schedule at serial No. 156 by the Constitutional 40th Amendment Act, 1976, and in view of the provisions of Article 31B, the Restoration Act cannot be deemed void or ever to have become void and, evidently, the State Legislature was competent to enact it. As already pointed out, even before the Supreme Court in *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, , the State did not urge the protection under Article 31-A and the legislature competence of the State Legislative to enact it was upheld with reference to Article 46 of the Constitution. It was only when the matter came up before the learned single Judge again for testing the constitutional validity of section 5-A of the Restoration Act that the question of its validity under Article 31 -A(1)(a) arose, and the learned single Judge, in his earlier judgment, was not required to consider section 5-A with reference to Article 31 -A(1)(a). In view of the reasons already indicated, it is not possible to agree with the conclusion of the learned single Judge that the Restoration Act was a measure of agrarian reform and the validity of section 5-A thereof would have to be tested upon the second proviso to Article 31 -A(1)(a) of the Constitution.

18. A reference may be made at this stage to certain obvious positions, and there was no debate about it. Section 3 of the Restoration Act annuls what would otherwise have been valid transfers by tribal to non-tribal, and in this respect the provisions of the Maharashtra Restoration Act differ substantially from the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Land) Act, 1978 (2 of 1979), which related to land granted by the Government under certain conditions to the Scheduled Castes and Scheduled Tribes and were rendered voidable by virtue of the terms of the grant. The Act made a transfer which was voidable, void, while under the Maharashtra Restoration Act, but for the provisions of the Restoration Act, the transfers which would have, been valid, are annulled with a view to restoring the land to the tribal-transferor upon his willingness to cultivate it personally and pay the compensation as provided under the Act. Viewed in the context of the defeasible nature of the transfer, the Supreme Court held that there was no deprivation of such right of property as may attract the provisions of Article 31 and Article 31 -A of the Constitution. u/s 5-A of the Restoration Act, if the land cannot be restored to the tribal by reason of his unwillingness to refund the purchase price, or for any other reason, the Collector is enabled to direct that the land shall be

deemed to have been acquired and vest in the State Government, free from all encumbrances. Though the purpose of the vesting of the land is to distribute it to other tribals residing in the village in which the land is situate, or within five kilometers thereof, in relation to the non-tribal/transferee, the acquisition and the vesting of the land in the State Government is complete, and In view of the ratio of *Ajit Singh Vs. State of Punjab and Another*, , the test of transfer of ownership of the estate is satisfied, and the acquisition would be one which would be covered by former Article 31 of the Constitution. The purpose of acquisition, however laudable it may be, would not alter the fact of acquisition and the applicability of Article 31.

19. Section 5-A of the Restoration Act was inserted by Maharashtra Act XXX of 1977, i.e. after Article 31-C was inserted in the Constitution by the Constitution (Twenty-fifth Amendment) Act, 1971, with effect from 20th April, 1972. It is the contention of the learned Advocate General that section 5-A of the Restoration Act, notwithstanding its incorporation in the Restoration Act made after the main Act was included in the 9th Schedule, would be protected by Article 31-C of the Constitution. Article 31-C (as it existed prior to 1977) was as follows:-

"31 -C. Saving of laws giving effect to certain directive principles :-

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

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

20. By the Constitution (Forty-fourth Amendment) Act, 1978, the words "Article 31" were deleted with effect from 20th June, 1979, simultaneously with the deletion of Article 31 which related to compulsory acquisition of property. The deletion of the words, "Article 31" from Article 34-C would be inconsequential because at the time when section 5-A of the Restoration Act was inserted by Maharashtra Act XXX of 1977, Article 31 could not have been set up as challenge to that section, if that provision could come within the sweep of Article 31 -C, if it otherwise applied.

21. In view of the Supreme Court decision in *The Godavari Sugar Mills Ltd. Vs. S.B. Kamble and Others*, , insertion of section 5-A, after the inclusion of the Maharashtra Restoration Act in the 9th Schedule, would not be protected by Article 31 -B. Under clauses (b) and (c) of Article 39, which falls in Part IV of the Constitution the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so

distributed as best to subserve the common good, and the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Article 46 mandates the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. The Restoration Act, including section 5-A, answers this test, and since the obvious purpose of the vesting of the land in the State is to distribute it amongst members of the Scheduled Tribes, section 5-A of the Restoration Act would be protected by Article 31-C, notwithstanding that adequate compensation may not be provided by sub-section (2) of section 5-A which limits the compensation to 48 times the assessment of the land.

22. Turning to the question of adequacy of compensation, if section 5-A of the Restoration Act satisfies the requirements of Article 31 -C of the Constitution, the fundamental right, which may have been granted to a person to whom second proviso to Article 31-A(1) could apply, by virtue of the Act being a measure of agrarian reform, would not apply to the non-tribal whose lands are divested by virtue of section 5-A of the Restoration Act. The principles for providing compensation to a non-tribal in the event of the annulment of the transfer, are provided in clause (b) of sub-section (4) of section 3, under which the amount payable to the tribal-transferor for the land restored to him under clause (ii) of sub-section (I) shall consist of an amount equal to 48 times the assessment of the land, and the amount of consideration paid by the non-tribal-transferee for acquisition of the land, whichever is less, plus the value of the improvements if any, made by the non-tribal/transferee therein to be determined by the Collector in the prescribed manner. Section 5-A would apply only when the land cannot be restored to the tribal by reason of his unwillingness to refund the purchase price or for any other reason. What difference will it make to the non-tribal/transferee whether his land goes to the tribal-transferor, or to any other tribal, once he loses the whole land by virtue of the provisions of the Restoration Act, which proceeds on the basis that the bargain to which he was a party, was unconscionable and, therefore, the bargain had to be statutorily regulated and restitution directed? There cannot be different measures of compensation in the same statute for the same land, if the transfer is liable to be statutorily annulled, depending on the person to whom the land would eventually go. The provision in clause (b) aforesaid is protected by Article 31 -B, on account of its inclusion in the 9th Schedule, and the basis adopted under sub-section (2) of section 5-A is identical.

23. While dealing with Article 31(2) as amended by Constitution (Fourth Amendment) Act, 1955, the Supreme Court observed in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, that what is excluded from the Court's jurisdiction is that the said law cannot be questioned on the ground that the compensation provided by that law is not adequate, and neither the principles prescribing the "just equivalent" nor the "just equivalent" can be

questioned by the Court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. Here, the principles laid down u/s 5-A, as they accord with the earlier protected statutory provision, cannot be stigmatised as illusory, when the result flows from the premise that an unconscionable bargain had to be statutorily regulated. The view we are taking is in accordance with the ratio in *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, .

24. Shri R. R. Deshpande contended that the State has completely changed its stand that the Restoration Act was a measure of agrarian reform, which was adopted before the learned single Judge, by abandoning that stand in this Court in trying to support section 5-A of the Restoration Act under Article 31-C of the Constitution. It must be remembered that every Act carries with it the presumption of constitutionality, and unless the petitioner is able to discharge the burden by placing adequate material, the Court would not strike down a legislative provision, if it can be supported by one or the other constitutional provision. Disagreeing with the learned single Judge, we find that section 5-A of the Restoration Act is constitutionally valid and it could not have been struck down by reference to the second proviso to Article 31 A(1) of the Constitution.

25. In the result, we allow the appeals, set aside the orders passed by the learned Single Judge and dismiss the petitions, and discharge the Rule in both the petitions. There will be no order as to costs.