

(1957) 08 CAL CK 0016

In the Calcutta High Court

Case No : Civil Revision No's. 2294, 2316 to 2327, 2379 to 2389, 2391, 2415 to 2435, 2668 to 2672, 2831 to 2846, 2847 to 2869, 2870 to 2877 and 3693 to 3696 of 1956

Surendranath Jana

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-08-1957

Acts Referred:

Constitution of India, 1950 — Article 31A, 31A(2)

Limitation Act, 1963 — Section 17, 18

West Bengal Estates Acquisition Act, 1953 — Section 23, 24, 52, 58, 6

Citation : AIR 1958 Cal 96 : 62 CWN 14

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S. Das, Basanta Kumar Panda, Dwijendra Nath Bose and Benode Behari Haldar, for the Appellant; J. Majumdar, Anil Kumar Das Gupta, Somendra Chandra Bose and P.K. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The subject matter and the legal points involved in this application and 101 other applications are the same. The petitioners in all these applications are occupancy raiyats in respect or holdings situated within the State of West Bengal. The question is as to whether by virtue of the West Bengal Estates Acquisition Act 1953 (Act I of 1954) the interests of the petitioners can be acquired by the State. Before I deal with this point, it will be necessary to state in brief how estates in West Bengal came to be acquired. The West Bengal Estates Acquisition Act 1953, which is West Bengal Act I of 1954 (hereinafter referred to as the "Act") came into operation on the 12th February, 1954 having received the assent of the President. The preamble to the Act states that it is an Act to provide for the State acquisition of estates, of rights of intermediaries therein and of certain rights of raiyats and under-raiyats. u/s 4 of the Act, "it is provided that the State Government may from time to-time by notification declare that

with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate, situated in any district or part of a district specified to the notification, shall vest in the State free from all incumbrances. u/s 2(1), "intermediary" has been denned to mean a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant. The word "estate" has not been defined in the Act, but Section 2(p) lays down that expressions used in the Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act 1835 (VIII of 1885) applies, the same meaning as in that Act, and in relation to other areas meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits. Prior to the coming into operation of the Act, land was held by the Zemindar or proprietor and his tenants, who, as described by Section 4 of the Bengal Tenancy Act, were grouped under three heads, namely,

- (1) tenure-holders, including under-tenure-holders;
- (2) raiyats; and
- (3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats;

and the following classes of raiyats (namely):

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity, or at a rate of rent fixed in perpetuity,
- (b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

2. According to Section 5 (1) of the Bengal Tenancy Act, the word "tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it and includes also the successors In interest of persons who have acquired such a right. Section 5 (2) defines the word ""raiya" as meaning primarily a person who has acquired such a right to hold land for the purpose of cultivating it by himself or by members of his family or by servants or labourers or with the aid of partners, and includes also the successors-in-interest of persons who have acquired such a right. Although the object of the Act was to provide for the State acquisition of estates and the rights of intermediaries therein and of certain rights of raiyats and under-raiyats, in the Act as originally framed, the intermediaries dealt with were "true intermediaries", as described by Bose, J., in the case of Biswambhar Singh and Others Vs. The State of Orissa and Another, , that is to say, the person who holds an interest in the land somewhere between a raiyat and the overlord of the State This however was not all. Chapter VI of the Act" dealt with acquisition of certain khas lands and rent receiving interests. This Chapter VI has undergone three

substantial amendments. In fact, it is under the provisions of this Chapter that the interests of the petitioners in these cases are being acquired. It will therefore be necessary to follow the various amendments and to observe the significance thereof. The heading of this chapter as appearing in the original bill and as retained by the Joint Select Committee was "Special provision for the acquisition of certain interests of raiyats and under-raiyats". But in the heading as it was incorporated in the original Act, or in the body of the chapter, there was no mention made of raiyats or under-raiyats. The chapter consisted of Sections 49 to 52. Section 49 lays down that the provisions of this chapter shall come into force on such date as the State Government may, by notification in the official gazette, appoint. Section 50 as it originally stood was as follows:

"50. Certain persons to be deemed to be intermediaries. For the purposes of this Chapter the following classes of persons, not being intermediaries within the meaning of Clause (i) of Section (2), shall be deemed to be intermediaries within the meaning of this Act, namely :

- (1) persons who hold lands which they cultivate by bargadars as defined in the West Bengal Bargadars Act, 1950, (W. B. Act II of 1950) or which they do not cultivate themselves or by members of their families, or by servants or labourers;
- (2) persons who have sublet their holdings in part or in whole".

Section 51 provided for the vesting in the State of so much of the khas lands of persons referred to in Clauses (1) and (2) of Section 50, which they cultivated through bargadars and which they did not cultivate themselves or by members of their families or by servants or labourers, and of rent-receiving Interests of persons referred to in Clause-(2) of Section 50. It was however provided that persons whose lands have vested in the State under Sub-section (1) would be entitled to retain khas lands not exceeding three acres, as tenants under the State Government. It will thus be seen that nothing was said about the position of the interests of raiyats and under-raiyats in express terms. The first amendment of the Act was by the West Bengal Estates Acquisition (Amendment) Act 1954 (Act XIII of 1954). By this Amendment Act, Section 52. was altered, but the alteration is not of any direct consequence for the purposes of these applications. This was followed by West Bengal Ordinance No. IV of 1954 which also it is not necessary for our purposes to consider. The next amendment was by the West Bengal Estates Acquisition (Amendment) Act 1955 (W. B. Act XXXV of 1955) which came into operation on the 25th November, 1955. By this amendment, the heading of Chapter VI was changed into "Acquisition of Interests of raiyats and under-raiyats". Sections 50 and 51 of the Act were omitted and were to be deemed always to have been omitted. Section 52 was totally altered as follows :

"52. On the issue of a notification u/s 49 the provisions of Chapters II, III, V and VII shall, with such modifications as may be necessary, apply mutatis mutandis to raiyats and under-raiyats as if such raiyats and under-raiyats were

intermediaries and the land held by them were estates and a person holding under a raiyat or an under-raiyat were a raiyat for the purposes of Clauses (c) and (d) of Section 5."

3. It is also not necessary to consider the latest amendment, being Amending Act of 1957 (W. B. Act IV of 1957) which came into operation on the 9th March. 1957.

4. When the West Bengal Government, as well as other State Governments in India, started the acquisition of zemindary estates, the question at once arose as to whether such acquisition was permitted by the Constitution of India. That properties could be compulsorily acquired for a public purpose was provided for by Article 31, but Article 31 itself imposed restrictions upon such acquisition, by making it subject to payment of compensation, which was interpreted judicially as meaning just compensation, that is to say, adequate compensation. The State Governments concerned were not willing to pay such compensation, and indeed it is problematical as to whether any of them had the means of doing so. Such points having been raised in the case of *The State of Bihar Vs. Sir Kameshwar Singh*, it gave rise to the Constitution (First Amendment) Act of 1951 which was made retrospective. The relevant part of Article 31A introduced by the first amendment, runs as follows:

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

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

Provided that where such law is a law 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.

(2) In this Article -

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land-tenures In force in that area, and shall also include any Jagir, inam or muafi or other similar grant....."

(b) the expression "rights" in relation to an estate, shall Include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or the intermediary and any rights or privileges in respect of land revenue",

5. The first amendment of the Constitution came into operation on the 18th June, 1951 and it was in this State of the law that the original Estates Acquisition Act was promulgated In West Bengal, in February, 1954. Soon however it was found necessary to amend the Constitution further. In fact, it was probably hastened by a series of Rules issued by this Court at the instances of raiyats and under-raiyats who claimed that the Constitution did not envisage the acquisition

of their interests By the Constitution Fourth (Amendment Act) 1955 which came Into operation on the 27th April, 1955 two very important amendments were incorporated in the Constitution. The first was in Article 31 of the Constitution, whereby in Clause 2 of the Article 31, it was inter alia provided that no law for the compulsory acquisition or requisition of property shall be called into question in any Court on the ground that the compensation provided for by that law was not adequate. The result of it is that property can still be acquired or requisitioned for a public purpose and compensation would have to be paid, but as long as some kind of compensation was paid, the matter was not justiciable. The fourth amendment also amended Article 31A(2)(b) which has a direct bearing upon the subject matter of these applications. In Article 31A(2)(b), after the words "tenure-holder" were added the words "raiyat and under-raiyat". It therefore came to read as follows :

"The expression "rights" in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary or any rights or privileges in respect of land revenue".

6. It is this amendment which is relied on for supporting the constitutionality of Chapter VI, which by the amendments mentioned above, has now conic to be expressly directed towards the acquisition of the interests of raiyals and under-raiyats. In other words, but for the Fourth Amendment of the Constitution, it would not have been legal to acquire the interests of raiyats and under-raiyats under the Act as it stands at present, but it is claimed that by virtue of the said amendment the provisions are now perfectly legal. It has however been pointed out during the course of the argument that so far as the Act is concerned, It would have been much simpler to have altered the definition of "intermediaries" and to have included raiyats and under-raiyats in that definition, rather than attempt in a round-about way to achieve the same purpose. That however is a matter for the Legislature, and I have to construe the law as it stands. The only other constitutional amendment that I need refer to is the Constitution (Seventh Amendment) Act 1956 which came into operation on the 19th October, 1956. Before this amendment, Item 42 in List III, (Concurrent List) in the Seventh Schedule of the Constitution stood as follows :

"Principles on which compensation for property acquired or requisitioned for the Purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given".

7. This entry has been wholly omitted and substituted simply as: "Acquisition and Requisitioning of Property".

8. This amendment has been referred to in the argument and I shall deal with it later on.

9. So far as the Present applicants are concerned, the relevant facts are as follows: The heading and substance of Chapter VI was altered by the West

Bengal Act XXXV of 1955 as stated above, which came into operation from the 25th November. 1955 so as to enable acquisition of interests of raiyats and under-raiyats. On the 9th April. 1956 a notification dated 9-4-56 was published in the Calcutta Gazette u/s 49 of the Act whereby the provisions of Chapter VI of the said Act came into force from the 10th April. 1956.

By notification published in the Calcutta Gazette. Extraordinary, dated the 13th April, 1956 the Governor of West Bengal declared that in exercise of his powers u/s 4(1) read with Section 52 of the Act, all lands held by raiyats and under-raiyats shall vest in the State of west Bengal from 1st Baisakh 1363 B. S. which is a date that has already passed. The petitioners, all of whom are occupancy raiyats, have come up to this Court and urge that the Act in so far as it affects the rights of occupancy raiyats and the acquisition of their rights, are ultra vires and void. In all these matters there have been a common set of argument and the matters can therefore be disposed of together.

10. Mr. Panda on behalf of the petitioners argues as follows: He says that Article 31A(1) of the Constitution validates a law directed towards acquisition by the State of any estate or of any rights therein. That must mean an existing law, and the existing law to which we should turn is the Bengal Tenancy Act. The West Bengal Estates Acquisition Act 1953 does not define an "estate" but according to Section 2(p) we have to turn for the definition to the Bengal Tenancy Act. Section 3(4) of the Bengal Tenancy Act defines the word "estate" as meaning land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khas mahals and revalue free lands not entered in any register.

He argues that Article 31A(1)(a) authorises the acquisition of an estate or a right in an estate but the rights of a raiyat or an under-raiyat cannot be called an estate or a right in an estate, because a raiyat or an under-raiyat pays rent and not revenue. In other words, it is only a true intermediary that can have an estate or a right in an estate. Therefore the amendment in Chapter VI of the Act which enables the acquisition of the rights of the raiyats and under-raiyats is bad. In my opinion, this point is not of substance.

11. Mr. Majumdar appearing on behalf of the respondents in the first instance draws my attention to the objects and reasons for the Fourth Amendment. The relevant part of the objects and reasons runs as follows:

"It will be recalled that the zemindary abolition law which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to Articles 14, 19 and 31 and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the Courts, Articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting Articles 14, 19 and 31 have raised serious difficulties in the way of the Union and

the States Putting through other and equally important social welfare legislation on the desired lines: e.g., the following:-

(i) While the abolition of zamindaries and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reforms are the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of the land-owners and tenants in agricultural holdings

It is accordingly proposed in Clause (3) of the Bill to extend the scope of Article 31A so as to cover these categories of essential welfare legislation."

12. Mr. Majumdar argues that it is quite clear from the objects and reasons as to why Article 31A(2)(b) was amended and, inter alia, the words "raiyats" and "under-raiyats" were introduced. He says that by the time the Fourth Amendment came to be enacted, the State had already taken over the land of true intermediaries. It then had to take the next step, namely, the taking over of the land of raiyats and under-raiyats, that is to say, the actual tenant. This is what is intended to be achieved by the fourth amendment and the corresponding amendment in Chapter VI of the Act. The question therefore arises as to how far it is permissible to look into the objects and reasons for the purpose of interpreting an enactment. This point has now been well-settled. In the case of *The State of West Bengal Vs. Subodh Gopal Bose and Others*, , Das J., said as follows:

"It is well-settled by this Court that the statement of objects and reasons is not admissible as an aid to the construction of a statute see *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, and I am not, therefore, referring to it for the purpose of construing any part of the Act or of ascertaining the meaning of any word used in the Act but I am referring to it only for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy."

This was followed in *M.K. Ranganathan and Another Vs. Government of Madras and Others*, and in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, .

13. It is therefore permissible to look into the objects and reasons, to see the historical background, and the purpose for which the Fourth Amendment was enacted, and the evil which it intended to remedy. It is quite clear that by the time the Fourth Amendment came to be introduced, the State Governments had already acquired the Interests of the true Intermediaries, and the time had come to take over lands of the raiyats and under-raiyats as well, and to put them in the same position as true intermediaries, leaving them only to enjoy a specified area of land and nothing more. It is somewhat difficult to accept the arguments advanced on behalf of the raiyats, in view of the express terms of Article 31A.

Under that Article, "any" estate or right in an estate was sought to be extinguished, and by Article 31A(2)(b) raiyats and under-raiyats were put on the same footing as proprietors or tenure-holders. Under the circumstance, it is difficult to see how it can be argued that the interests of raiyats and under-raiyats were permitted to be excluded. As regards the point that the rights of raiyats and under-raiyats cannot be said to be an "estate" because it was the right of a tenant paying rent and not revenue. Mr. Majumdar has drawn my attention to the Land Laws of Bengal, being Tagore Law Lectures 1895 delivered by Mr. Justice Sarada Charan Mitra, page 52, where the learned author has pointed out that where the rent was payable directly to Government, the right to receive revenue and the proprietary right to receive rent, having united in the Government, the proprietary interest merges in the paramount title, and rent in such cases is called revenue. By the time that the Fourth Amendment came to be enacted, and certainly before the amendment of Chapter VI of the Act, the true intermediaries had gone and the State was face to face with the tenant. Therefore the nice distinction between rent and revenue had disappeared and what was payable can be called revenue.

14. Next it was argued, this time by Mr. Das, that even if raiyat and under-raiyat be included, what was intended under Article 31A(2)(b) was to include only such raiyatg and under-raiyats as were intermediaries, that is to say, not in actual possession of the land. In my view, this point also is not of any substance, although there is one Allahabad decision which seems to support this view, namely, *Ajab Singh Vs. State of U.P. and Others*, . With great respect J. am unable to agree with the conclusion reached therein. a raiyat or an under-raiyat is certainly not a true intermediary, what then could be the significance of including them in the same List as other true intermediaries, and what is the significance of the words "other intermediary" at the end of the list? It is urged that the "ejusdem generis" rule should be applied.

15. In other words, what is argued is that the provisions contained in Article 31A(2)(b), before the amendment, contained an enumeration of true Intermediaries only. When the words "raiylats" and "under-raiyats" have been introduced, they are also to be taken to have been included only when they fill the role of intermediaries. It is said that a raiyat or under-raiyat is not a true intermediary but it is possible for a raiyat or under-raiyat to hold the position of an intermediary, e. g., where a raiyat has let out to an under-raiyat or an under-raiyat has let out to another under-raiyat. It is argued that only in this particular sense a raiyat or under-raiyat can be included within the mischief of Article 31A(2)(b) as it now stands. If this is the true position, then the result would be that the provisions of Chapter VI of the Act, in so far as it deals with the interest of a raiyat or an under-raiyat in actual possession of the lands, would not be covered by the Constitutional protection of Article 31A(2)(b). Under Chapter VI of the Act, the provisions of the Act are applicable to raiyats and under-raiyats, not as intermediaries, but "as if" they were intermediaries. In other words, it is a deeming provision. The significance of such a provision has been explained by

the Supreme Court in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, . It was held there that when a statute enacts that something shall be deemed to be that which it is not, the Court is bound to give effect to the statutory fiction. A person is "deemed to be" something when he is not in fact that which the law directs him to be treated as. AIR 1930 54 (Privy Council) . It is not for me to explain why it was found necessary to treat raiyats and under-raiyats "as if" they were intermediaries and not to include them in the definition of intermediaries as given in the Act. Perhaps it was felt that as they were not true intermediaries they should be treated, not as intermediaries, but as if they were intermediaries. But whether raiyats or under-raiyats are true intermediaries or not, it is obvious that under Chapter VI, as framed now, there is no longer any difference between the raiyats and under-raiyats and other true intermediaries, and lands held by them must be deemed to be estates or right in estates which will vest in the State, giving the raiyats and under-raiyats the same rights as other intermediaries, of holding a specified area of land etc., as laid down in Section 6 of the Act. The argument upon this point amounts to this that in so far as it deals with the lands of raiyats or under-raiyats who are actually in possession, as the petitioners before me claim to be, the provisions of the Act have exceeded the protection of Article 31A(2)(b) of the Constitution. Coming back to the provisions contained in Article 31A(2)(b) of the Constitution, it does not appear to me that the Fourth Amendment intended only to affect the rights of the raiyat and under-raiyat in the limited sense mentioned above. I have set out above an extract of the object and reasons of the Fourth Amendment, which shows the historical background which necessitated the introduction of it. There was no question of affecting the rights of the raiyat and under-raiyat partially. By the time the Fourth Amendment came to be enacted, the true intermediaries were out of the picture and it was found necessary to put the interests of all tenants on the same footing as other true intermediaries and they were also to hold a limited area of land etc., which was allowed to all intermediaries u/s 6 of the Act. There was no intention of leaving anything else outstanding, remaining vested in the raiyat or under-raiyat. In my opinion, the rule of ejusdem generis does not help because the classes of persons enumerated before the words "other intermediary", do not appear to belong to the same genus. For example, the interest of a proprietor is entirely different from that of a tenure holder. Again, the interest of a tenure holder is not the same as that of the raiyat or under-raiyat. Indeed, they have been defined as belonging to two different classes altogether in the Bengal Tenancy Act, as stated above. Then again, Article 31A(1)(b) protects the acquisition by the State of "any estate or of any rights therein." The generality of these words cannot be taken away by the provisions of Article 31A(2)(b). One way of looking at it may be that the Constitution, by the Fourth Amendment, has declared raiyats and under-raiyats as intermediaries although they are not in fact true intermediaries. Mr. Das is perfectly willing to accept this interpretation, but follows it up by saying that under Chapter VI, the raiyat or under-raiyat has not been treated as an intermediary but "as if he was an intermediary, and therefore the provisions are

defective, an argument which I am unable to understand. As I have already stated above, it is legitimate to argue that it would have been simpler to include the raiyat or under-raiyat within the definition of an "intermediary" in Section 2(i) of the Act, but I do not see how the position is improved because they have been deemed to be intermediaries without such inclusion. Mr. Majumdar has also pointed out that in West Bengal, raiyats and under-raiyats, are in the majority of cases, in actual possession of the land, and it is only in rare cases that they act as intermediaries. It could not, therefore, have been the intention of the Constitutional amendment to affect the interests of this limited class, leaving the majority of cases unaffected. Then again, the word "intermediary" is not defined in the Constitution and it is a recognised method of interpreting the Constitution to give it the most liberal construction, a construction that will give effect to the provision rather than one which will obliterate it. Reading the provisions of Article 31A and the provisions of the Act, I am of opinion that the interest of a raiyat or an under-raiyat must now be regarded as if it was an estate or right in an estate of an intermediary as referred to in both these provisions of law, and that Chapter VI has affected such rights, and the raiyat or under-raiyat is now in the same position as any other intermediary, as defined by the Act.

16. The next point taken by Mr. Panda is that the provisions of Chapter VI are Vague and uncertain so that no effect can be given to them. For example, he points out that u/s 52 of the Act, certain provisions of the Act are to apply *mutatis mutandis* to raiyats and under-raiyats, as if such raiyats or under-raiyats were intermediaries. This means that the provisions referred to therein, which were in the first instance meant to be applied to intermediaries as defined in the Act, were to apply to raiyats and under-raiyats with such modifications as were necessary. Mr. Panda poses the question as to what are the modifications that are to be made and who was to decide the same. In my view there is no substance in this argument. Deeming provisions of law are usually made in this fashion. The alternative would have been to repeat the provisions of all the Chapters which were meant to apply, increasing the bulk of the Act needlessly. Next, Mr. Panda argues that the application of Section 52, as it has been framed at present, may give rise to great confusion. For example, he says that Chapters II, III, V and VI have been made applicable to raiyats and under-raiyats but not Chapter I. Section 3 in Chapter I lays down that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law, or any contract express or implied, or in any instrument, and notwithstanding any usage or custom to the contrary. He" argues that if this does not apply to the raiyat or under-raiyat, then the rights enjoyed by them under some other law, or contract, or usage would remain outstanding. Although this is a very interesting point, I do not see the difficulty in practice. The Act aims at the acquisition of the entire interest of the raiyat or under-raiyat, which now vests in the State. I do not see what difficulty could possibly arise upon the non-application of Section 3. A contract, usage or custom cannot override the provisions of a statute, and no provision of law is brought to my notice which

would come into conflict with the vesting provision in the Act. Next Mr. Panda argues that under Sections 39 and 48 of the Act, a new record-of-rights is to be drawn up. The Bengal Tenancy Act also requires or provides for the drawing up of a record-of-rights periodically. Section 59 of the West Bengal Land Reforms Act proposes to repeal the Bengal Tenancy Act, but the repeal has not yet been declared. Mr. Panda argues that there being more than one provision for the drawing up of the record-of-rights, which was to be given effect to? In my opinion, that again presents no difficulty. All lands have now vested in the State, leaving the tiller of the soil face to face with the state and the record-of-rights has correspondingly lost all its complications. Even assuming that there exist two provisions of the nature mentioned above, it is not likely to be put into operation so as to come into conflict with each other.

17. The next point which is taken up by Mr. Panda and followed up by Mr. Das, is also an interesting point, but I regret to say that it is of no substance. It is argued that the Act does not make the payment of compensation compulsory, and in fact must be taken to have provided for no compensation at all, because it is not stated anywhere that the State was charged with the payment of compensation. The question of compensation is dealt with in Chapter III of the Act. Section 14 deals with the preparation of the compensation assessment roll. Section 16 lays down How the gross net income was to be computed. Section 17 lays down how the amount of compensation is to be assessed. The amount of compensation payable is set out in a table and is dependent on the net income. Section 18 lays down how the compensation assessment roll was to be published and how objections were to be disposed of. Sections 19 and 20 deal with the mode in which the Compensation Officer was to make orders and how appeals therefrom were to be dealt with. Section 21 deals with the final publication of the compensation assessment roll and Section 23 deals with the manner of payment of compensation. Section 25 lays down certain restrictions as to amount payable as compensation and finally Section 26 lays down certain limitations as to attachment of compensation etc. It is argued that there is no charging section and therefore there is no liability on the part of the State to pay compensation. It is next argued that even if the liability be spelt out from the provisions aforesaid, it is not enforceable because u/s 58 no suit, prosecution and other legal proceeding will lie for enforcement of the compensation money. According to Mr. Das Article 31(2) applies to this case and the law which provides for acquisition must also lay down provisions for compensation and either fix the amount or specify the principles on which, and the manner in which, the compensation is to be determined and given. According to him, the present Act does not obey these limitations. Next he argues that the payment is wholly uncertain. He points out that under Article 204 read with Article 266 of the Constitution, appropriations out of the consolidated fund which are not charged thereon have to be brought before the Legislative Assembly and voted upon. He argues that it may so happen that in a particular year the Assembly may refuse to vote a grant for payment of compensation and then the persons whose properties have been

compulsorily acquired will be left without remedy. The first answer to this argument, given by Mr. Majumdar, is that under Article 31A, any estate or any right in an estate can now be taken or acquired even without compensation. He points out that under Article 31A, no such law 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. It is Article 31 which lays down that the State can acquire property for a public purpose but with payment of compensation. Where Article 31A is applicable, no compensation need be paid at all. To this Mr. Das has given a very interesting answer. He says that although Article 31A was introduced by the First Amendment which came into operation on the 18th June, 1951 the matter was governed by Entry 42 in List III (Concurrent List). Entry 42 which runs as follows:

"42. Principles on which compensation for property acquired or requisitioned for purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

This continued to hold the field until the Entry was amended by the Constitution (Seventh Amendment) Act, 1956, which came into operation, on the 19th October, 1956 long after the Act came into operation. Entry 42 now reads as:

"Acquisition and requisitioning of property". Mr. Majumdar points out that a similar point was raised in the case of *The State of Bihar Vs. Sir Kameshwar Singh*, . It was held there that failure to make a law under Entry 42 of List III could not make an entry made under Entry 36 of List II bad. In other words, a law which has been made by the State Legislature for acquisition or requisitioning of property under Entry 36 of List II, would not be bad because the legislature also did not legislate, under, or in accordance with, Entry 42 in List III. Apart from this, I do not think that it is a sound proposition that the Act does not provide or lay down provisions for the payment of compensation. I have already referred to the provision of Chapter III which lays down how the compensation is to be calculated, the amount of it and the procedure to be adopted for its payment. In Section 23 it has been laid down that within six months after the date within which appeals u/s 20 may be made, has expired, the Compensation Officer "shall in the prescribed manner proceed to make payment of the compensation to the intermediaries who are entitled to such compensation in terms of the compensation assessment roll together with interest. Next we come to the rules framed under the Act. Rule 19 lays down that "compensation shall be paid u/s 23 in accordance with the provisions of Schedule A appended to these rules". Mr. Das points out that u/s 24, payment is to be made, not by the State, but by the Compensation Officer, In my opinion this objection is not sound. The Compensation Officer is only an agent of the State, and has no personal liability. Under the Land Acquisition Act also, there is no provision for the State paying compensation, but the payment is made by the Land Acquisition Collector. There is therefore sufficient provision in the Act read with the rules, charging the State

with the liability to pay. The objection, that if the State did not pay, then the parties were without remedy, is not also sound, Section 58 of the Act states that no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or Intended to be done in pursuance of the Act or any rules made thereunder. This provision is practically the same as Section 17 of the Defence of India Act. In *Hindusthan Housing and Land Development Trust Ltd. Vs. State of West Bengal*, (J). Bose J., held that non-payment of compensation was not an act done in pursuance of the Defence of India Act or any rules made thereunder, nor could such an act be considered as anything done in good faith under the statute. Consequently there was no bar to the maintainability of a suit to enforce payment of compensation. Also see *State of West Bengal Vs. Brindaban Chandra Pramanik and Another*, . In the *Darbhanga* case (B), mentioned above, the same point was taken that the provision in the Bihar Land Reforms Act as to compensation was unenforceable because specific provisions have not been made therefor. This argument was repelled. Mr. Majumdar has also drawn my attention to the decision of *Attorney-General v. De Keyser's Royal Hotel Ltd.* 1920 AC 508 (L), where it was held that in a compulsory acquisition by the Crown, payment of compensation was inherent, and that a petition of writ would lie for enforcement thereof. Also see *State of Bihar v. Sir Kameswar Singh*, (B) supra, at P. 282; AIR 1940 105 (Privy Council) . Mr. Majumdar has also drawn my attention to Articles 17 and 18 of the Indian Limitation Act which provide for the institution of a suit for compensation for lands acquired for a public purpose. Although the Limitation Act does not furnish a cause of action, it indicates that the view that a suit lies under such circumstances is the proper view to take. Upon this point, Mr. Das has cited the case of *the Province of Bombay v. The Municipal Corporation of the City of Bombay* AIR 1947 PC 34 (N). It was held there by the judicial Committee that the general principle applicable in England in deciding whether the Crown is bound by a statute that it must be expressly named or bound "by necessary implication" applies also to Indian legislation, and that the Crown was not bound either expressly or by necessary implication, by Sections 222 and 265 of the City of Bombay Municipal Act. 1888 which gave the municipality power to carry water-mains across any land situate within the city. Mr. Das argues that in the absence of specific provision in the Act making the State liable, no liability could be enforced against it for compensation. To start with, this decision has been dissented from in *Corporation of Calcutta Vs. Director of Rationing and Distribution*, (O), where the learned Judges have pointed out that decisions of the Judicial Committee were entitled to great weight but were no longer binding. The decision in the Bombay case depended on the peculiar provisions of the English law, and there is no reason why it should be applied to India any longer. But quite apart from that, I have already indicated that the Act and the rules do provide expressly, and certainly by necessary implication, that compensation should be paid, and therefore this question does not arise at all. Mr. Anil Das Gupta has drawn my attention to an able exposition of the subject in "Governmental Liability" by Street p. 143 at P. 165. The learned author after an

exhaustive treatment of the subject has concluded that the rule that in all cases where the King's rights and that of a subject conflicted, the King was preferred, is a medieval rule and rather inappropriate to the present public and executive concept of the Crown. The learned author comments by saying -- "moreover the right of the Crown to be treated differently from other administrative bodies is increasingly difficult to justify but the Judges can do much to alleviate the difficulties XXXXX".

18. I hold that there are ample provisions in the Act and Rules for the payment of compensation, that such compensation is payable by the State acquiring the properties under the Act, and payment is enforceable in courts of law. The adequacy of such payment is however beyond the cognisance of the courts.

19. As regards the point of compensation not having been charged on the consolidated funds, I fail to see how it affects the validity of the Act. It is true that the compensation has not been charged by the Act on the consolidated fund, and as such is votable, but the right to receive compensation does not depend on the voting of the grant. The State having acquired the property is bound to pay compensation. It will be the look-out of the Government to procure the necessary funds and if it cannot do so, it must either return the property or compensation can be realised in the same manner as it can be realised in any other case, by Institution of a suit, by the obtaining of a decree, and by execution of the decree against the assets of the State.

20. These are the only points that have been raised in these cases and in my opinion they have failed. In the premises, these applications must fail and be dismissed. The Rules, namely, C. R. Nos. 2316 to 2327, 2379 to 2389, 2415 to 2435, 2831 to 2846, 2847 to 2869, 2391, 2294, 2668 to 2672, 2870 to 2877 and 3693 to 3696 of 1956 are discharged and all interim orders vacated.

21. There will be no order as to costs.

22. The operation of the orders are stayed for one month to enable the petitioners to prefer appeals.

23. I might mention here that both Mr. Das and Mr. Panda have made it clear that they are not abandoning the points which have been raised in the case of Purnendu Kumar v. The State of West Bengal, C. R. No. 2994 of 1954 (Cal) (P), in which the Act was unsuccessfully challenged on various grounds and which is now pending in Appeal (Appeal No. 285 of 1955).