

(1985) 12 MAD CK 0030
In the Madras High Court

The Authorised Officer (Land Reforms) Mayuram and Another	APPELLANT
Vs	
K.V. Balasubramaniam	RESPONDENT

Date of Decision : 02-12-1985

Acts Referred:

Citation : (1986) 1 MLJ 307

Hon'ble Judges : M.N. Chandurkar, C.J

Bench : Division Bench

Judgement

M.N. Chandurkar, C.J.—This judgment will dispose of writ appeals W.A.Nos. 255 to 257 of 1977, W.A. No. 242 of 1977, W.P. No. 2878, and W.P. No. 2941 of 1978.

2. The question involved in the writ appeals relates to the determination of compensation in respect of surplus lands under the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, hereinafter referred to as the Tamil Nadu 1961 Act. The question is whether the compensation for the lands declared as surplus has to be determined in accordance with the rates prescribed in Schedule HI, as it was on the day on which the Tamil Nadu 1961 Act came into force, that is , 6.4.1960 or in accordance with the schedule which was amended by the Tamil Nadu Act 39 of 1972 which came into force from 1st of March, 1972. W.P.Nos. 1855, 1856 and 1858 of 1974 which are filed by the original petitioners out of which W.A.No. 255 to 257 of 1977 arise and W.P.No. 2941 which is filed by the petitioner in W.P.No. 7002 of 1975 out of which W.A.No. 242 of 1977 arises challenge the constitutional validity of Tamil Nadu Act 25 of 1978 which was brought into force with retrospective effect from 1.3.1972. The learned single Judge who has disposed of three writ petitions W.P.Nos. 1855, 1856 and 1858 of 1974 has taken the view that the rights of the land owner to compensation in respect of the lands which are acquired as surplus lands were crystallised on the day on which a final statement declaring surplus land is published u/s 12 of the Tamil Nadu 1961 Act, the date in the three petitions being 13.9.1972. Accordingly, the learned Judge held that the rate of compensation at which the land owners would be entitled to compensation would be the rates prescribed in

Schedule III as it was on 13.9.1972. That is also the view which the learned single Judge has taken in W.P.No. 7002 of 1975. The correctness of this view is challenged by the State Government in the four appeals.

3. In order to appreciate the respective contentions of the parties, it is necessary to briefly refer to the statutory provisions.

4. The Tamil Nadu 1961 Act received the assent of the President on 13.4.1962 and though it was published in the Gazette on 2.5.1962, the date of commencement of the Act was specified in Section 3(11) of the Act as 6th of April, 1960. It is not necessary to refer in detail to the several provisions of the Act. But u/s 10 it was provided that on the basis of the return furnished under Sub-section (1) of Section 8, the Authorised Officer after making an enquiry was to prepare and publish a draft statement as regards lands in excess of the ceiling area. This was to be followed by publication of a final statement u/s 12. Section 12 inter alia provided that the Authorised Officer shall publish the final statement specifying therein the entire land held by the person, the land to be retained by him with the ceiling area and the land declared to be surplus land and such other particulars as may be prescribed and a copy of such final statement was to be served on the persons referred to in Sub-section (5) of Section 10 of the Act. Sub-section (5) of Section 10 of the Act refers to the tenants, creditors and all other persons, who in the opinion of the Authorised Officers were interested in the land to which the draft statement u/s 10 related.

5. The statement published u/s 10 could be subject of an appeal to the Tribunal u/s 78 of the Act. The Act further provided for publishing a notification to the effect that the surplus land was required for a public purpose. Section 18(1) of the Act reads as follows:

After the publication of the final statement u/s 12 or 14, the Government shall, subject to the provisions of Sections 16 and 17, publish a notification to the effect that the surplus land is required for a public purpose.

The other relevant provision is in Section 18(3) which reads as follows:

On the publication of the notification under Sub-section (1), the land specified in the notification together with the trees standing on such land and buildings, machinery, plant or apparatus constructed, erected or fixed on such land and used for agricultural purposes shall, subject to the provisions of this Act, be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such land with effect from the said date, be deemed to have been extinguished.

Provided that where there is any crop standing on such land on the date of such publication the authorised officer may, subject to such conditions as may be prescribed permit the harvest of such crop by the person who had raised such crop.

Section 50 of the Tamil Nadu 1961 Act provided that every person whose right, title or interest in any land is acquired by the Government under Chapter II (Sections 12 and 18 were included in Chapter II) shall be paid compensation according to the rate specified in Schedule III. We are not concerned with the details on the rate of compensation; but it is necessary to mention that paragraph 6 in the Schedule specified the scale according to which the amount of compensation was to be determined. The amount of compensation was to be determined on the basis of the net annual income from the land. The scale provided for the first sum of Rs. 5,000 or any portion thereof of the net annual income from the land, 12 times such sum or portion. The compensation was scaled down for further slabs of Rs. 5,000 each of the net annual income to 11 times, then to 10 times and the residuary Clause (iv) provided for 9 times the balance of the net annual income as compensation. Paragraph 6 reads as follows:

The amount of compensation for the land acquired by the Government under this Act shall be determined in accordance with the following scale, namely-

- (i) for the first sum of Rs. 5,000 or any portion thereof of the net annual income from the land, 12 times such sum or portion;
- (ii) for the next sum of Rs. 5,000 or any portion thereof of the net annual income from the land, 11 times such sum or portion;
- (iii) for the next sum of Rs. 5,000 or any portion thereof of the net annual income from the land, 10 times such sum or portion;
- (iv) for the balance of the net annual income from the land, nine times such balance.

The Tamil Nadu 1961 Act was amended from time to time, one such amendment was made by Tamil Nadu Act 17 of 1970 known as the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970. By this Act, the date of the commencement of the Act which was originally specified as 6.4.1960 was substituted by 15th of February, 1970. A reduction was made in the figure of ceiling area and the ceiling area of 30 standard acres was reduced to 15 standard acres. An important provision on which mainly the case of the original petitioners has been canvassed before us is in Section 3 of the Tamil Nadu Act 17 of 1970. Section 3 is a saving provision which reads as follows:

(1) Subject to the provisions of Sub-section (2) any action taken (including any order made, notification issued, decision or direction given, proceeding taken, liability or penalty incurred and punishment awarded) under the provisions of the principal Act before the date of the publication of this Act in the Fort St. George Gazette may be continued or enforced after the said date in accordance with the provisions of the principal Act as if this Act had not been passed.

(2) Nothing in Sub-section (1) shall be deemed to entitle any person whether or not such person is a party to any proceeding mentioned " Sub-section (1), to hold after the 15th day of February, 1970, land in excess of the ceiling area

under the principal Act as modified by Section 2 and the provisions of the principal Act as modified by Section 2 shall, after the said date, apply to such person.

6. Later on, the Tamil Nadu 1961 Act came to be amended by two Acts, being Tamil Nadu Act 20 of 1972 by which the ceiling area for a family came to be reduced from 60 standard acres to 40 standard acres with effect from 1.3.1972 and Tamil Nadu Act 37 of 1972 provided for a penalty for an acquisition of land in excess of the ceiling area.

7. The other relevant enactment for purposes of these appeals and writ petitions is Tamil Nadu Act 39 of 1972 which was called the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fourth Amendment Act, 1972, hereinafter referred to as the Tamil Nadu Act 39 of 1972. By this Act, the date of the commencement of Tamil Nadu 1961 Act was changed to 1.3.1972. In respect of the family the ceiling limit was further reduced to 30 standard acres. But one of the material amendments was the one made in Schedule III of the Tamil Nadu 1961 Act. The effect of the amendments made in Schedule III by Section 4 of the Tamil Nadu Act 39 of 1972 was that for item 4 in paragraph 6, a further scale of compensation was introduced with the result that while under the Tamil Nadu 1961 Act the minimum compensation receivable by the land owner was 9 times the net annual income, a further scale was provided for and the last part of the scale only provided for two times the balance of the net annual income as the quantum of compensation. This section was brought into force on 21.12.1972.

8. There are two more amendments which have some relevance. The Tamil Nadu Act 7 Of 1974 was passed by the Tamil Nadu Legislature and though it was published after receiving the assent of the President for the first time on 15.2.1974, it was given retrospective effect from 1.3.1972. One of the important amendments made was that in Section 18(3) in the place of the words "with effect from the date of any such publication" the words "with effect from the date of the commencement of this Act were to be substituted. The result of this amendment was that while u/s 18(3) as it originally stood surplus lands were deemed to have been acquired for public purpose and vested in the Government free from all encumbrances with effect from the date of the publication of the notification u/s 18(1) of the Act, as a result of the amendment by Tamil Nadu Act 7 of 1974 the lands were deemed to have vested in the Government with effect from 15.2.1970. We may at this stage point out that the effect of the amendment of Section 18(3) would be that even if the notification u/s 18(1) of the Act is published after 1.3.1972, the compensation would be payable according to the land owners on the basis of Schedule III as un amended. There was a further amending Act passed by the Tamil Nadu Legislature being Tamil Nadu Act 25 of 1978 which was described as Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1978. This Act which was published on 18.5.1978, was given retrospective operation from 1.3.1972 and what was done by way of amendment in Section 18(3) by Tamil Nadu Act 7 of 1974 was undone

by providing in Section 4 that on and from the first day of March 1972, in Section 18(3) of the Act for the words "with effect from the date of the commencement of this Act" the words "with effect from the date of such publication had been substituted. The effect of this amendment is that Section 18(3) was restored to its original form with the result that once again the lands which were surplus, were deemed to have been acquired for a public purpose and vested in the Government only from the date of the publication of the notification u/s 18(1). This amendment has according to the counsel for the landowners the effect of taking away a right to have compensation determined in accordance with the unamended schedule and has therefore, been challenged as ultra vires and unconstitutional in the two writ petitions W.P.Nos. 2878 of 1978 and 2941 of 1978.

9. On behalf of the landowners Mr. V. Sri devan and Mr. Kunchithapadam have heavily relied on the saving provision in Section 3(1) of the Tamil Nadu Act 17 of 1970. It may at this stage be stated that so far as the landowners in the three writ appeals and W.P.No. 2878 of 1978 are concerned, undisputedly the final statement u/s 12 has been published on 21.7.1972 and 13.9.1972 respectively. The notification u/s 18(1) has been published on 28.2.1973 and possession of the surplus land has been taken in March 1973. The draft compensation roll has been published u/s 50 of the Act on 1.8.1973 and a final compensation roll has been published u/s 50 of the Act on 15.12.1983. There are appeals pending against this determination of compensation before the Land Tribunal under the Act but simultaneously the petitioners (Landowners) also filed three writ petitions challenging the view taken by the authorised officer that the compensation was payable in accordance with the amended schedule. In so far as the landowner who has filed W.P.No. 2941 of 1978 is concerned, the final statement u/s 12 has been published on 9.8.1972. The notification u/s 18(1) acquiring the surplus land was published on 28.2.1973 and lands were taken over by the Government on 15.4.1973.

10. The learned Advocate General, who appears in support of the appeals by the State, has contended that the learned Judge was in error when he took the view that the right to compensation is crystallised on the date when the final statement is published as required by Section 12 of the Tamil Nadu 1961 Act. According to him unless the lands vest in the State and are acquired by the State, no right to claim any compensation can at all arise because the land owners continued to be in possession of the land and they are entitled, until dispossessed, to cultivate the land. Therefore, according to the learned Advocate General the right to compensation would accrue only on the date the notification contemplated u/s 18(1) of the Act that the surplus land is required for a public purpose is published. Thus, according to the learned Advocate General the compensation to be paid will have to be determined in accordance with the rates prescribed in Schedule HI as it stood on the date on which the notification u/s 18(1) was published because it is only on the day of publication of that notification the lands are deemed to have been acquired for a public purpose and

vest in the Government free from all encumbrances.

11. As against this argument the learned Counsel appearing for the landowners have contended that a distinction has to be made between the right to receive compensation and the changed rate of compensation. It is argued that the right to receive compensation at a particular rate accrued on 6.4.1960 when the legislation relating to surplus land became operative. Further, it is contended that having regard to the provisions of the saving clause in Section 3(1) of Tamil Nadu Act 17 of 1970, the legislature expressly saved all rights which had accrued to the landowners under Tamil Nadu Act 58 of 1961 before its amendment. It is argued that Tamil Nadu Act 39 of 1972 does not undo the effect of the saving provision in Section 3(1) of Act 17 of 1970 and, therefore, notwithstanding the amendment of Schedule HI by Tamil Nadu Act 39 of 1972, the landowners were entitled to have the compensation determined in accordance with the un amended schedule because Section 3(1) of Tamil Nadu Act 17 of 1970 expressly provided that all proceedings which were taken under the provisions of the Principal Act before the date of the publication of Tamil Nadu Act 17 of 1970 may be continued in accordance with the provisions of the Principal Act as if Tamil Nadu Act 17 of 1970 had not been passed. It was pointed out that if the Legislature intended that the schedule as amended by Tamil Nadu Act 39 of 1972 was to be made applicable to the pending proceedings relating to the determination of surplus land, then such a provision would have been found in Tamil Nadu Act 39 of 1972 itself and inasmuch as the saving provision in Section 3(1) of Tamil Nadu Act 17 of 1970 has been left untouched by Tamil Nadu Act 39 of 1972, in so far as the petitioners (Landowners) are concerned, the compensation had to be determined with reference to the un amended Schedule III.

12. It is necessary at the outset to ascertain whether the view taken by the learned Judge that the right to compensation arises on the date on which the final statement is published u/s 12 is supported by the provisions of the Act. The provision for compensation is made in Section 50 of the Act. Section 50 expressly provided that every person whose right, title or interest in any land is acquired by the Government under Chapter II shall be paid compensation according to the rate specified in Schedule III. Sub-section (2) of Section 50 further provides that any person claiming any compensation under Sub-section (1) may, within thirty days from the date of the publication of the notification under Sub-section (1) of Section 18 prefer the claim before the authorised officer in such form and containing such particulars as may be prescribed. Sub-sections (1) and (2) of Section 50 thus make it clear that the right to be paid compensation arises only in favour of a person whose right, title or interest in any land is acquired by the Government. Acquisition of interest in land is, therefore, a pre-condition before a right to compensation can arise. Reference in Section 50(1) to the right title or interest in any land being acquired by the Government has obviously a reference to the acquisition which is provided for in Section 18(3) of the Act. The scheme of the provisions from Sections 12 to 18

shows that the notification u/s 18 specifying which land is surplus and therefore, which surplus land is required for a public purpose has to be issued only after the final statement is published u/s 12 and after the conclusion of any other proceedings which could be taken either by way of appeal by the landowner who is entitled to challenge the final statement or certain amendments which may be required to be made in the final statement as contemplated by Section 14. It is only after the land, which is to be declared as surplus land, is identified that a notification u/s 18(1) can be issued. It is to be remembered that a right to compensation does not arise merely by virtue of the enactment of Tamil Nadu Act 58 of 1961. A right to compensation will arise only after the landowner is deprived of any land which is declared surplus and until such time as any particular pieces of land identifiable by their survey numbers are specifically declared as surplus and by virtue of the fiction provided for in Section 18(3) they are deemed to have been acquired for a public purpose and they are deemed to have vested in the State Government, there could never be any occasion to claim any compensation in respect of the surplus land. Merely because the statement issued u/s 12 is referred to as a final statement, it cannot be said that the right to compensation can arise on the publication of that final statement. As we have pointed out till such time as the notification u/s 18(1) of the Act is not issued, the landowner continues to be the owner of the land and is entitled to cultivate the land and get the produce from the land. There is bound to be an interval of time between the publication of the final statement u/s 12 and the publication of the declaration of surplus land u/s 18(1). If the view of the learned Judge that the right to compensation is crystallised on the date on which the final statement is published u/s 12 of the Act is accepted as correct, it will mean that even though the land does not vest in the State and the land is not even acquired by the State, the State will be required to pay compensation in respect of land of which the landowner continues to be the owner and is in fact cultivating the said land. Such a construction will mean that the landowner will enjoy the produce of the land and also get the additional benefit of compensation for the same period. The scheme of the Act clearly indicates that the legislature having specifically provided for a particular date of vesting of surplus land which has the fictional effect of depriving the landowner of ownership rights in the land which is declared as surplus, there is no earlier point of time with reference to which the right to compensation arises. We are, therefore, unable to accept the view taken by the learned single Judge that the right to compensation gets crystallised on the date on which the notification u/s 12 is issued. Section 18(1) and (3) read together clearly indicate that the acquisition having been intended to take place only on the date on which the notification u/s 18(1) is issued and the vesting of the surplus land having been intended to take place also simultaneously on the same day, the right of compensation can arise only on the date of the notification u/s 18(3) and not earlier.

13. If this is the correct position of law according to us then the compensation will have to be determined in accordance with Schedule III of the Act as modified

by Act 39 of 1972. Section 4 of that Act which amends Schedule III brings into force the amended Schedule III with effect from 21.12.1972. The consequence is that whenever a notification has been issued u/s 18(1) after 21.12.1972, the rights of the parties to compensation will have to be determined in accordance with the amended schedule.

14. It is, however, contended on behalf of the petitioners that notwithstanding the provision of Section 4 in Act 39 of 1972, the landowners will have a right to have the compensation determined in accordance with the original Schedule by virtue of the saving provision made in Section 3 of Act 17 of 1970. We have already reproduced Section 3 of Act 17 1970. The argument is that the enactment of Act 39 of 1972 does not take away the rights which were saved by Section 3 of Act 17 of 1970 and therefore notwithstanding the provisions of the amended schedule introduced by Act 39 of 1972, the compensation will have to be determined in accordance with the un amended Schedule III of the Act. This contention in our view is based on a misreading of the scope of the provisions of Section 3 of Act 17 of 1970. The provisions of Section 3 are like the usual saving provisions which are to be found in Section 6 of the General Clauses Act or Section 8 of Madras General Clauses Act. It is necessary to remember that when in a subsequent enactment a saving provision is enacted, the object of the legislature is to save the rights which have already accrued to a citizen from the operation of the subsequent enactment unless the subsequent enactment is intended to operate retrospectively. But it has to be remembered that a saving provision in an enactment will only save and preserve such of the rights of a person which would otherwise have been affected by the subsequent enactment or the amended provision of law. Therefore the scope of a saving provision is limited in character and its operation is limited so as to prevent the amended or new provisions from affecting the vested rights. A saving clause cannot go beyond the new provisions and the only effect of Section 3 of Act 17 of 1970 will be that in respect of such of the matters that are affected by Act 17 of 1970 or the rules, the rights of the parties will have to be determined as if Act 17 of 1970 has not come into force. If we now peruse the provisions of Act 17 of 1970, we find that the substantial amendments are made in the definition Clause 3(11) of the principal Act where the date of commencement of the Act was now to be 15.2.1970. Then there was an amendment to Clause (14) in Section 3. Clause (14) deals with the definition of "family" and the original explanation was to be renumbered as Explanation 1, and a second explanation was added so that the definition of "family" alone came to be amended. Then there was an amendment in Clause (31) where a wholly new clause was substituted. There was then an amendment in Section 5 of the principal Act which prescribes the ceiling area and this was an extensive amendment of the different clauses with the substantial result that wherever the ceiling area was prescribed as 30 standard acres, the figure 15 standard acres was sought to be substituted. Then, apart from Section 5, there was an amendment in Section 8 also. That was again to give effect to the new figure of the ceiling area. There were extensive amendments also in

Section 8. There were amendments in Section 21. Section 21-A was added to provide for validity of partitions and certain transfers. There was amendment in Sections 22 and 23 and a new Section 60-A was added. There was also an amendment in Section 96 of the principal Act. All these were by virtue of Section 2 of the Act 17 of 1970. It was thereafter that the saving provision in Section 3(1) was made. The effect of Section 3(1) therefore would be that notwithstanding the several amendments, subject of course to what was specified in Section 3(2), those amendments were not to be taken into account in so far as proceedings pending on the date on which Act 17 of 1970 came into force were to be considered. Sub-section (2) of Section 3 is in the nature of a proviso and it made it clear that nothing in Sub-section (1) shall be deemed to entitle any person whether or not such person is a party to any proceeding mentioned in Sub-section (1), to hold after the 15th day of February, 1970 land in excess of the ceiling area under the principal Act as modified by Section 2 and the provisions of the principal Act as modified by Section 2 shall, after the said date, apply to such person. Sub-section (2) therefore made it clear that notwithstanding the saving provision, a person was not entitled after 15.2.1970 to hold land in excess of the ceiling area as prescribed by the various amendments made by Act 17 of 1970. Therefore, the operation of Section 3(1) must be restricted only to the area covered by the various amendments made by Act 17 of 1970 and no provision in Act 17 of 1970 having dealt with the quantum of compensation or the rate of compensation, there was no question of any right to receive compensation under an amended schedule being saved by the provisions of Section 3 notwithstanding the enactment of Act 39 of 1972.

15. An argument was advanced that Act 39 of 1972 does not make any reference to take away the effect of Section 3 of Act 17 of 1970. Indeed, it may be pointed out that it was not necessary for Act 39 of 1972 to make any reference expressly to the provisions of Section 3(1) of Act 17 of 1970 because Act 17 of 1970 which was a prior Act had only amended certain provisions of the Act and Section 3 of Act 17 of 1970 would only operate with reference to the date on which Act 17 of 1970 came into force. If the legislature was competent by enacting an independent legislation to modify the scheme with regard to payment of compensation and this is what was done by Act 39 of 1972, the provisions of Act 39 of 1972 can in no way be affected by a provision in the nature of a saving clause in an earlier enactment. We must therefore reject the argument that notwithstanding the enactment of Act 39 of 1972, the claimants were entitled to determination of compensation in accordance with the unamended Schedule having regard to the provision of the saving clause in Section 3(1) of Act 17 of 1970.

16. When Act 39 of 1972 by Section 4 thereof specified 21.12.1972 as the date with reference to which Schedule III would stand amended, there was no question of any retrospective operation of Section 4 of Act 39 of 1972. As already pointed out, Section 4 did not have the effect of taking away any right which was saved by Section 3 and therefore the argument that Act 39 of 1972 is

retrospective in character must be rejected as wholly without any substance. It is not necessary for us therefore to deal with the four decisions cited by Mr. Kunchidapadam before us. These decisions were: Corporation of Blackpool v. Star Estate Company Ltd (1922) 1 A.C.27; Hamilton Gell v. White (1952) 2 K.B. 422; Joint Secretary to the Government of India and Others Vs. Khillu Ram and Another, and State of Punjab Vs. Mohar Singh, .

The learned Counsel then referred us to an amendment which was made in Section 18(3) by Act 7 of 1974. As we have already pointed out, Act 7 of 1974 was brought into force retrospectively from 1.3.1972. Section 3(2) of Act 7 of 1974 introduced an amendment in Section 18(3) of the Act. The amending Section 3(2) of Act 7 of 1974 reads as follows:

Section 3(2): In Section 18 of the Principal Act, - (a) in Sub-section (3), for the words "with effect from the date of such publication", the words "with effect from the date of the commencement of this Act", had been substituted;

(b) in the proviso to Sub-section (3), for the expression "on the date of such publication", "the expression" on the date of the publication of the notification under Sub-section (1)" had been substituted;

There was also a consequential amendment made by introducing a new Sub-section (3-A). This amended Sub-section (3-A) reads as follows:

(3-A)(a): Every person who, after the date of the commencement of this Act, was in possession of, or deriving any benefit from the property vested in the Government under Sub-section (3) shall be liable to pay to the Government, for the period, after such commencement, for which he was in such possession or deriving such benefit, an amount as compensation for - the use, occupation or enjoyment of that property as the authorised officer may fix in the prescribed manner. Such officer shall take into consideration such facts as may be prescribed.

(b) Any amount payable to the Government under Clause (a) shall be recoverable as arrears of land revenue.

Now it cannot be seriously disputed that by the amendment introduced by Section 18(3) the date of acquisition was changed to 1.3.1972. The consequential amendment by introducing Section (3-A) shows that by virtue of the amendment of Section 18(3), notwithstanding the issue of the notification u/s 18(1) after 1.3.1972, the lands were deemed to have vested, in the State and acquired for a public purpose with effect from 1.3.1972. The State Government had therefore, to provide for compensation by the land owner who was in possession of the land for the benefit of cultivating the lands which vested in the State Government under Sub-section (3) of Section 18, but still continued to be in possession of the landowner. This was really compensation for the use, occupation and enjoyment of the property, and this compensation was to be fixed by the authorised officer. This provision made by introducing Sub-section (3-A)

was a logical corollary, since by the amendment, land had vested in the State Government even prior to the date of the notification u/s 18(1). The landowner being admittedly in possession of the property and was cultivating or using the property which belonged to the State, he had to be required to pay compensation to the State Government. If Section 18(3) had stood in this amended form on the date on which the notifications u/s 18(1) in the instant cases were issued, there would not have been much difficulty in accepting the contention that the compensation had to be determined in accordance with the unamended schedule or in other words in accordance with the schedule as on 15.2.1970. The legislature, however, has undone the effect of Act 7 of 1974 by enacting Act 25 of 1978 with retrospective effect from 1.3.1972. The result was that the date of vesting was once again modified, and the original position that surplus lands would vest in the Government with effect from the date on which the notification u/s 18(1) was published was restored. The amending Section 4 of Act 25 of 1978 reads as follows:

Section 4: Tamil Nadu Act 58 of 1961 as subsequently modified, to have effect subject to modifications - The principal Act, shall, on and from the 1st day of March 1972, have effect as if,-

(1) in Section 18 of the principal Act, - (a) in Sub-section (3) for the words "with effect from the date of the commencement of this Act", "with effect from the date of such publication" had been substituted; (b) in the proviso to Sub-section (3), for the expression "on the date of the publication of the notification under Sub-section (3)", for the expression "on the date of the publication of the notification under Sub-section (1)", the expression "on the date of such publication" had been substituted;

(c) Sub-section (3-A) had been omitted.

18. By the same amendment, the newly enacted provision in Section 18(3-A) was also deleted. Therefore, the overall effect of Act 25 of 1978 was that the date of vesting of surplus lands which was specified as the date of the publication of the notification u/s 18(1) prior to the coming into force of Tamil Nadu Act 7 of 1974 was restored. The further consequence was that the compensation would become payable in accordance with the rates effective under the law as it would be on the date of the publication of the notification u/s 18(1). In other words, the compensation would be payable only in accordance with the amended schedule in respect of lands which were declared surplus after 21.12.1972 as prescribed by Section 4 of Act 39 of 1972.

19. When faced with this situation, the only alternative for the petitioner was to challenge the constitutional validity of Act 25 of 1978. Act 25 of 1978 was therefore challenged by the petitioner firstly on the ground that it takes away the right of compensation given by Act 7 of 1974 by altering the date of vesting and that Act 25 of 1978 is a colourable exercise of power and a fraud on the legislative power by the legislature. This argument proceeds on the footing that

according to the learned Counsel, the pith and substance of Act 25 of 1978 is a debt payable by the State Government and an attempt has been made to reduce the burden of the debt in the nature of compensation in the garb of amending an Act relating to land reforms. It may be at this stage pointed out that both Act 39 of 1972 and Act 25 of 1978 have been included in the Ninth Schedule. Act 39 of 1972 is item 171 in the Ninth Schedule and Act 25 of 1978 is item 196 in the Ninth Schedule having been included by the Constitution Forty seventh Amendment Act. The consequence of this inclusion is set out in Article 31-R of the Constitution. In view of the provisions of Article 31-B of the Constitution, these Acts having been now included in the Ninth Schedule, they are not open to attack on the ground that the provisions of these Acts are inconsistent with or take away or abridge any of the rights conferred by, any provision in Part HI of the Constitution. Article 31-B provides further that notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force. The effect of the inclusion in the Ninth Schedule therefore is that today when we are called upon to decide the validity of Act 25 of 1978, we find that it is included in the Ninth Schedule, and we must take notice of the fact that it is so included in the Ninth schedule. This Act cannot therefore be challenged on the ground that it violates any fundamental rights.

20. At this stage, we may also point out that the validity of the Act 58 of 1961 fell for consideration before the Supreme Court in Jagannath Vs. The Authorised Officer, Land Reforms and Ors, . It must be remembered that earlier in A.P. Krishnasami Naidu etc. Vs. State of Madras, the old Act had been struck down as unconstitutional. In paragraph 23 of the judgment, the Supreme Court pointed out that even if the Act was void or inoperative at the time when it was enacted by reason of infringement of Article 13(2) of the Constitution, it assumed full force and vigour from the respective dates of their enactment after their inclusion in the Ninth Schedule read with Article 31-B of the Constitution. An argument was advanced before the Supreme Court that the State legislature should have re-enacted Act 58 of 1961. This argument was rejected by the Supreme Court. The observations of the Supreme Court in paragraph 23 of the judgment may be reproduced with advantage:

Apart from the question as to whether fundamental rights originally enshrined in the constitution were subject to the amendatory process of Article 368, it must now be held that Article 31-B and the Ninth Schedule have cured the defect, if any, in the various Acts mentioned in the said schedule as regards any unconstitutionality alleged on the ground of infringement of fundamental rights, and by the express words of Article 31-B such curing of the defect took place with retrospective operation from the dates on which the Acts were put on the statute book. These Acts even if void or inoperative at the time when they were enacted by reason of infringement of Article 13(2) of the Constitution, assumed full force and vigour from the respective dates of their enactment after their

inclusion in the Ninth Schedule read with Article 31-B of the Constitution. The States could not at any time cure any defect arising from the violation of the provisions of Part HI of the Constitution and therefore the objection that the Madras Ceilings Act should have been re-enacted by the Madras legislature after the Seventeenth Constitutional Amendment came into force cannot be accepted.

The Supreme Court also found that the Act squarely fell within Entry 18 in List II read with Entry 42 in List III and that it can aptly be described as a measure of agrarian reform of land improvement. In paragraph 29 of the judgment, the Supreme Court observed as follows:

If the State wants to enforce a measure of acquiring lands of people who hold areas over a certain ceiling limit so as to be able to distribute the same among the landless and other persons, to give effect to the directive principles in Article 39(b) and (c) of the Constitution, it is not possible to say that the same would be outside the scope of Entry 18 in List II read with Entry 42 in List III. Such a measure can aptly be described as a measure of agrarian reform of land improvement in that persons who have only small holdings and work on the lands themselves would be more likely to put in greater efforts to make the land productive than those who held large blocks of land and are only interested in getting a return without much effort.... Acquisition of land would not directly be covered by Entry 18 but read with Entry 42 in List III the State has the competence to acquire surplus land so as to give effect to the policy in Article 39 of the Constitution.

With this decision of the Supreme Court we must proceed on the assumption that the Act 58 of 1961 which originally contained Section 50 and Schedule III of the Act as squarely falling within the legislative power in Entry 18 read with Entry 42 of List III. Merely because the rate of compensation has been changed, the nature of the enactment will not undergo any change. The enactment will continue to be one whose pith and substance is acquisition of land for the purpose of agrarian reform and it is therefore difficult to accept the contention that the legislation was enacted in order to wipe out any debt. As a matter of fact, unless the liability to pay compensation is crystalised, it could not be said that any debt payable by the State to the landowner has come into being. In view of the provisions of Section 18, the liability to pay compensation would come into being only on the date of acquisition and there is nothing which prevents a legislature from specifying any particular date with reference to which, according to the legislature, the surplus land must be deemed to have vested in the state for a public purpose. All that has been done by Act 25 of 1978 is to restore the original date of vesting. If the original provision was itself within the legislative competence, then restoring that position by virtue of an amendment and repealing an amendment would not affect the nature of the power of the legislature to do so. Therefore, there is no substance in the contention that Tamil Nadu Act 25 of 1978 is a colourable exercise of legislative power.

21. We may also point out that once it is held that the pith and substance of Act 25 of 1975 falls within the scope of the legislative entry, then the principle on which compensation is to be paid is a matter for the Legislature to decide. In *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, the Supreme Court observed in paragraph 18 that Entry 42, List III is a mere head of legislative power and the legislature can adopt any principle of compensation in respect of properties compulsorily acquired. No grievance can, therefore, be made for the purpose of canvassing the invalidity of Act 25 of 1978 that the scale of compensation has been reduced by amending the main Act.

22. It was then argued on the authority of the decision in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, that notwithstanding the fact that the protection of Article 14 is not available to Act 25 of 1978, the provisions with regard to the amendment of Schedule III can still be challenged on the ground that they are unreasonable.

23. *Basantibai's case* (1984) M.L.J. 534 has been considered at length by this Court in *His Holiness Sri la Sri Abbalavana Pandara Sannadhi Avergal v. The State of Tamil Nadu* (1985) W L.R. 1. In that decision it has been pointed out that Article 300-A cannot be so construed as to reintroduce the concept of Articles 14 and 19 in a case where the Constitution expressly rules out unreasonableness as creating invalidity in a legislative provision by a specific provision in the Constitution itself like Article 31-C. Having regard to this decision, it would not be permissible to go into the question of reasonableness of the scale of compensation introduced by the amended schedule.

24. A contention has been raised before us that the proceedings before the Authorised Officer have been deliberately delayed awaiting the enactment of Act 25 of 1978. The learned Government Pleader has given us several dates in all the cases. The dates which are relevant for facts in W.P. No. 2941 of 1978 show that the final statement u/s 12 was published on 9.8.1972 and the notification u/s 18(1) was prepared on 1.9.1972. It was approved on 9.2.1973 and was published on 28.2.1973. It does not appear to us that after the final statement was published, there was any considerable delay.

25. With regard to the other connected writ petition, it appears that the final statement was published on 13.9.1972 and the notification was published on 28.2.1973. It is true that the proceedings commenced with the filing of the reports as early as December, 1962 but it appears that there were several proceedings between 1962 and 1972 in the nature of petitions and writ petitions to the High Court. It is difficult to see how once the legislation has come into force, the operation of a statutory provision can be controlled or avoided by any delay which has taken place before the authorities. The only relevant date for the purposes of Sections 18(1) and 18(3) is the date on which the notification u/s 18(1) has been published and while giving effect to the law relating to compensation, it is that date alone which will become relevant. There is no power given to the State Government to determine compensation with reference to any

other date.

26. It appears to us that before the learned Judge the only question in W.P. No. 7002 of 1975 seems to have been argued related to the rate of compensation and the date on which the right to compensation arises. This judgment by which we have not accepted the view of the learned Judge will be effective only in so far as the correctness of that view is concerned.

27. Having considered the matter at length, we find that the orders made by the learned Judge proceed on an erroneous construction of the provisions of the statute. The orders are, therefore, liable to be set aside. Accordingly, the appeals are allowed. The orders passed by the learned single Judge are set aside. The writ petitions are dismissed. There will be no order as to costs.

28. Leave to appeal to the Supreme Court in all the masters is rejected.