(1965) 07 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No. 18 of 1963

The Gaur Nitay Tea Co. APPELLANT

Vs

State of Assam and Another RESPONDENT

Date of Decision : 29-07-1965

Acts Referred:

Assam Land (Requisition and Acquisition) (Amendment) Act, 1964 — Section 11, 11(1), 11(2), 11(3), 155
Assam Land (Requisition and acquisition) Act, 1948 — Section 21, 22, 3, 3(1), 4(1)
Assam Land and Revenue Regulation, 1886 — Section 3
Constitution (First Amendment) Act, 1951 — Section 4
Constitution of India, 1950 — Article 11, 13, 14, 19, 19(1)
Income Tax Act, 1961 — Section 34
Land Acquisition Act, 1894 — Section 11, 17(4), 23, 23(1), 23(2)
Taxation on Income (Investigation Commission) Act, 1947 — Section 5(1), 5(4)

Citation : (1965) 07 GAU CK 0005

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J;C.S. Nayudu, J

Bench : Full Bench

Advocate : J.C. Medhi, Goswami and B.M. Goswami, for the Appellant; B.C. Barua, General and M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, C.J.—By this petition he constitutionality of the Assam Land (Requisition and Acquisition) Act, 1964 (Assam Act (sic) of 1964) (hereinafter called ''the Act'') has been challenged.

2. By a notification dated the 13th March 1961 the State Government has acquired 942 bighas of land in N.L.R Grant No. 383/576 in (sic) Nos. 1 and 2/42 in village Madhagosai rant (N.C. Bargara Bagieha), Mouza Dalgaon 1st. This land belonged to Gaur Nitai Tea Co. (sic) and had been requisitioned under the revisions of the Assam Land (Requisition and acquisition) Act of 1948 (hereinafter called the Act of 1948) The notification dated the 13th March 1961 was issued u/s 4(1) of the Act of 1948 The validity of this equation was challenged by the present petition.

This application was filed on the 21st February 1963 and rule was issued on 25-2-63 The constitutionality of the Act of 1948 was challenged. During the pendency of this petition the Act in question was passed and under Sections 21 and 22 of the Act, the acquisition made under the Act of 1948 has been validated.

3. The matter came up for hearing before a Bench of this Court and it was urged by the counsel for the State that the Act of 1948 has been substituted by the Act and thus the petition has become in fructuous. Thereafter the Petitioner was permitted to amend his petition and by the amended petition the Petitioner has now challenged the constitutionality of the Act. The validity of the Act of 1948 was challenged The Supreme Court upheld the validity of the said Act in the case of Paresh Chandra Chatterjee Vs. The State of Assam and Another, .

4. The Petitioner company holds a grant No. 333/576 covering an area of 1530 bighas (510 acres) for special cultivation under the New Lease Rules. The surplus land of this Tea Garden has been acquired under the provisions of the impugned Act. The Petitioner contends that the Act is violative of Articles 14 and 31(2) of the Constitution. The contention of the Petitioner is that the Act is discriminatory. The attack on the ground of discrimination has been based on two fold arguments. Firstly it is urged that the land which is sought to be acquired could have been acquired under the Land Acquisition Act also. Both the Acts in question and the Land Acquisition Act cover the same field. If the land was acquired under the Land Acquisition Act, the Petitioner would have been entitled to compensation at the market rate, but as it has been acquired under the Act, the compensation paid is much less and on a special rate as provided for u/s 11 of the Act. It is also urged that the procedure for acquisition laid down in the Land Acquisition Act is more detailed while the acquisition proceedings under the Act in question are summary in nature. As the legislature has not laid down any guiding principles in the Act in question, the Government can arbitrarily pick and choose any v person and acquire his surplus land under the Land Acquisition Act and the same class of land can be acquired by the Government under the Act in question. There is thus a, discrimination brought about in the same class of the land. It is said that there being two legislations covering the same field the Act in question which is more detrimental to the interests of the land owners, should be struck down as discriminatory.

5. It is next urged that even if the whole Act is not discriminatory, on the face of it, the two sub-sections of Section 11 bring about discrimination between the same class of persons owning simillar land. There is no defined and valid classification, having any relation with the object and the purpose of the Act. In the matter of payment of compensation thus there has been a discrimination between the same class of persons holding similar properties.

6. It is then urged that the Act Infringes the provisions of Article 31(2) of the Constitution. The Act does not provide for compensation, nor does it fix the principles for determining the compensation. The compensation which the Petitioner will get is Illusory and thus the Act is violative of Article 31(2) of the

Constitution.

7. The Advocate General contended that the Act Is covered by Article 31-A and thus its validity cannot be challenged on the ground that it violates Article 14 or 31 of the Constitution.

8. The Petitioner contends that as the State has not in its counter-affidavit tried to sustain the law on the ground that Article 31-A applies, the, Advocate General should not be allowed to raise the point. In the case of Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, the State had taken up the plea in the counter affidavit that the challenge to the validity of the law is barred by the provisions of Article 31-A(1)(e) of the Constitution. But during the argument that was sought to be justified on the ground that the Act did not violate the provisions of Article 31(2) of the Constitution, an objection was raised by the counsel for the Petitioner in that case that it was not open to the State to urge that point. This contention was repelled and the following passage at p. 963 of the report brings out the point:

Mr. Das pointed out that the only ground on which the Central Government in their affidavit have tried to sustain the validity of the provisions relating to the acquisition of land under the Act is that a challenge to the validity of the law is barred by the provisions of Article 31A(1)(e) and that it is not now open to the Central Government, to say that the law can be sustained on another ground. We cannot accept this contention. Where the validity of a law made by a competent legislature is challenged in a Court of law that Court is bound to presume in favour of its validity. Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained.

9. In order to appreciate the point, it will be necessary to refer to the provisions of the Constitution. Article 31 A was introduced Into the Constitution first lime by the Constitution (First Amendment) Act, 1951. This article has also been amended from time to time The Constitution (Fourth Amendment) Act. 1955 brought about certain changes in this provision, Article 31-A reads as follows:

31A. (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 or the extinguishment or modification of any such rights,

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(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such, agreement, lease or licence.

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, inane or muafi or other similar grant and in the States of Madras and Kerala, any janmam right,

(b) 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 and any rights or privileges in respect of land revenue.

Only the relevant provisions of the Article have been quoted above

10. It is urged by the Advocate General that the Act provides for the acquisition of an ''estate'' as defined in the Assam Land and Revenue Regulation and as such it is immune from challenge on the ground that it violates Article 14, 13 or 31 of the Constitution. In the Assam Land and Revenue Regulation Section 3(b) defines ''estate'' as including-

(1) any land subject, either immediately or prospectively, to the payment of land revenue, for the discharge of which a separate engagement has been entered into;

(2) any land subject to the payment of, or assessed with a separate amount as land revenue, although no engagement has been entered into with the Government for that amount;

(3) any local area for the appropriation of the produce or products whereof a license or farm has been granted under rules made by the State Government u/s 155, Clause (e) or Clause (f);

(4) any char or island thrown up in a navigable river which under the laws in force is at the disposal of the Government;

(5) any land which is for the lime being entered in the Deputy Commissioner''s register of revenue free estates as a separate holding;

(6) any land being the exclusive property of the Government of which the State Government has directed the separate entry in the registers of revenue-paying and revenue-free estates mentioned in Chapter IV. According to the Land and Revenue Regulation, the definition of ''estate'' is wide enough to cover any land ''Estate'' refers to the condition and circumstances in which an owner stands with

regard to his property. The different kinds of estates or interest in land as recognised by the Assam Land and Revenue Regulation, may be classified as follows:

(i) The Lakhiraj estates, estates held in fee-simple with estates under the special Waste Land Rules,

(ii) Permanently-settled estates of Cachar and Goalpara.

(iii) Temporarily-settled estates other than town lands held direct from Government on private teases,

(iv) Temporarily-settled Khiraj estates held direct from Government on annual leases.

11. Section 3 of the Act provides for the requisition of any land. Section 6 provides for the acquisition of any land which has been the subject-matter of requisition u/s 3. u/s 2 of the Act the ''land'' has the samg meaning as in the Land Acquisition Act. It is contended that every land is either an ''estate'' or a part of an ''estate'' as defined in the Land and Revenue Regulation. The law thus provides for acquisition of an ''estate'' and thus is immune from the challenge under Articles'' 14, 19 and 31 of the Constitution.

12. The contention of Dr. Medhi for the Petitioner is that all laws providing for acquisition of an estate do not come within the purview of Article 31-A. The law must be one made as a part of the general scheme of agrarian reform and unless that is proved it is not protected from challenge under Articles 14, 19 and 31 of the Constitution. Unless the law itself relates to agrarian reform, it does not come within the ambit of Article 31-A. Reliance is placed in support of this contention on the case of Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, . In this case the constitutional validity of Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) was challenged. The following observation at pp. 1086-87 of the report has been relied upon in support (sic) the contention:

Article 31A as amended by the 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 lights in relation to the estate The object of the amchdrueivt 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.

It was also observed in this case by the Supreme Court that 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 by the Constitution (Fourth Amendment) Act (1955)). The minority judgment held that the Act was protected from challenge under Articles 14, 19 and 31 of the Constitution as it was covered by Article 31A. The minority held that as soon as the law provides for acquisition of an estate as understood in a particular area and according to the law of that area it is not necessary that the law should be one intended to achieve agrarian reform.

13. This case has been fully considered by the Supreme Court in the later decision of Ranjit Singh v. State of Punjab AIR 19&6 SC 032. After considering the easier cases and the case of AIR 1910 SC 10 referred to above, the Supreme Court observed as follows:

From a review of these authorities it follows that when the Punjab High Court decided these cases on the authority of Jagat Skiati v. State of Punjab 64 Pun LR 241 : AIR 1968 P&H 221 (FB) the view taken in this Court was in favour of giving a large and liberal meaning to the terms ''estate'', ''rights in an estate'' and ''extinguishment and modification'' of such rights in Article 31-A No doubt Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, considered a bare transfer of the rights of the thane to the larva without alteration of the tenure and without any pretence of agrarian reform, as not one contemplated by Article 31-A however liberally construed But that was a special case and we cannot apply it to cases; where the general scheme of legislation is definitely agrarian reform and under its provisions something ancillary thereto in the Interests of rural economy has to be undertaken to give full effect to the reforms.

14. Dr. Medhi contends that this case does not accent the minority view in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, . It only accepts the wider meaning to the expression ''agrarian reform'' than that given in the Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, The agrarian reform does not necessarily mean the adjustment of the rights of the tenure-holders, but it may also embrace within its ambit the rural planning and other matters relating to rural development. But this case still lays down that unless the Act forms part of the general scheme of agrarian reform, it is not covered by Article 31-A. His contention is that the State has not given any facts in the counter-affidavit which will go to show (hat the present Act forms part of any scheme of agrarian reform. The Act deals with all the lands including the homestead land. The perusal of the provisions of the Act will show that the object was to provide for the speedy acquisition of the land and for maintaining supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation, flood control and anli erosion measures including embankment and drainage or for providing land individually or in groups to landless, flood affected or displaced persons The object, therefore, is much wider than mere distribution of the surplus land to the landless people which may result in improving rural economy.

15. That a number of measures were passed in the Stale to bring about agrarian reform cannot be denied. But the contention of Dr. Medhi is that the impugned legislation does not form part of any scheme of agrarian reform. It was not

enacted to implement any such ''scheme. It was an Act barely providing for acquisition of land.

16. In the case of P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, the constitutionality of the Land Acquisition (Madras Amendment) Act (23 of 1901) was challenged. The Government had issued a notification u/s 4(1) of the Land Acquisition Act (Act 1 of 1894) notifying that certain lands were needed for a public purpose, to wit, for the development of the area as ''neighbourhood'' in the Madras City in accordance with the Land Acquisition and Development Scheme of Die Government. Thereafter a notification was issued u/s 17(4) of the Land Acquisition Act. Subsequently the Madras Legislature enacted the amending Act providing for the acquisition of lands for housing schemes and laying down the principles for fixing compensation different from those prescribed in the Land Acquisition Act. The validity of this amending Act was challenged. The first ground taken on behalf of the Stale was that the validity of the amending Act could not be challenged under Articles 14, 31 and 19 of the Constitution as the case was covered by Article 31A of the Constitution This contention was repelled and it was laid down that Article 31A of the Constitution was amended only to implement agrarian reforms which expression had to be given a comprehensive meaning so as to in elude provisions made for the development of the rural economy. It does no|, however, enable the Slate to acquire the land of a citizen without any reference to any agrarian reform in derogation of their fundamental rights without payment of compensation. This Case again in effect lays down that Article 31A only applies to the Acts passed for acquisition of land under a general scheme of agrarian reform and not to Acts which are simply for the purpose of acquiring the land by the Government to be given to u third party.

17. In my opinion sufficient material has not been placed before us by the Government to justify the inference that the present Act formed part of any general scheme of agrarian reform. Thus 1 will now proceed to consider whether the act is hit by Article H or Article 31(2) of the Constitution.

18. Article 31 of the Constitution as amended by the Constitution (Fourth Amendment) Act, 1955, reads as follows:

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to he determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the Slate or to a corporation owned or con I rolled by the Stale, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his properly.

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Only the relevant provisions of the Article have been quoted above. It cannot be disputed that the Act provides for transfer of the ownership or right to possession of the properly and thus it is an acquisition of properly. The two essential requirements for acquisition are (1) that the acquisition should be for public purpose and {2) that it should provide for payment of compensation either fixing the amount of the compensation or specifying the principles on which, and the manner in which, the compensation is to be determined. The amended Article 31 (2) also lays down that no law can be questioned on the ground that the compensation provided for is inadequate. So long as the law provides for compensation, either fixing the amount or laying down the principles for determination of the compensation, even it the compensation is inadequate, the law cannot be questioned. The Petitioner contends that the law in question does hot provide for compensation at all. The compensation which the Petitioner is going to get u/s 11 (2) of the Act is illusory. The compensation necessarily means an amount which is the market value of the property. If the law which lays down certain principles for determining the compensation, results in no compensation to the person whose properly has been acquired, it cannot be said that the law provides for payment of compensation.

19. Section 11 of (he Act reads as follows:

11.(1) Subject to the provisions of Sub-section (2), whenever any land is acquired u/s 6 or Section 9 there shall be paid compensation the amount of which shall be, determined by the Collector. In determining the amount of compensation the Collector shall lake into consideration the market value of the land for a period of five years preceding the date of publication of the notice under Sub-section (1) of Section 6 where the land is acquired under the said section, and where the land is acquired u/s 9, from the dale of passing the order under Sub-section (1) of the said section, and the amount of compensation payable shall be on the basis of the average market value so arrived at:

Provided that where any building is acquired u/s 6, the compensation shall be payable at the market value of the building on the date of publication of the notice under Sub-section (1) thereof.

(2) In the case of land with respect to which any settlement has been made for special cultivation or which is included in any grant, if such land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or for the purposes, incidental thereto, then the compensation payable for acquisition of such land together with trees if any standing on it shall be an amount equal to ten times the annual land revenue which, on the date of publication of the notice referred to in Sub-section (1) of Section 6 or Sub-

section (1) of section ft, is or would have been payable if such land is or had been assessable to revenue at full rates:

Provided that where any amount was originally paid to Government by the grantee as price or premium for the land, an additional amount equal to the amount originally paid by the grantee shall also be payable.

Explanation. ''Special cultivation'' means cultivation which involves, either owing to the nature of the crop or owing to the process of cultivation, a much larger expenditure of capital per acre than is incurred by most of the cultivators in the State, and includes cultivation of tea.

Only the Sub-sections (1) and (2) of the section have been quoted above. Section 11(1), provides for compensation on the basis of an average market value of the land for a period of five years preceding the date of publication of the notice. It cannot be said that under this sub-section the compensation is illusory. The attack is on Section 11(2) and it is urged that the compensation provided for u/s 11(2) is wholly illusory. In cases of special cultivation including tea, if a certain land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or for the purposes incidental thereto, then the compensation payable is an amount equal to ten times the annual land revenue. If ten times the land revenue is payable as compensation and over and above that if any amount has been paid by the grantee to the Government as a price or premium for the latter, that has to be added to the multiple of the land revenue, it cannot be said that the compensation provided for is illusory. That the amount of compensation which the Petitioner is going to get is less than what he might have got if he had sold the land in the open market, is no ground for holding that the Act does not provide for compensation at all. It is only challenging the adequacy of the compensation.

20. Reliance is placed on the decision of the Supreme Court in the case of Stale of Bihar v. Sir Kameshwar Singh and other cases reported in AIR 1952 SC 252 wherein the constitutionality of the provisions of Bihar Land Reforms Act, M.P. Abolition of Proprietary Rights (Estates, Mahals Alienated Lands) Act and U.P. Zamindari Abolition and Land Reforms Act was challenged. It was held that the validity of the Acts could not be challenged on the ground that they contravened Article 14, 19 or 31(2) of the Constitution inasmuch as Article 31B covered those cases and further that the ground that they did not provide for compensation was not open to be canvassed in view of Article 31(4) of the Constitution. The argument addressed by the counsel for the Petitioners in those cases was that Article 31(4) and Article 31B only prohibit the challenge on the ground that the Act contravenes fundamental rights. But as the payment of compensation and existence of public purpose are necessary obligations, if the State intended to acquire any property under entry 36 of list 2 of the 7th Schedule and entry 42 of list 3 of the 7th Schedule to the Constitution and as no compensation was provided for, nor was there any public purpose, the Acts should be struck down.

The Supreme Court held that the Acts were valid. The challenge on the ground that the Acts do not provide for compensation was not open in view of the provisions of Article 31(4) and further that the Act was for public purpose. The majority, however, held Sections 4 and 23(f) of the Bihar Act to be ultra vires. Section 4(b) of the Bihar Act provided that all arrears of rents, including royalties and all cusses together with interest, if any, due thereon for any period prior to the date of vesting, which were recoverable hi respect of the estates or tenures of the proprietor or tenure-holder and the recovery of which was not barred by any law of limitation shall vest in, and be recoverable by the State, Section 23(f) provided for deduction on a percentage basis from the gross assets of costs of works of benefit to the radiates of such estates or tenures in ascertaining the net assets on which the compensation is to be based. It was held by the majority that these two provisions were colourable pieces of legislation. Regarding Section 4 it was held that there was no public purpose Entry 42 as it was at that time, read as follows:

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

It was held that Section 23(f) cannot be said to be a law in the exercise of the power under entry 42 of List III of the Seventh Schedule, inasmuch as it was a colourable legislation. No principles of paying compensation have been provided but in truth the, whole provision was designed to deprive a number of people of their properly without payment of compensation In fact dealing with the question that the entire legislation was a fraud on the Constitution, the following observation was made by Mahajan J at p. 276:

From the premises that the estates of half a dozen zemindars may be expropriated without payment of compensation one cannot jump to the conclusion that the whole of the enactment is a fraud on the Constitution or that all the provisions as to payment of compensation are illusory.

Thus merely because under the provisions of Section 11(2) of the Act some of the grantees will get less compensation, it cannot be said that the compensation was illusory. In the Bihar case the effect of Section 23(f) was that the net income was reduced to nullity by making certain deduction from the net income and thus by way of compensation the Zemindars got nothing. Thus Section 23(f) which provided for deductions was struck down as ultra vires. It is also significant to note that till then the Constitution (Fourth Amendment) Act, 1955 had not come into force and there was no provision in Article 31 which protected an Act from the challenge on the ground of adequacy of compensation

21. In support of his contention that the compensation in Article 31(2) is to he just equivalent even after the Constitution (Fourth Amendment) Act, reliance is placed on the case of P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras

and Another, . The validity of the amending Act in this case was attacked on two grounds, firstly that the amending Act infringed Article 31(2) of the Constitution and secondly that it was hit by Article 14 of the Constitution. The law as to what is the effect of the Constitution (Fourth Amendment) Act 1955 has been summed up at p. 1024 of the report as follows:

The real difficulty is, what is the effect of ouster of jurisdiction of the Court to question the law on the ground that the ''compensation'' provided by the law is not adequate? It will be noticed that the law of acquisition or requisition is not wholly immune from scrutiny by the Court. But 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. It will further be noticed that the clause excluding the jurisdiction of the Court also used the word ''compensation'' indicating thereby that what is excluded from the court''s jurisdiction is the adequacy of the compensation fixed by the Legislature. The argument that the word ''compensation'' means a just equivalent for the property acquired and, therefore, the court can ascertain whether it is a ''just equivalent'' or not, makes ''the amendment of the Constitution nugatory. It will be arguing in a circle Therefore, a more reasonable interpretation is that 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. To illustrate: a law is made to acquire a house; its value at the time of acquisition has to be fixed; there are many modes of valuation, namely, estimate by an engineer, value reflected by comparable sales. capitalization of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value Bui nonetheless I hey are principles on which and the manner in which compensation is determined. The court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy.

Thus unless it can be shown that the principle laid down in the impugned Act is not relevant to the assessment of the compensation, it cannot be said that the Act does not provide for compensation or lays down the principle for compensation. If working out of the principle adopted by the Act will resurvey in payment of lesser compensation than what will be payable on adopting the principles laid down in other Acts, this only relate to the question of adequacy. By the amending Act Section 23 of the Land Acquisition Act was amended and in Clause (1) of Section 23 of the Land Acquisition Act the following was substituted:

First, the market value of the land at the date of the publication of the notification u/s 4, Sub-section (1) or an amount equal to the average market value of the land during the live years immediately preceding such date, whichever is less.

After clause sixthly the following clause was added.

Seventhly, the use to which the land was put at the date of the publication of the notification u/s 4, Sub-section (1). Sub-section (2) of Section 23 of the Land Acquisition Act was amended by substituting the words, in inspect of solarium, "fifteen per centum" by the words "five per centum". Their Lordships of the Supreme Court held that the amending Act was within the powers of the legislature and thus the clause cannot be said to be hit by Article 31(2). According to the other amendment by which the average of five years was fixed the Supreme Court held that it could not be said that they did not lay down the principle for ascertaining the price of the laud No. could it be said that the principle amounted to fraud on the Constitution. Regarding the third amendment which excluded the potential value of the land acquired it was held that in awarding compensation if the potential value of the land is excluded, it cannot be said that the compensation awarded is the just equivalent of what the owner has been deprived of But such an exclusion only pertains to the method of ascertaining the compensation One of the elements that should be taken into account in fixing-compensation is omitted. It results in the inadequacy of the compensation Bui that in itself does not amount to fraud on power. Thus applying any test laid down in that case to the provisions of the impugned Act, it cannot be said that the Act is violative of Article 31(2) of the Constitution inasmuch as it does not provide for compensation or principles for ascertaining compensation and is a fraud on the Constitution. The amending Act was in this case held not to infringe Article 31(2) of the Constitution. There is, therefore, no force in the contention that the provisions of Section 11 are violative of Article 31(2) of the Constitution.

22. Dr Medhi has made two submissions on which he contends that the Act is violative of Article 14 of the Constitution. Firstly his contention is that the legislature has laid down no guidance for applying the provisions of the impugned Act and not applying the Land Acquisition Act In fact the same class of land could be acquired either under the Land Acquisition Act or under the Act and thus the Act which is harsher in treatment, should be struck down. In my opinion there is no substance in this contention. Section 3 of the Act provides that if in the opinion of the Stale Government or any person authorised in this behalf by the State Government it is necessary so to do, for maintaining supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation, flood control and anti-erosion measures including embankment and drainage or for providing land individually or in groups to landless, flood affected or displaced persons, or to a society registered under the Assam Cooperative Societies Act, 1949, or a company incorporated under the Companies Act, 1956, formed for the benefit and rehabilitation of landless, flood affected or displaced persons the State Government or the person so authorised, as the case may be, may, by order in writing, requisition any land and thereafter acquire u/s 6 the same land which has been the subject matter of requisition. Thus there is a clear guidance for the Government for taking action under this Act. It cannot be said that the

Government can arbitrarily pick and choose persons against whom it should take action under the impugned Act and against whom it should take action under the Land Acquisition Act A land which is required for the purposes enumerated in Section 8 naturally forms a distinct and definite class by itself. The whole object of the Act as set out in the preamble is to provide for speedy acquisition of the premises and land. The public purposes enumerated in Section 3 do require a speedy action on the part of the executive. Thus the classification has a reasonable nexus with the object of the Act and the purpose sought to be achieved by the Act.

23. The next point urged is that Section 11 itself is discriminatory There is no valid ground for treating a land with respect to which a settlement has been made for special cultivation or which is included in any grant separately from any oilier land. The argument is that even if the object of the Act is to have speedy acquisition and to provide for acquisition for the purposes mentioned in Section 3, there is no reason why in the matter of payment of compensation a distinction should be drawn between the land covered by Sub-section (2) of Section 11 and the one covered by Sub-section (1) of Section 11. The first answer to this is that Sub-sections (1) and (2) of Section 11 both provide for compensation and both separately embody the principles on which the compensation is to be calculated aioli paid. In Sub-section (1) of Section 11 the compensation is to be paid by the Collector after taking into consideration the market value of the land for a period of live years. Under Sub-section (2) of Section 11 the compensation fixed is ten limes the Government annual land revenue. Sub-section (2) also applies to the acquisition of a fallow or uncultivated land or the land which is not utilised for the purpose for which the grant or settlement was made and thus the scope of Section 11(2) is limited. If the land which is given for special cultivation or is the subject-matter of any grant and lire grantee or the person with whom the selectmen is made does not utilise a portion of the land, he cannot reasonably claim benefit of the rise in he prices which may be due to the improvement on the land and further the is not entitled to claim more than what can be claimed by a person who has utilised the land and thus earned some benefit out of that land. Such a land even may not have any market and the market value of that land cannot be equated with the market value of a land which is actually under cultivation. The land which remains fallow and is a part of the land settled for special cultivation or included in any grant thus forms a class by itself, and the classification can neither be said to be vague nor arbitrary. ''Special cultivation'' has been denned as meaning cultivation which involves, either owing to the nature of the crop or owing to the process of cultivation, a much larger expenditure of capital per acre than is incurred by most of the cultivators in the State, and includes cultivation of lea. It is questioned as to why less compensation should be paid to a person who has settlement for special cultivation and who has kept a part of the land lying fallow than to a person who has taken settlement for any other cultivation aim leaves a land fallow. In cases where the land is given on settlement for special cultivation,, if the land is

allowed to remain fallow, it will ordinarily be due to the fact that the land-holder or settlement-holder is not economically sound as to utilise the entire land, while in the case where the land is let out for ordinary cultivation, the chances are very remote for leaving any part of the land fallow. It is only big tea gardens or the big lands granted for special cultivation involving an expenditure that there is likelihood of getting a surplus land. Moreover, as I have already pointed out, Sub-sections (1) and (2) of Section 11 may not bring about airy discrimination at all. It may be that in cases to which Sub-section (2) of Section 11 applies, the market value may he even less than ten limes the land revenue and that is why the legislature has fixed the amount of compensation payable in such cases. Mere difference in the amount of compensation does not by itself amount to discrimination.

24. In support of this part of his argument Dr Medhi has again referred to the Supreme Court decision of N.B. Jeejeebhoy Vs. Assistant Collector, Thana Prant, Thana, . The ground on which the provisions of lire amending Act were struck down in this case was that it violated Article 14 of the Constitution. As laid down in this case under Article 14 the Stale shall not deny to any person equality before the law or actual protection of law, within the territory of India. But this does not preclude the legislature from making a reasonable classification for the purpose of legislation. The classification shall pass two tests, -- (1) lire classification must be founded on an intelligible differentia which distinguishes persons and things left out of the group and (2) the differentia must have a rational relation to the object sought to be achieved by the statute In question.

25. In the present case as I have already pointed out, there is a clear guidance given in the Act for applying the impugned ct at against the Land Acquisition Act. The Land Acquisition Act does not deal with requisition. This Act deals both with requisition and acquisition. The impugned Act provides for acquisition after the land has once been requisitioned and for specific purposes enumerated u/s 8 and thus It cannot be said that persons whose lands will be required for the purposes mentioned in Section 3 and after their land had already been requisitioned do not form a separate class from those whose lands could be acquired for any public purpose without resorting to previous requisition. The land having been once requisitioned the acquisition procedure has to be speedier. Moreover the fact that the action could be taken under the Land Acquisition Act and could alio be taken under the Impugned Act by itself does not render the impugned Act invalid under Article 14. The Meld of operation of the two Acts is different. If in any case any one has been discriminated and purposely action has been taken against him under the Land Acquisition Act though it could be taken under the impugned Act in order to give him a larger compensation or the action has been taken under this Act in order to give him lesser compensation, the particular acquisition may be struck down for being discriminatory. But it cannot be said that the Act is violative of Article 14 of the Constitution.

26. It is not contended that Section 11(1) of the impugned Act will result in

payment of lesser compensation and is thus hit by Article H of the Constitution. The argument is that all the acquisitions under this Act are to be made for the purposes enumerated in Section 3 and with that object in view there is no reasonable basis for differentiating in treatment between the persons owning lands with respect to which any settlement has been made for special cultivation or which is included in any giant and persons owning the land which is the subject-matter of settlement for the other purposes. u/s 11(2) no distinction in fact has been made between the settlement for special cultivation and other settlements. A lesser compensation is no doubt payable in respect of the land which though taken for special cultivation lies unutilised for that or any other ancillary purpose, and such a land does form a separate class. As I have pointed out earlier, it is not necessary that the compensation in respect of the land covered by Clause 2 of Section 11 will be less than what may be payable in respect of the said land if the principle laid down in clause 1 was made applicable. It is in effect challenging the validity of the Act on the ground of inadequacy of compensation and not on the ground of discrimination The principle laid down in the Supreme Court decision will not be attracted to the facts of the present case.

27. The next case of AIR 1965 SC 10 % is not of much assistance to the Petitioner. It was a pre-Constitution Act and it was held that Article 31A could not save such an Act as it was violative of Article 31(2) before this amendment. No opinion was expressed whether the Act infringed the provisions of Article 14 of the Constitution.

28. In any view of the matter, in my opinion, the Act is not hit by Article 14 of the Constitution. Thus there is no force in this petition and I would dismiss this petition.

C.S. Nayudu, J.

29. In this civil rule, the constitutional validity of the Assam Land (Requisition and Acquisition) Act, 1948 (Assam Act XXV of 1948) and the Assam Land (Requisition and Acquisition) Act, 1964 (Assam Act XV of 1964) has been called into question.

30. Before adverting to the various points that arise for consideration in these proceedings, it would be useful and necessary to set out the various legislative changes that had taken place in regard to the first of these two enactments, namely, Assam Act XXV of 1948, hereinafter referred to as the Act of 1948. This Act was enacted by the then Provincial Legislature of Assam, presumably by virtue of the power conferred on it under Entry 9 of list II of the Seventh Schedule to the Government of India Act, 1935, which related to compulsory requisition and acquisition of land, and received the assent of the Governor of Assam on 14-11-1948. This Act, therefore, is a pre-Constitution Act and was constitutionally valid at the time it was made. This being the case, the said law by reason of Article 872 of the Constitution would continue to be In force after

the commencement of the Constitution until altered, repealed or amended by a competent Legislature or other competent authority. As originally enacted, this was to be in force for one year. Subsequently, by Act XVI of 1949 passed by the Assam Legislature and which received the assent of the Governor of Assam on 28-9-1949, the operation of act XXV of 1948 was extended to five years. Later after the Constitution came into force, Act XX of 1950 was passed by the Assam Legislature by way of Amending Act XXV of 1948. This Amending Act received the President''s assent on 22-5-1950. Subsequently another Amending Act was passed, Act XXXIV of 1950. Amending act XXV of 1948, which received the President''s assent on 1-12-1950. By this Act, Section 7(1A) was introduced into the Act Act 1948. Thereafter, Assam Act XXXIII of 1958 was passed extending the operation of act XXV of 1948 for a period of ten years Iron its inception, and this Act received the President''s assent on 20-11-1958. Again, in the year 1958, Act XXVII of 1958 was passed, which extended the operation of Act XXV of 1948 for a period of fifteen years from its inception, that is till the year 1968. This Act received the President''s assent on 18 11-1958. Thereafter, Assam act XXIV of 1903 was passed, which extended the operation of the Act of 1948 for another period of five years and this Act received the President''s assent on 30-10-1963. After this, in the year 1964, came to be passed the second of the impugned Acts, namely Act XV of 1964, hereinafter referred to as the ''new Act.'' This Act received the President''s assent on 29-7-1964. This enactment repealed three Acts of the Assam Legislature, including the Act of 1948. While doing so, it practically re-enacted the provision of the said Act of 1948, besides validating all Rules made, orders issued, notification published, proceedings commenced and action taken and whatever was done under the Act of 1948, in connection with the requisition or acquisition of any land, and protecting all actions of requisitions, acquisitions and payment of compensation etc., made under the repealed Act XXV of 1948. (Vide Sections 21 and 22).

31. The basis of the Petitioner''s application under Article 226 of the Constitution is that 942 bhigas of land in the possession and control of the Petitioner had been acquired on the 13th March, 1961, by the State Government in exercise of the powers conferred on them by the provisions of the Assam Land (Requisition and Acquisition) Act, 1948, as amended, the said land having been previously requisitioned under the said Act by the State Government. The Petitioner''s objection to this acquisition by the State Government is based on the the following grounds:

Firstly, that the said Act is ultra vires the powers of the State Legislature and unconstitutional:

Secondly that the compensation paid to the Petitioner under the said Act was nominal and did hot amount to compensation at all, and that, therefore the acquisition must be regarded as violative of Article 31 of the Constitution; and

Thirdly, the Assam Land (Requisition and Acquisition) Act, 1964 (Assam Act XV 1964) which repealed the Act of 1948, while reenacting its, provisions and declaring the validation of acquisition, and the payment of compensation under the repealed Act of 1948 is also, unconstitutional, both the Acts being violative of Articles 14, 19 and 31 of the Constitution. The Petitioner claimed that as the Acts are ultra vires and unconstitutional, anything done under those Acts can have no validity under law, and, in any event, virtually as no compensation had been paid, the whole propceeings resulting in the acquisition of the Petitioner''s, land should be quashed and appropriate writs and direction issued for the protection of the rights of the Petitioner in regard to his property.

32. The Government in their counter affidavit; pleaded that the land in question was granted to the Petitioner for purposes of special cultivation so that the same may be reclaimed and brought under tea cultivation, but that the land was allowed to lie fallow by the Petitioner and remained uncultivated Consequently, the State Government which already requisition ed the land in question, acquired it and paid compensation at ten times the land revenue as provided u/s (1A) of the said Act XXV of 1948.

33. It is further pointed out that as the Petitioner had filed objections to the award after the passing of the award, the matter was referred to the proper Court u/s 8(1)(a) of the Act of 1948 on or about 9-2-1963 and is now pending adjudication, before that Court. It is further pointed out that, the Act of 1948 did not infringe any of the Articles of the Constitution, such as Articles 14, 19(1) or 31 thereof and that the enactment was in accordance with the Constitution and no exception could be taken thereto.

34. At the outset, a preliminary objection was taken by the learned Advocate-General appearing for the State Government, to the effect that as the question as to what amount of compensation is payable to the Petitioner under law, is pending adjudication before a Court of competent jurisdiction, namely the civil court, no writ petition for the same relief based on the quantum of compensation could be maintained. The learned Advocate-General contended that when there is a clear alternative remedy, which remedy had, in fact, been availed of by the Petitioner, he could not run parallel proceedings in regard to the same matter, and, in any case, under the circumstances, an application for the issue of a prerogative writ, which could be issued only under special circumstances, would not lie. As we were not very clear as to the scope and sustainability of the preliminary objection, we preferred to hear the entire matter on its merits and consider the preliminary objection along with the other points arising for consideration in the case Hence, the matter was argued at length by Dr. Medhi on behalf of the Petitioner and the learned Advocate-General on behalf of the State. On such hearing, we are satisfied that there is no substance in the preliminary objection taken, as the points that fell to be determined in this Civil Rule did not and could not be determined in the reference made to the District Judge u/s 8(1) of the Act.

35. Before adverting to the respective contentions urged by the learned Counsel, it would be necessary to refer to the relevant provisions of the Act of 1948. This

Act which was passed into law on the 24th November, 1948, was intended among others to provide for the requisition and speedy acquisition of premises and land for certain purposes. Power is given u/s 3 of the Act to requisition property and the relevant portion thereof reads as follows:

3.(1) If in the opinion of the State Government 01 any person authorised in this behalf by the State Government it is necessary so to do for maintaining supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport communication, irrigation or drainage or for providing land individually or in groups to landless, flood-affected or displaced persons, or to a society. registered under the Indian, Co-operative Societies Act, 1912 (with such statutory re-enactment or modification thereof as shall from time to time be made) or a company incorporated under the Indian Companies Act, 1913, formed for the benefit and rehabilitation of landless, flood-affected or displaced persons the State Government or the person so authored, as the case may be, may, by order in Writing, requisition any land and may make such further orders as appear to it or to him to be necessary or expedient in connection with the requisitioning:

* * * * *

Section 4 of the Act provides for the acquisition of land and reads as follows:

(1) Where any land has been requisitioned u/s 4, the State Government may use or deal with it in such manner as may appear to it to be expedient and may acquire such and by publishing in the official Gazelle, a notice to the effect that the State Government has decided to acquire such land in pursuance of this section.

(2) Where a notice as aforesaid Is published in the Official Gazette, the requisitioned land and premises shall, on and from the beginning/of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end.

(3) On such vesting the State Government shall be empowered to apply to such land any of the provisions of the Land Acquisition Act, 1894 (Act I of 1894), with the rules framed thereunder.

Section 5 of the Act provides for the issue of a public notice by the Collector that the Government has acquired the land in question, giving the particulars of land acquired and requiring claims to compensation for all interests in such land to be made to him staling the nature of their respective interests in the land and the amount and particulars of their claim to compensation for such interests, and mentioning the time and place where the particulars of the claims could be submitted. Section 7(1) provides for payment of compensation for the land acquired u/s 4. This is in the following words:

7(1) Subject to the provisions of Sub-section (1-A), wherever any land is acquired u/s 4 there shall be paid compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in Sub-section (1) of Section 23 of the Land Acquisition Act, 1894:

Provided that the market value referred to in clause first of Sub-section (1) of Section 23 of the said Act shall, in respect of any land required under this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in Sub-section (1) of Section 4.

Section 7(1A) which is inserted by Assam Act XXXIV of 1950, as already indicated, deals with the amount of compensation payable for the acquisition of land which had been included in a grant or settlement made for special cultivation, if such land is lying fallow or uncultivated or not utilised for the purpose for which the grant or settlement was made on the date of the acquisition. This sub-section is as follows:

(1A) In the case of land included in any grant or settlement, made for special cultivation, if such land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or for the purposes Incidental thereto, then the compensation payable for acquisition of such land together with trees (if any) standing on it shall be an amount equal to ten times the annual land revenue which, on the date of publication of the notice referred to in Sub-section (1) of Section 4, is or would have been payable if such land is or had assessable to revenue at full rates:

Provided that where any amount was originally paid to Government by the grantee as, price or premium for the land an additional amount equal to the amount originally paid by the grantee shall also be payable.

Explanation: "Special cultivation" means cultivation which involves, either owing to the nature of the crop or owing to the process of cultivation, a much larger expenditure of capital per acre than is incurred by most of the cultivators in the State, and includes cultivation of tea.

It may be seen from the above Explanation to this sub-section that what is meant by ''special cultivation has been clearly defined, as cultivation involving a much larger expenditure of capital investment per acre than what is incurred by most of the cultivators in the State, owing to the nature of the crop or the process of cultivation involved in raising the crop.... The cultivation of tea is expressly included in the definition of ''special cultivation''. There is thus no vagueness or doubt or ambiguity about the definition.

36. The validity and the constitutionality of the Act (Act XXV of 1948) came up for consideration by the Supreme Court in Paresh Chandra Chatterjee Vs. The State of Assam and Another, . The Act was sought to be attacked in that case on two grounds. Firstly that lea industry was a matter for exclusive legislation by the Parliament under Entry 52 List I of the Seventh Schedule to the Constitution, and, therefore the Assam Land (Requisition and Acquisition) Act of 1948 in so far as 01it provides for the requisition and acquisition of a tea estate or lands

appertaining to it, was ultra vires the State Legislature; and; secondly, the said Act was also constitutionally void as it offends Article 31(2), of the Constitution, inasmuch as it did not provide for the payment of compensation for the property requisitioned or specify the principles on which and the manner in which the compensation was to be determined.

37. On the first point their Lordships of the Supreme Court pointed out that the Act was constitutionally valid at the time when it was made and it being a pro-Constitution Act, the said law by reason of Article 372 of the Constitution, would continue to be in force after the commencement of the Constitution until altered, repealed or amended by a competent Legislature or other, competent authority. They further held that by reason of the passing of the Tea Act, it did not have the effect of altering or in any way amending the law laid down by the Assam Act in question, and that a comparative study of both the Acts made it clear that the two Acts dealt with different matters and were passed for different purposes and that therefore, the Tea Act did not have the effect of in any way altering, repealing or amending the Assam Act in question.

38. Dealing with the contention based on Article 31(2) of the Constitution, Subba Rao, J, speaking for the Court observed as follows:

Under this Article (Article 3(2) the law made for acquiring or requisitioning a property is conditioned by two circumstances, namely (i) the existence of a public purpose, and (ii) the payment of compensation. If the law provides for compensation and either fixes the amount of compensation or specifies the principles on which and the manner in which, the compensation is to be determined, the adequacy of the compensation is not justiciable. The question is whether the Act satisfies the said conditions. The relevant provisions of the Act dealing with compensation in the case of requisition of land are as under.

His lordship next referred to the various relevant provisions of the Act and observed as follows:

These provisions provide for the payment of agree compensation, and, in the case of disagreement between the Collector and the person to whom possession of any land is delivered u/s 6, for a reference to the Court in respect of any such reference to the Court the provisions of the Land Acquisition Act, 1894, shall mutatis mutandis apply. The argument is that in the matter of requisition, the Land Acquisition Act 1894, does not prescribe any, principles for awarding compensation, and, therefore, in respect of requisitio. either Sub-section (2) of Section 8 is not applicable or becomes otiose, with the result that the Act does not lay down any principles on which and manner in which the compensation is to be determined This argument ignores the expression mutatis mutandis" Sub-section (2) of Section 8 The said expression means "with due alteration of details. The Land Acquisition Act applies only to acquisition of land as distinguished from requisition of land. Acquisition deprives the owner permanently of his land; and requisition deprives him only of his right to present possession. When the necessity for which the land was requisitioned ceased, it may be made to revert to him. Sub-section (2) of Section 8 of the Act makes the provisions of the Land Acquisition Act, 1894, with due alterations of details or appropriate changes apply in respect of any reference made to the Court Part III of the Land Acquisition Act provides for a reference to the Court and the procedure thereof. With appropriate modifications the provisions of that Chapter apply to a reference in respect of compensation for requisition Ss 23, 24 and 25 lay down the principles for ascertaining the amount of compensation payable to a person whose land has been acquired We do not see any difficulty in applying those ''principles for paying compensation in the matter of requisition of land.'' In the above, case it was not disputed and it was also found by the, Supreme Court that the Act contained sufficient provisions for payment of compensation on acquisition. It was sought to be argued that similar provision did not exist in regard to the requisition, which argument has been repelled by the Supreme Court on the ground that the Act provides that the provisions of the Land Acquisition Act apply mutatis mutandis for the payment of compensation on the requisition as well. From the above decision, It is clear that the Act cannot be challenged on the ground that it offends against Article 31(2) of the Constitution.

39. The new Act, namely the Assam Land (Requisition and Acquisition) Act, 1964 (Assam Act XV of 1964), more or less, re-enacted all the provisions of the Act of 1948, which was repealed, as may be seen from Section 21(1) of the new Act it was also provided in Section 21(2) that notwithstanding such repeal, any rule made, any order issued, any notification published, any proceedings commenced, any action taken or anything whatsoever done under the Act repealed, shall continue and be deemed to have continued and have effect as if made, issued published commenced, taken or done under the corresponding provisions of this Act; and. that any action taken, order made or other acts and things done by any officer acting or purporting to act under the Acts repealed in connection with the requisition or acquisition of any land shall be valid and shall be deemed always to have been valid, and shall not be called in question in any Court on the ground of incompetence of the officer to act under the Act repealed.

Section 22 of the new Act provides as follows

Notwithstanding anything contained in any judgment. decree or order of any Court, all lands requisitioned, acquired, compensation paid for, works undertaken or purported to have been requisitioned, acquired, compensation paid or works undertaken under the Acts repealed, shall be and shall be deemed always to have been, as validly, requisitioned, acquired, paid or undertaken as if the provisions of this Act were in force at all material times when such requisition or acquisition was made or compensation was paid or works were undertaken, and accordingly.

(a) no suit or other proceeding shall be maintained or continued in any Court against the Slate Government or any officer for the release of any land so requisitioned or acquired or for payment of any damages; and

(b) no Court shall enforce, a decree, or order directing the release of ? any, land so requisitioned of acquired or for the payment of any damages.

The learned Advocate General contended that as the Act of 1948 is no longer in force, the said Act having been repealed, and as whatever action taken under it shall be deemed to have been taken under the new Act, It is the validity and the constitutionality of the new Act that would have to be considered and not that of the Act of 1948. He further contended that the new Act is protected from any attack on grounds of constitutionality as violative of Article 14, 19 or 81 of the Constitution, by virtue of Article 31A thereof, and the question would have to be examined in the light of this Article and the provisions of the the new Act.

40. The relevant portions of Article 31A of the Constitution may be extracted:

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

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

(b) x x x

(c) x xx

(d) x xx

(e) x x x

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 of 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 un-less 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 rela lion to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land Lenore in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala any janmam right:

(b) 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 and any rights or privileges in respect of land revenue.

This Article together with another Article 31B was added to the Constitution with retrospective effect by Section 4 of the Constitution (First Amendment) Act, 1951. When it was so introduced, Article 31A read as follows;

31A(1) Notwithstanding anything in the ''foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for 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 any provisions of this part.

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

X X X

As already pointed out, this Article was made retrospective by employing the words shall be deemed always to have been inserted in Section of the Constitution (First Amendment) Act 1951. Subsequently, this Article has been amended by the Constitution (Fourth Amendment) Act, 1955. The object of this Amendment apparently was to take out from the purview of Articles 14, 19 and 31 not only laws relating to acquisition of property in an estate or of rights therein by a State or extinguishment or modification of Such rights in an estate, but also other laws indicated by the States as part of agrarian and. social welfare legislation affecting proprietary rights In estates as defined in the law relating to land tenures in force in any local area. Although, strictly speaking, whatever has been stated in the statement of objects and reasons may not be used in interpreting the provisions of the amendment, the purpose and foundation of the amendment could be ascertained and to that limited extent the statement could be looked into. It would be seen from a perusal of this that the following additional objects inter alia are sought to be achieved by this amendment:

(1) fixing the limits of agricultural land that may be owned or held by any person; the disposal of land held in excess of this maximum and the further modification of the rights of land owners and tenants in agricultural holdings-all this is part of the objectives of land reforms.

(2) to secure full control over mineral and oil resources of the country including the power to cancel of modify the terms and conditions of prospecting licences. mining leases and similar agreements in the interests of the national economy of the Stale; the reforms in company law under contemplation, in the national inter est.

41. In so far as the subject matter of this case is concerned, it would appear to be not necessary to go into any detail in regard to the amendment of Article 31A of the Constitution brought about in 1955, as we are only concerned with the acquisition by the State of land which is estate and of right''s therein, which was already covered by Art, 31-A as it originally stood and now by Clause (a) of the amended Article 31-A which is a mere reproduction of the corresponding provision in Articles 31-A as it was before the amendment.

42. Dr. Medhi pointed out that the new Act is no in am way saved by Article 31-A inasmuch as the object of the Article 31-A was to protect Acts passed for

securing or providing for social reforms or passed in furtherance of a scheme of agrarian reforms and as the instant Act is not one that can be said to be in furtherance of or by way of implementing any such reforms Article 31 A cannot apply to the new Act. Before examining the rulings relied on by either side on this aspect of the matter, it would be useful to analyses the provisions of the Article in so far as they are relevant to the instant case In order that this Article could be held to apply to any particular enactment, the provisions of that enactment should fulfil the following conditions:

(1) It must be an Act providing for

(a) either the acquisition by the State

(i) of any estate; or

(ii) of any rights in an estate or

(b) the extinguishment or modification of any such rights; and

(2) The law should have been reserved for the consideration of the President and should have received his assent,

In this context, it must be noticed that the Article has defined the words "estate" and the rights in an estate.

43. The expression "estate" shall have the same meaning in relation to any local area as that expression'' or its local equivalent has in the existing law relating to land tenures In force In that area. This expression shall also include any Jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any Janmam right.

44. The expression ''rights'' in relation to an-estate has been defined as including any rights "vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, ralyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. It may thus be seen that the expression ''rights'' has been given a very wide meaning as including any kind of right vesting in a person holding any interest in land and fulfilling the status indicated in the definition

45. As regards the meaning of "estate" as applicable in the State of Assam, which is the local area concerned in the instant case, the law relating to land tenures in force in the area is contained in the Assam Land and Revenue Regulation, 1886. The definition of "estate" is given in Section 3 of the said Regulation"; and is as follows:

In this Regulation, unless there is something repugnant in the subject or context,--

* * *

(b) "estate" includes-

(1) any land subject, either immediately or prospectively, to the payment of land revenue; for the discharge of which a separate engagement has been entered into;

(2) any land subject to the payment of, or assessed with a separate amount as land revenue although no (engagement has been entered into with the Crown for that

(3)any local area for the appropriation of the produce or products whereof a license been granted, under rules made by the provincial Government u/s 155, Clause (e) or (f);

(4)any char or island thrown up in a navigable river which under the laws in force is at the disposal of the. Crown:

(5)any land which is for the time being entered in the Deputy Commissioner''s register of revenue-free estates as a separate holding;

(6)any land being the exclusive property of the Crown of which the provincial Governments has directed the separate entry in the registers of revenue-paying and revenue-free estated mentioned in Chapter VI:

Explanation: Any land gained by allusion or by dereliction of a rive to any estate as here defined which under the laws in force is considered an increment to the tenure to which the land has accreted shall be deemed to be part of that estate:

46. It may be seen from the above definition that the term ''estate'' includes any land liable to the payment of land revenue or subject to the payment of land revenue, and that the technical meaning given to the expression ''estate'' in the laws, relating 4o land tenures in other States has no application in the State of Assam. For example, the definition of ''estate'' in the Madras Estates Land Act, which contains the law relating to land tenures both in Madras as well as in Andhra Pradesh and which has a very restricted meaning, has application in regard to the new Act which we have to consider. Thus, when an enactment passed by a State Legislature comes up for consideration, the definition and the meaning of the word "estate"; as adopted in the laws relating to the land tenures which are in force in that State would have to be taken into consideration and the scope and application of the Article should be limited to such estates. The position is thus quite simple, so far as the State of Assam is concerned, as, In that State, the expression "estate" is understood as and equated to, any land subject, to the payment of land revenue, such as the land that has been acquired under the Act of,''1948 in the instant case. Hence, Article 81 of the Constitution, so far as the area covered by the State of Assam is concerned, would; be applicable to every enactment passed by the Assam" State Legislature, providing for the acquisition by the State of any such land. So, on a prima facie reading of the provisions, of the Act of 1948 as amended by the post-Constitution Amendment Acts and of the new Act (Assam Act XV of 1964) alongside the; provisions of Article 31A, one would experience no difficulty in coming to the

conclusion that these Acts satisfy the conditions laid down in Article 31A and, therefore must be regarded as covered by Article 31A of the Constitution; and if this conclusion is correct obviously, the provisions of these Acts could not be challenged on the ground that they are inconsistent with or take away or abridge the fundamental rights provided for in Articles 14, 19 and 31 of the Constitution.

47. In support of his contention that the impugned Acts are not in any way protected by Article 31A of the Constitution reliance has been placed by Dr. Medhi on decision of the Supreme Court In Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, . In that case, the validity of Madras Act 32 of 1955 came to be considered in the light of the application of Article 31A of the Constitution. This Act known as the Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) did not modify any the rights, appertaining to ''Janmam right'' in land. Theirs Lordships held that the impugned Act in that case did not purport to modify or extinguish any right in an estate, the avowed object of it being only to declare particular sthanams to be Marumakkathayam tarwads and the property pertaining to such sthanams as the property of such tarwads. It further declared particular sthanams to have always been tarwads and their property to have always been tarwad property. The result of the Act was found to be that the sole title of the sthanee was not recognized and the members of the tarwad I Were given rights therein. That being the case, their Lord-ships experienced no difficulty in holding that the impugned Act did not relate to the modification of any rights in an estate as defined in Article 3lA of the Constitution, or regulate the rights inter se the landlords and the tenants. The decision in that case rested thus on two facts, namely. (1) the impugned Act did not purport to make a law in regard to the extinguishment or modification of any rights in an estate; and (2) nor did it purport to extinguish or modify the rights inter se between the proprietor, sub-proprietor, under proprietor, tenure-holder, raiyat, under-raiyat or other intermediary.

48. It was because the impugned Act merely converted the exclusive ownership of janmam right in tarwad property vesting in a sthanee, into a joint property, thereby creating rights in the other members of the tarwad. It was held that the legislation did not purport to affect land tenures and acquire the character of introducing any agrarian reforms, that is reforms in regard to agricultural lands in an estate but merely deprived a person of a sole and exclusive right in the property and vested it jointly in himself and in the other members who belonged to the same tarwad or family group in Kerala. It was accordingly, held that Article 31A of the Constitution did not apply to the impugned Act.

49. Obviously, this decision has no application to the facts of the instant case where the legislation falls directly and squarely within the scope of Article 31A(1)(a) in so far as it relates to an ''estate'' and involves the acquisition by the Stale of such an estate. But, strangely enough, from the above decision it was sought to be argued by Dr. Medhi that unless the law made by a Slate related to agrarian reforms and formed part of a scheme of agrarian reforms, it could not

receive the protection of Article 31A. I see no force in this contention. Whatever considerations might apply in regard to the other clauses of Article 31A introduced by the Constitution (Fourth-Amendment) Act, 1955, there can be no difficulty in this case, as it relates to legislation providing for acquisition by a State of an estate, to which Article 31A(1)(a) directly applies. In this connection, for the sake of completeness, it may be noticed that the decision in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, did not involve any law providing for the acquisition by the State of any estate.

50. This decision came to be considered by a subsequent decision of the Supreme Court in Ranjit Singh and Others Vs. State of Punjab and Others, , , wherein the following observations were made.

No doubt Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, , considered a bare transfer of the rights of the sthanee to the tarwad without alteration of the tenure and without any pretence of agrarian reform, as not one contemplated by Article 31-A however liberally construed. But that was a special case and we cannot apply it to cases where the general scheme of legislation is definitely agrarian reform and under its provisions something ancillary thereto in the interests of rural economy, has to be undertaken to give full effect to the reforms.

It may be seen from the above observations that their Lordships of the Supreme Court in the above quoted case Ranjit Singh and Others Vs. State of Punjab and Others, were anxious to confine Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, to the special and limited circumstances and the facts of that case and did not wish to extend the dictum laid down therein to other cases involving land reforms. It is contended by Dr. Medhi that even in that case their. Lordships were conscious that unless a legislation purports to be part of and affect the scheme of general agrarian reform, Article 31-A would not be applicable. It must be noted that Ranjit Singh and Others Vs. State of Punjab and Others, did not also purport to deal with any legislation involving the acquisition of land by the State. Their Lordships were concerned with and in fact were interpreting the meaning of the words "extinguishment and modification of rights in an estate" and it is in that context Hidayatullah, J. who spoke for the Court, made use of the expression "general scheme of legislation involving agrarian reform."

There is nothing laid down in that decision to the effect that the acquisition of land in an estate particularly where the expression "estate" in a local area means "any land subject to the payment of land revenue" that it would apply only to laws providing for acquisition of estates only as part of a general scheme of agrarian reform of something ancillary thereto in the interests of rural economy. Not only does this decision not lay down any such proposition, but it has also got to be noticed that there is nothing in Article 31A(1)(a) confining its scope only to legislation for the acquisition of an estate where such acquisition is effected as part of a general scheme of agrarian reform. That would be reading something into the clause which is not there, and if we purport to put in those words which are not in Article 31A(1)(a), we would be encroaching upon the prerogative of the Parliament and would be exposing ourselves to the charge of legislating under the guise of interpreting the plain and straightforward provision which admits of no ambiguity or doubt.

51. The two decisions of the Supreme Court, namely, Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, and Ranjit Singh and Others Vs. State of Punjab and Others, relate to cases wherein the question that arose for decision was whether the particular legislation that was considered, provided for the extinguishment or modification; of rights in an estate, the expression ''estate being given the meaning which it obtains-in the particular law relating to land tenures that was in force in the Stales of Madras and Kerala in the one case and in the State of Punjab in the other. Thus, they were not cases involving legislation by the State which provided. for the acquisition by the State of any estate or of any rights in an estate. These decisions, therefore, as already pointed out, can have no application to the instant case, which relates to legislation by the State of Assam providing for the acquisition by that State of an estate, meaning revenue paying land.

52. In this connection, our attention has been'' drawn by the learned Advocate-General to a set of decisions of the Supreme Court which laid down and maintained this distinction in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, , there are observation which Clarified the whole position. Their Lordships of the Supreme Court, dealings with the Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956) observed that the impugned Act was however not a for the acquisition by the Stale of any estate or of any rights therein, because even the provisions with regard to the compulsory purchase by tenants of the land on the specified date, transferred the title in those lands to the respective tenants and not to the State. Thus, there was no compulsory acquisition of any "estate" or any rights therein be the State itself Their Lordships further observed that Article 31A(1)(a) talks of two distinct objects of legislation: one being the acquisition by the State of any estate or of any rights therein and the other being the extinguishment or modification of any such rights. If the State acquired an estate or any rights therein that acquisition would have to be a compulsory acquisition within the meaning of Article 31(2A) which was also introduced in the Constitution by the Constitution (Fourth Amendment) Act. 1955 simultaneously with the amendment to Articles 31A thereof Their Lordships further pointed out that an extinguishment or modification of any rights in an "estate" is a distinct concept altogether and could not be in the process of an acquisition by the State of any "estate"'' or of any rights therein, and the words extinguishment" or modification of any such rights" must be understood in their plain grammatical sense. Their Lordships further emphasised that in the case before them there was an extinguishment, or, in any event, a modification of the landlord''s right in the estate, well within the meaning of those words used in Article 31A(1)(a) and that, therefore, the

impugned Act was covered by Article 3.1A and was protected from attack against its constitutionality on the score of its having violated the fundamental rights enshrined in Articles 11 19 and 31 of the Constitution.

53. Dealing with the attempt, of Courts to read into words in the enactment which arc not there their. Lordships observed as follows:

If the language of the enactment is clean and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the legislature The intention of the Legislature is to be gathered only from the words used by it; and no such liberties can be taken by the Courts for effectuating a supposed intention of the legislature. There is no warrant at all in our opinion, for adding these words to the plain terms of Article 31A(1)(a) and the words extinguishment or modification of any such rights must be understood in their plain grammatical sense without any limitation of the type suggested by the Petitioners.

54. Our attention has been drawn to another case in the same volume, namely, Atma Ram v. State of Punjab AIR 1959 SC 19. In that case, their Lordships of the Supreme Court were dealing with the provisions of the Punjab Security of Land Tenure Act (10 of 1953)(as. amended by Act 11 of 1055), and held that these provisions amounted to modification of the land owner''s rights in the land comprised in his estate or holding The question that was examined in that case was whether those provisions involved a modification of rights in an estate and are protected by Article 31A(1)(a) and their Lordships held that they were so protected. They further held that a piece of validating enactment purposely introduced into the Constitution with a view to saving that kind of legislation from attacks on the ground of constitutional invalidity, based on Articles 14, 19 and 31; should not be construed in a narrow sense and, on the other hand, such a constitutional enactment should be given its fullest and widest effect, consistently with the purpose behind the enactment, provided, however, that such a construction did not involve any violence to the language actually used.

55. In Gangadharrao Narayanrao Majumdar Vs. The State of Bombay and Another, , , their Lordships of the Supreme Court had to consider the constitutional validity of the Bombay Personal Inams Abolition Act, 1953 (42 of 1953). This again is a case relating to the extinguishment or modification of rights. In an estate and it was held that although the Act extinguished the rights of the invader to retain part of the full assessment over and above the quit-rent payable to the Government, which was a right in an estate, and although no compensation is to be paid for the loss to the invader of what he used to get before the Act was applied, their Lordships held that the Act was saved by Article 31A of the Constitution and was not open to any attack under Article 31.

56. The case reported in State of Bihar Vs. Rameshwar Pratap Narain Singh and Others, lays down the law in clear and unambiguous terms in regard to the

legislation involving acquisition of an estate or estate land by the State In this case the Bihar Land Reforms Act, 1950, came to be considered and it was therein held as follows:

That whether the Amending Act was a law as regards land reform or not it was clearly and entirely as regards acquisition of property, and as such, was within the legislative competence of the Bihar Legislature under Article 246 of the Constitution.

(2) That a law may be a law providing for "acquisition" even, though the, purpose behind the acquisition is not a public purpose

(3) That after the deletion of Item 36 and amendment of item 42 in the Concurrent List in the year 1956, the legislative list permitted the State Legislature to enact a law of acquisition even without a public purpose and that the only obstacle to such a law being enacted without a public purpose was the prevision in Article 31 (2) of the (sic). That obstacle also disappear-ed If the law in question was one within Article 31A.

(4) That there was no doubt that the right of the proprietor of an estate to hold a mela on his own land was a right in the "estate". being appurtenant to his ownership of the land; so also the right of a tenure-holder, who was the owner of the land subject only to the payment of rent to the proprietor, to hold a mala on land forming part of the tenure. There fore, the argument that the impugned law was not a law for acquisition of a right in the estate", because the right to hold a mela was not a right in the land must be rejected. 5. That the impugned provisions of the Amending Act were thus a law providing for the acquisition by the State of rights in an ''estate'' within the meaning of Article 31A of the Constitution and consequently even if it was assumed that they were inconsistent with or take away or abridge any of the rights conferred by Articles 14, 19 and 31 they were not void on that ground.

57. On a careful consideration of the various decisions of the Supreme Court bearing on the subject and the weighty observations made therein, I am clearly of opinion that the impugned Acts being Acts providing for the acquisition of an estate by the State are to that extent clearly covered and protected by Article 31A of the Constitution, and that Article 31A(1)(a) directly applies to the impugned Acts and the provisions thereof cannot, therefore, be questioned as violating Articles 14, 19 or 31. In this connection, it may be recalled that the validity and constitutionality of the Act of 1948 had been considered by the Supreme Court, which held that the Act was constitutionally valid and no exception could be taken to the provisions thereof. Vide Paresh Chandra Chatterjee Vs. The State of Assam and Another, ..

58. In the view 1 have taken, it would not stately speaking be necessary for me to go further and examine independently of the conclusion reached by me, whether this Act offended Articles 14, 19 and 31. But, as a difference of opinion has been expressed in regard to the question whether the impugned Acts are

volatile of Articles 14 and 31 by my learned brothers the Chief Justice and Dulla. J., I am constrained to examine the position and give my conclusions thereon.

59. At the outset, it has to be pointed out that Dr. Medhi did not seriously contend that the Acts are vocative of Article 19(1)(f) Hence, it is not necessary to examine the provision of the Act with reference to Article 19 of the Constitution.

60. We are thus left with the examination of the question whether the impugned Acts violated Articles 14 and 31 of the Constitution. I shall first take up the question relating to the latter Article, which had already been to some extent dealt with supra. The relevant portion of Article 31 is as follows:

31(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) x x x x

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President has received his assent.

x x x x x

Assuming for the sake of argument that Article 31 (2) is applicable to the Act of 1948, the requirements of that Article have been complied with by the provisions of that Act. The requisition or the acquisition under the Act is for a public purpose, as may be seen from the provisions of the Act, and his aspect is not seriously questioned.

61. The only other question to be determined is whether there is provision for the payment of compensation for the property acquired or requisitioned either fixing the amount of compensation or specifying the principles or the manner in which the compensation is to be determined and given. On this question it is clear from the provisions of the Act that there is adequate provision made for payment of compensation under the Act, Section 7 of the Act deals with compensation. Section 7(1) lays down that compensation shall be paid whenever land is acquired u/s 4 of the Act, the amount of which compensation being directed to be deter mined by the Collector in the manner and in accordance with the principles sel out in Sub-section (1) of Section 23 of the Land Acquisition Act, 1894; and the proviso to the sub-section lays down that the market; value shall be deemed to be the market value of such land on the date of; publication of the

notice referred to in Sub-section (1) of sec lion 4 of the Act. It is clear that Sub-section (1) of Section 7 provides for payment of ''compensation adopting the same principles as are set out in Sub-section (1) of Section 23 of the Land Acquisition Act, subject to the proviso in Sub-section (1); and it is also clear that Sub-section (1A) provides for payment of compensation to land acquired which is included in any grant or settlement made for special cultivation, which land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made, or for the purposes incidental thereto. It is thus clear that there is provision for payment of compensation and the method of fixing the compensation, is also laid down in the Act. Hence, there is no difficulty in holding that the Act of 1948 does not violate Article 31 of the Constitution and the new Act if a mere reproduction of the provisions of the Act of 1948, and hence the new Act also complies with the requirements and conditions laid down by Article 31.

62. Further, we have seen that the various Acts amending the Act of 1948 made and passed after the Constitution came into force were reserved for consideration by the President and had received his assent and in the case of the new Act also Clause (8) of Article 31 has been complied with, as it had been reserved for the consideration of the President and had received his assent. No exception could, therefore, be taken to these Acts on the ground that Article 31 had been violated. As already pointed out earlier in this judgment, the same conclusion was reached by their Lordships of the Supreme Court in regard to the constitutionality of the Act of 1948 in AIR 1962 SC 167. In that case, their Lordships had proceeded on the assumption that there was adequate provision in that Act for payment of compensation in the case of acquisition of land, and the question consider-ed was whether there was similar provision in regard to requisition as well. On such consideration, the learned Judges held that the provisions in regard to acquisition applied mutatis mutandis to requisition of an estate and no exception could be taken to the said Act on that ground. This is conclusive and I am clearly of opinion that in the circumstances of the case there is no substance in the contention that the compensation is illusory, and that there cannot, therefore, be any attack against the Act of 1948 as well as the new Act, as being unconstitutional, on the ground of offending Article 31(2) of the Constitution.

63. In this connection, it is contended that although there is a provision for payment of compensation, the compensation paid is illusory. But as already held this question cannot be agitated after the Constitution (Fourth Amendment) Act, 1951, which amended Article 31(2), providing that no such law as is contemplated by Article 31(2) shall be called in question in any Court on the ground that the compensation provided by that law is not adequate. Hence, there is no substance in the contention that the two impugned Acts offend Article 31(2) of the Constitution.

64. The next question to consider is whether the provisions of the two impugned

Acts are violative of Article 14 of the Constitution Article 14 reads as follows:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

65. The arguments with regard to Article 14 advanced by Dr. Medhi are two fold firstly, that as provision has already been made for the acquisition of land in the Land Acquisition Act, the impugned Acts covering the same field and dealing with the same subject cannot be regarded as valid and operative in view of the fact that the provisions of the Land Acquisition Act are more favourable to the citizen, and following the principle that when two enactments cover the same field and deal with She game subject, the one whose provisions are harsher and more stringent, should not be followed as it would mean adopting the harsher enactment in one case and the more favourable enactment in another, which would result in and involve discrimination. Reliance is placed on the decision in Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastry AIR 1964 SC 545.

66. At the outset, it must be pointed out that legislative power is given by the Constitution to the State for enacting laws in regard to the acquisition and the requisitioning of property. Vide entry 42 in List III of Schedule VII of the Constitution: "Acquisition and requisitioning of property". The Constitution (Seventh Amendment) Act of 1956, substituted the present entry 42 for the previously existing one, which was considered not satisfactory, and also omitted entry 36 of List II and entry 33 of List I, both of which had dealt with acquisition and requisitioning of property, the entry 33 in List I relating to acquisition or requisition for purposes of the Union and entry 36 relating to acquisition and requisition for the purpose of the State. These two entries before they were omitted by the Constitution (Seventh Amendment) Act of 1956 were made subject to the then entry 42 of List III. The confusion was obviated by the substitution of the present entry 42 of List III quoted above.

67. It may be seen that the Assam Act of 1948 was passed under the provisions of the Government of India Act, 1935, Entry 9 of List II of the Seventh Schedule, which empowered the Provincial Legislatures to pass such legislation; and the new Assam Act of 1964 was passed in exercise of the power conferred by Entry 42 of List III. Hence, no exception could be taken to the legislative competence of the Assam State Legislature in passing these enactments. That the State has the power to make a law acquiring property for the State is assumed and recognised in Article 31A(1)(a) which specifically provided for the acquisition by the State of any estate, or of any rights therein.

68. The only other question that requires to be considered is whether the Act of 1948 and the new Act of 1964 related to and dealt with the same subject matter as the Land Acquisition Act; and if so, whether the provisions of the impugned Acts are harsher or less favourable than those of the Land Acquisition Act, and, if so, what would be the consequence in law.

69. Reliance has been placed by Dr. Medhi on the principle enunciated in Suraj

Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, .. This must, in my opinion, be confined to the enactments passed by the same Legislature in exercise of the same power given by the Constitution, or to two parallel provisions occurring in the same enactment, one of which is more advantageous than the other, and both of whom, that is, the separate enactments or separate provisions, as the case may be, would be applicable and could be applied, to the same class of persons, the subject-matter of the provisions in question being exactly the same. That principle, in my considered opinion, must be confined to the particular facts and circumstances of that case, and if would not be correct to extend the principle By analogy or otherwise, to enactments passed by different Legislatures in exercise of different and independent powers conferred on them by the Constitution, For example, if power is given to Parliament to enact a law on a subject and power is given to a State Legislature to enact a law on a similar subject, the scope and applicability of laws would be dependent on the scope of and the separate conditions and circumstances set out in the enactment, and there can be no question of the principle in Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, being applied to those enactments To hold otherwise would amount to interfering with the legislative jurisdiction and power of the Parliament or the State Legislatures, as the case may be, to make laws in their respective spheres of legislation in conformity with Article 246 of the Constitution.

70. The question, however, become-academic in the instant case as the scope of the Land Acquisition Act and the scope of the impugned Acts, namely, the Act of 1948 and the new Act of 1964 are by no means the same, for, the Laud Acquisition Act does not deal with any requisitioning of property but only with a direct acquisition of properly whereas the impugned Acts deal firstly, will: the requisitioning of property and, secondly, with the acquisition of the properly so requisitioned under the said Acts. To that extent, there is no common field covered by the two Acts. Further, while the Land Acquisition Act deals with the acquisition of lands in general for a public purpose generally, the impugned Acts provide for the acquisition only of properly which had already been requisitioned for certain specified public purposes only. Here again there is a clear distinction between the character of the Assam Acts and the Land Acquisition Act. Further, even in regard to the requisitioned property, the purpose for which acquisition could be made are particularized in Section 3 (1) of the Act of 1948 and Section 3(1) of the corresponding new Act of 1964, and as the acquisition of property under the impugned Acts is ''confined to properties requisitioned u/s 3 it is clear that the acquisition under the Acts is also for the limited purpose set out in the enactment. Hence, there is no substance in the contention that the Land Acquisition Act covers the same field as the impugned Acts and that, therefore, the impugned Acts should be struck down as violative of Article 14 of the Constitution. Further, Article 254(2) of the Constitution is a complete answer to the argument based on the difference between the provisions of the Land Acquisition Act and the two impugned Acts.

71. Another argument which was particularly directed towards the validity of Section 7(1-A) of the Act of 1948 and the corresponding Section 11(2) in the Act of 1964 is that a special mode of fixing compensation is laid down in this provision in regard to lands granted or settled for special cultivation'' where such lands are allowed to lie fallow or uncultivated. It may be seen that so far as all other properties acquired under the impugned Acts are concerned, the compensation is payable u/s 7(1) of Act of 1948 in accordance will) the principles set out in the Land Acquisition Act, subject to the proviso to that sub-section and Sub-section (2). Similarly, the principles on which the compensation has to be arrived at is laid down in Section 11(1), (2) and (3) of the new Act, which principles follow closely those adopted under the Land Acquisition Act. There is, strictly speaking, no marked difference between these provisions and the corresponding provisions of the Land Acquisition Act, except that the provision for the payment of 15 per cent solarium for compulsory acquisition is omitted. This omission may be reasonably justified, as the acquisition under the Acts is of property already requisitioned and as the owner must have been receiving compensation for the period of requisition under the provisions of the impugned Acts.

72. The classification made in Section 7(1A) of Act of 1948 and Section 11(2) of the new Act in regard to the land settled or granted for special cultivation is reasonable and the compensation is fixed at ten times the land revenue on the said land. This is because the land in question covered by these sub-sections in question is granted for special cultivation but has not been utilised by the grantee for the purpose and was allowed to remain uncultivated and fallow. Further, as pointed out by the learned Advocate-General. no payment was initially involved in regard to the lands granted or settled for special cultivation ordinarily; and. where any such payment was in fact made, provision is made in the proviso to the sub-section for the payment of the amount of premier or price paid at the time of the settlement or grant of such land by the grantee, in addition to the compensation fixed. So that the grantee not only gels back whatever is paid by him, but he also gets an amount equal to ten times the land revenue on the land in addition. This provision, classifying separately the lands granted for special cultivation and left fallow, cannot by any stretch of reasoning, be regarded, there-tore, as discriminatory or unreasonable. The classification satisfies the tests of reasonableness and nexus, laid down in Budhan Choudhry and Others Vs. The State of Bihar, , , and other decisions of the Supreme Court, particularly Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, ,, and reiterated in the recent case of the Supreme Court in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, .. There is, therefore, no substance in the contention of Dr. Medhi in this regard. I am clearly of the opinion that even independent of Article 31-A of the Constitution, neither the Act of 1948 nor the new Act of 1964 could be attacked on the ground that they violate Article 14.

73. In the result, I hold that there is no substance in the petition. I would,

accordingly, dismiss the petition and discharge the rule.

S.K. Dutta, J.

74. I have had the opportunity of going through the judgment prepared by my Lord the Chief Justice. I am of the view that the Assam Land (Requisition and Acquisition) Act, 1964 (hereinafter called the Assam Act) offends Articles 14 and 31(2) of the Constitution of India and I give my reasons for the same.

75. By a notification dated, 13th March 1961, the State Government has acquired 942 bighas of land in N.L.R. Grant No. 333/576 in Dag Nos. 1 and 2/42 in village Madhagosal Grant (N.C. Bargara Bagicha), Mouza Dal-gaon east belonging to Gaur Nitai Tea Company Limited under the provisions of the Assam Act. The validity of this Act is being challenged by the prsent petition.

76. My Lord the Chief Justice has elaborately discussed the question whether the Assam Act gets protection under Article 31-A(1)(e) of the Constitution. He has come to a finding that there is not sufficient material to hold that the Assam Act forms part of any general scheme of agrarian reform and hence no such protection is available to it. I entirely agree with this finding.

77. Therefore, the only question that remains is whether the Assam Act is hit by Article 14 or the provisions of Article 31 of the Constitution. In order to examine this question, it is necessary I - lay down certain provisions of the said. Act, The Preamble is as follows;

Whereas it is expedient to amend and consolidate the law for requisition and speedy acquisition of premises and land for certain public purposes; It is hereby enacted in the Fifteenth Year of the Republic of India as follows:

78. Section 3(1) reads as follows:

If in the opinion of the State Government or any person authorised in this behalf by the State Government it is necessary so to do, for maintaining supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport, communication. irrigation, flood control and anti-erosion measures including embankment and drainage or for providing land individually or in groups to landless, flood affected or displaced persons, or to a society registered under the Assam Co-operative Societies Act, 1949, or a company incorporated under the Companies Act, 1956, formed for the benefit and rehabilitation of landless,'' flood affected or displaced persons the Stale Government or the person so authorised as the case may be. may by order in writing, requisition any land and may make such further orders as appear to it or to him to be necessary or expedient in connection with the requisitioning:

Provided that no land used for the purpose of religious worship shall be requisitioned under this section:

Provided further that where it is necessary to provide the land to landless or displaced persons such land shall not be requisitioned unless the person interested in the land has been given an opportunity of making representation against it within such time and in such manner as may be prescribed in this behalf.

79. Section 6 reads as follows:

(1) Where any land has been requisitioned u/s 3, the State Government may use or deal with it in such manner as may appear to it to be expedient and may acquire such land by publishing in the Official Gazette, a notice to the effect that the State Government has decided to acquire such land in pursuance of this section.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land and premises shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end.

(3) Subject to the provisions of this Act on such vesting, the provisions of the Land Acquisition Act, 1894, with the rules framed thereunder shall, so far as may be, apply to such land.

80. Section 11 reads as follows:

(1) Subject to the provisions of Sub-section (2), whenever any land is acquired u/ s 6 or Section 9 there shall be paid compensation the amount of which shall be determined by the Collector. In determining the amount of compensation the Collector shall take into consideration the market value of the land for a period of five years preceding the date of publication of the notice under Sub-section (1) of Section 8 where the land is acquired under the said section, and where the land is acquired u/s 9, from the date of passing the order under Sub-section (1) of the said section, and the amount of compensation payable shall be on the basis of the average market value so arrived at:

Provided that where any building is acquired u/s 6, the compensation shall be payable at the market value of the building on the date of publication of the notice under Sub-section (1) thereof.

(2) In the case of laud with respect to which any settlement has been made for special cultivation or which is included in any grant, if such land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or for the purpose incidental thereto, then the compensation payable for acquisition of such land together with decs if any standing on it shall be an amount equal to ten limes the annual land revenue which, on the dale of publication of the notice referred to in Sub-section (1) of Section 6 or Sub-section (1) of Section 9, is or would have been payable if such laud is or had been asses-sable to revenue at full rales:

Provided that where any amount was originally paid to Government by the grantee as price or premium for the land, an additional amount equal to the amount originally paid by the grantee shall also be payable.

Explanation. - "Special cultivation" means cultivation which involves, either owing to the nature of the crop or owing to the process of cultivation, a much larger expenditure of capital per acre than is incurred by most of the cultivators in the State, and includes cultivation of tea.

3. When the compensation has been determined under Sub-section (1) or Sub-section (2), the Collector shall make an award in accordance with the principles set out in Section 11 of the Land Acquisition Act, 1894 but no amount referred to in Sub-section (2) of Section 23 of that Act shall be included in the award.

(4) * * * *

(5) * * * *

81. From the Preamble it is clear that the Assam Act is meant for speedy acquisition of land for certain public purposes. These purposes are laid down in Section 3 of the Assam Act. There is no doubt that for these very purposes land can be acquired under the Land Acquisition Act, 1894 (hereinafter called the Central Act). In fact the Government has from time to time, applied the Assam Act or the Central Act at their free choice for the acquisition of land for purposes mentioned in Section 3 of the Assam Act. If the Assam Act is (sic) compensation amounting to only ten times the land revenue is payable u/s 11 (2) of the Assam Act for the class of land mentioned in that section. In his additional affidavit the Petitioner has drawn our attention to the acquisition of about 315 blghas of land of the Ghunsali Fee Simple grant. This land was acquired for the purpose of "accommodating" the Refinery and the Assam Act could be applied as "accommodation" is one of the purposes mentioned in Section 3 of the said Act. In that case, the land being part of a grant meant for special cultivation, compensation amounting to Rs. 3.75 paise would have been payable u/s 11(2) of the Assam Act. But the land was acquired under the Central Act and compensation at the rate of Rs. 3,000 per bigha was paid. Therefore, both the Assam Act and the Central Act may operate on the same field Article 14 of the Constitution of India guarantees to all persons the right of equably before the law and equal protection of the law. Two substantially different laws, one being more onerous, cannot be allowed to operate in the same field and the onerous one must he shuck down as a piece of discriminatory legislation Thus in the case of Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, the Supreme Court held that Section 5(4) of the Taxation on Income (Investigation Commission) Act 1947 which dealt with income-lax evaders was hit by Article 14 of the Constitution as Section 34 of the Income Tax Act operated in the same field and the former Act was more onerous. Similarly, in since Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another, , , the Supreme Court truck down Section 5(1) of the aforesaid Act of 1947.

82. The authority concerned has a naked discretion to apply either the Assam Act or the Central Act in the acquisition of land for the purposes mentioned in

Section 3 of the Assam Act. When any land is acquired under the Central Act, the question of paying only ten limes the land revenue cannot arise. Thus the Assam Act which is more onerous must be struck down.

83. Moreover when land is acquired under the Assam Act, the amount mentioned in Section 23(2) of the Central Act, viz., 15 percent of the market value which is payable on account of the compulsory nature of the acquisition, is not payable. Thus if land is acquired under the Central Act for a public purpose the above amount is payable, whereas if it is acquired for a public purpose mention-ed in Section 3 of the Assam Act and the Assam Act is applied that 15 per cent is not payable. On a comparative study of the Central Act and the Assam Act it is clear that if land is acquired under the Assam Act for a public purpose mentioned in that Act, the claimant gels a lesser compensation than he would get if the same land is acquired for a public purpose under the Central Act. The Assam Act therefore, infringes Article 14 of the Constitution. In the case of P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, ,, the Supreme Court pointed out that if land was acquired for a housing scheme tinder the Land Acquisition (Madras Amendment) Act 1961, the claimant got a lesser value than he would have got if the same or similar land was acquired for a public purpose like hospital under the Land Acquisition Act 1894. It therefore, held that discrimination was writ large on the Amending Act and it would not be sustained on the principle of reasonable classification.

84. Section 11(2) of the Assam Act lays down that compensation to the extent of only ten times the annual land revenue is payable when any land is acquired which was settled for special cultivation, or which is included in any giant, if such land is lying fallow or uncultivated, or is not utilised for the purpose for which the grant or settlement was made or the purposes incidental thereto. Thus land originally settled for special cultivation or included in any grant is classified for the purpose of compensation. If such laud lies fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or the purposes incidental thereto, it is a class by itself and on acquisition of such land only ten times the land revenue is paid as compensation and such a compensation is only nominal. But a classification which is not well defined will be hil by Article 14 of the Constitution

85. Now the question arises, what are the purposes incidental to special ''cultivation. We may lake, for example, the case of a tea garden. In a lea garden land is required not only for lea plantation but also for such purposes as labour lines, officers'' bungalows, hospital, factory, markets etc. In many tea gardens there are lands where thatch grows wild and this thatch is utilised for repairs of labour lines. In some gardens again, there are lands full of forests from which not only the labour, but also the management collect fuel for their personal use as well as for use in the factory. In certain gardens labourers are given lands for cultivation. In most of the gardens there arc grazing grounds for the cattle of the labourers. Land is also required for recreational purposes of the labourers and

also of the officers such as foot-ball grounds, polio fields etc. It is also required for opening up now plantation areas.

86. It is difficult therefore, to say what land in a tea garden is being utilised for the purposes (sic) to tea plantation. Opinion may vary in this respect from person to person. Therefore, the authorities can arbitrarily classify some land in a tea garden as surplus land and in some other garden similar land as land used for incidental purposes. There is no guidance whatsoever in the Assam Act as to what land should be treated as land used for incidental purposes.

87. In the present case, the Sub-Divisional Officer''s order dated 14th February 1962 (Annexure "I") shows that the Sub-Divisional Officer gave a finding that the land in question was not being used for special cultivation. He did not go into the question if any portion of the land was utilised for incidental purposes On the other hand, in the acquisition of the land of the Chunsali Tea Estate mentioned above, the Assam Act was not applied and, therefore, the question whether any portion of the acquired land was surplus land for which only ten times the land revenue was payable as compensation, could not be gone into.

88. Next the definition of "special cultivation" as given in the explanation under Sub-section (2) of Section 11 of the Assam Act, also vague. It says that special cultivation must involve a much larger expenditure of capital per acre than is incurred by most of the cultivators in the Stale. Most of the cultivators in this State grow paddy. Lands may be settled for example, for sugar-cane cultivation also. The cost of sugar-cane cultivation per acre may be larger than that of paddy cultivation. Yet it is difficult to say that sugar-cane cultivation can be classed as special cultivation, because there is no indication as to what is meant by "a much larger expenditure" as laid down in the proviso.

89. In view of the above vagueness ID the classification of land for payment of compensation only at ten times the land revenue the authorities acquiring land under the Assam Act are left with arbitrary power to pick and choose certain people for more favourable treatment than what is meted out to others In this view of the matter the Assam Act clearly offends Article 14 of the Constitution.

90. The Petitioner further submits that the compensation provided in Section 11(2) of the Assam Act is illusory and hence Article 91(9) of the Constitution (sic) violated. It may be noted that the annual land revenue for land mentioned in that section is generally less than a rupee per bigha. So the compensation comes to less than Rs. 10 per bigha. If there are trees on the land, the compensation will be the same however valuable the timbers may be. At this rate the Petitioner has been awarded Rs. 6.25 paise per bigha of his land. The Petitioner claims that the market value of his land will be about Rs. 500 per bigha and this claim is not denied. As already pointed out, the land revenue of the Chunsali Fee Simple grant being -/6/- annas per bigha the compensation u/s 11 (2) would have been Rs. 3.75 paise per bigha. But as the land of Chunsali grant was acquired under the Central Act for reasons best Known to the

authorities, the compensation paid was Rs. 3,000 per bigha, that being the market value. Regarding payment of compensation the Supreme Court observed as follows in the case of P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, mentioned above viz.

When a Court says that a particular legislation is a colourable one, it means that the Legislature has transgressed its legislative powers in a covert or indirect manner, it adopts a device to out step the limits of its power. Applying the doctrine to the instant case, the Legislature cannot make a law in derogation of Article 31 (2) of the Constitution. II can, therefore, only make a law of acquisition or requisition by providing for "compensation" in the manner prescribed in Article 31(2) of the Constitution. If the Legislature, though ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power which it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the properly acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the Legislature made the law in fraud of its powers. Briefly stated the legal position is as follows:

If the question pertains to the adequacy of compensation, it is not justiciable; if the compensation fixed or the principles evolved for fixing it disclose that the Legislature made the law in fraud of powers in the sense we have explained the question is within the jurisdiction of the Court.

91. For the reasons given above, I hold that the compensation provided in Section 11(2) of the Assam Act is so absurd that it is illusory. It is no compensation'' within the meaning of Article 31(2) of the Constitution In effect the acquisition under the above section is confiscation. The legislature has thus committed fraud of powers in providing such so-called compensation. In the result the Assam Act must be declared to be void.

Per Curiam

92. In view of the decision of the majority'' this petition is dismissed. But we make no order as to costs.

