

(1969) 11 DEL CK 0007

In the Delhi High Court

Case No : Regular First Appeal No's. 51D and 56D of 1961

Union of India

APPELLANT

Vs

Mohinder Kaur

RESPONDENT

Date of Decision : 19-11-1969

Acts Referred:

Citation : (1969) ILR Delhi 1154

Hon'ble Judges : V.D. Misra, J; Narain Andley, J; M.R.A Ansari, J

Bench : Full Bench

Advocate : D. Chaudhary, B. Kirpal, A.K. Sen and M.R. Chhabra, for the Appellant;

Judgement

S.N. Andley, J. (Concurring)

(1) The two main questions that arise for consideration in these two appeals are the constitutional validity of the two provisos to clause (e) of sub-section (1) of section 7 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, hereinafter referred to as "the Act", and the construction of the aforesaid provisos. These appeals had come up for hearing before a Division Bench of this Court (S. K. Kapur and M. R. A. Ansari, JJ.). Reliance was placed upon a decision of another Division Bench of this Court in re. Mongol Sen v. Union of India whereby the said provisos had been struck down. The Division Bench hearing these appeals felt that the judgment in Mangal Sen's case needed reconsideration and the construction of the aforesaid provisos was also an important question. These appeals were Therefore, referred to a larger Bench.

(2) R.F.A. No. 51-D of 1961 is the appeal filed by the Union of India and connected with it is F.A.O. No. 56-D of 1961 filed by Shrimati Mohinder Kaur.

(3) The land in dispute is a plot measuring 1629. 2 sq. yards situate in Block No. 56 of Western Extension Area, Karol Bash Delhi. It had been demised on a 99 years lease by the Delhi Improvement Trust by a lease dated August 11, 1942, in consideration for an amount of Rs.7331.00/6.00 in favor of one H.A. Rehman.

Rehman sold his leasehold interest to the Delhi Land and Finance Limited on July 23, 1947, inconsideration for a sum of Rs. 40,730. In its turn, the Delhi Land and Finance Limited assigned the leasehold interest in favor of Harbans Singh, son of Smt. Mohinder Kaur the respondent in the regular first appeal, in consideration for an amount of Rs. 43,988.00 by a deed dated March 22, 1949. In purported exercise of the powers u/s 3 of the Act, the Provincial Government issued a notification on November 2, 1953, for acquisition of the land and in pursuance of this notification possession of the land was taken. For determining the amount of compensation payable for the acquisition, the matter was referred to various arbitrators and ultimately it was decided by Mr. K. S. Sidhu, who gave his award on December 31, 1960. He determined the compensation under the second proviso to clause (e) of sub-section (1) of section 7 of the Act and fixed the amount of compensation at Rs. 40,730.00 which was the consideration received by H.A. Rehman from the Delhi Land and Finance Limited. The contention of the Union of India was that compensation should have been determined under the first proviso. The contention on behalf of Shrimati Mohinder Kaur was that it should be determined according to clause first of sub-section (1) of section 23 of the Land Acquisition Act, 1894, that is, according to the market value of the land on the date of publication of the aforesaid notice u/s 3 in 1953. That is how the Union of India and Shrimati Mohinder Kaur have both filed appeals against the award.

(4) The first question that arises is the constitutional validity of the two provisos to clause (e) of sub-section (1) of section 7 of the Act. This section and the two provisos are in these terms :-

"7.(1) Where any land has been acquired under this Act, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,-

(A) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(B) where no such agreement can be reached, the Provincial Government shall appoint as arbitrator a person qualified for appointment as a Judge of a High Court;

(C) the Provincial Government may, in any particular case, nominate a person having expert knowledge as to the nature and condition of the land acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose;

(D) at the commencement of the proceeding before the arbitrator, the Provincial Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;

(E) the arbitrator, in making his award, shall have due regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894 (I of 1894);

PROVIDED that the market-value referred to in clause first of sub-section (1) of section 23 of the said Act shall be deemed to be the market-value of such land on the date of publication of the notice u/s 3, or on the first day of September, 1939, with an addition of 40 per cent. whichever is less: Provided further that where such land has been held by the owner thereof under a purchase made before the first day of April, 1948, but after the first day of September, 1939, by a registered document, or a decree for preemption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for preemption as the case may be.

(2) The arbitrator shall, in awarding any compensation under this section, apportion the amount thereof between such persons, if any, as may appear to him to be entitled thereto.

(3) An appeal shall lie to the High Court from the award of the arbitrator appointed under this Act, and the decision of the High Court shall be final.

(4) Save as provided in this section, nothing in any law for the time being in force shall apply to arbitrations under this section."

(5) The Act is a pre-Constitution Act enacted more than 18 months prior to the coming into force of the Constitution. The Division Bench which decided *Mongol Sen's* case relied upon the Supreme Court decisions in the case of *State of West Bengal v. Mrs. Bela Banerjee* (2); *P. Vajravelu Mudaliar v. Special Duty Collector, Madras*, and another (3) and *N. B. Jeejeebhoy v. Assistant Collector, Thana Prant, Thana* (*) to come to the conclusion that the two provisos were repugnant to section 299(2) of the Government of India Act, 1935, and were void. Being void, they were not "existing law" within the meaning of clause (5) of Article 31 or Article 31-A of the Constitution on the date of its commencement and could not be saved by either of these provisions. The Division Bench concluded that the measure of compensation adopted in the two proviso to clause (e) of sub-section (1) of section 7 of the Act could by no means be described as a just equivalent. The Division Bench was also of the view that "the inclusion of the Act in the Ninth Schedule also does not save the impugned provision from being declared void or from having become void because the attack against the validity of the impugned provision is not directed on the ground of its being inconsistent with or taking away or abridging any of the fundamental rights contained in Part III of the Constitution. The attack is exclusively aimed on the ground that it is ultra virus section 299(2) of the Government of India Act, 1935 and is not saved as existing law after the coming into force of the Constitution."

(6) Article 31-B was included in Part III of the Constitution by the Constitution (first Amendment) Act, 1951, which came into force on June, 18, 1951. The Act was included in the Ninth Schedule to the Constitution on April 27, 1955, by the Constitution (Fourth Amendment) Act, 1955. In *Bela Banerjee's* case section 8 of the West Bengal Land Development and Planning Act, 1948, was attacked. This

section made the declaration of the Government conclusive as to the public nature of the purpose of the acquisition and the limitation of the amount of compensation so as not to exceed the market value of the land on December 31, 1946. The judgment of the Supreme Court was delivered on December 11, 1953, when this West Bengal Act was not included in the Ninth Schedule to the Constitution. It was after the aforesaid decision that this West Bengal Act was included in the Ninth Schedule at item No. 20 by the Constitution (Fourth Amendment) Act, 1955. The Supreme Court had, Therefore, no occasion to consider Article 31-B of the Constitution in this case. They held that the latter part of the proviso to section 8 of the West Bengal Act limited the amount of compensation so as not to exceed the market value of the land on December 31, 1946, irrespective of the time when the land was acquired and inasmuch as the impugned Act was a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market value on December 31, 1946, as the ceiling on compensation without reference to the value of the land at the time of acquisition, is arbitrary and cannot be regarded as in due compliance in letter and spirit with the requirements of Article 31(2). This case is not, Therefore, of any relevance insofar as the effect of Article 31-B of the Constitution is concerned.

(7) The next decision of the Supreme Court is in *Jeejeebhoy's* case where the validity of the Land Acquisition (Bombay Amendment) Act, 1948, was considered. This Act provided for acquisition of lands for housing scheme. It brought about an amendment in the first clause of sub-section (1) of section 23 of the Land Acquisition Act, 1894, the result of which was that if land was acquired for a housing scheme, the person whose land was acquired will not be entitled to the market value of the land at the date of publication of the notification but only to the market value of the land at the date of the said notification or on January 1, 1948, whichever is less, and he will not be entitled to a sum of 15 percent on the market value as solatium in consideration of the compulsory nature of the acquisition. The Supreme Court tested this Act in the light of sub-section (2) of section 299 of the Government of India Act, 1935. It was held that the Bombay Amendment Act did not provide for compensation in the sense of a just equivalent of what the owner had been deprived of and was, Therefore, violative of sub-section (2) of section 299 of the Government of India Act, 1935. The Supreme Court further observed that the wording in the last part of section 299 of the Government of India Act, 1935, was verbatim lifted and introduced in Article 31(2) of the Constitution and it was, Therefore, reasonable to assume that, at any rate, when the Constitution was originally framed, the intention was not to give a different meaning to the said wording, the meaning to the word "compensation" in section 299 of the Government of India Act, 1935, given by the Supreme Court was the same as given to that word in clause (2) of Article 31 of the Constitution. The attempt to save the Bombay Amendment Act by clause (5) of Article 31 of the Constitution also failed because it was held that it was not existing law within the meaning of Article 366(10) of the Constitution as the

Bombay Amendment Act was still-born and it was void at the inception. The argument based upon Article 31-A was stated to have no bearing in the context of an Act which had no legal existence at the time the Constitution came into force because it did not purport to revive laws which were void. at the time they were made. A further attempt was made to save the Bombay Amendment Act on the basis of the decisions of the Supreme Court in *Dhirubha Devisingh Gohil v. The State of Bombay* and *The State of U.P., v. H. H. Maharaja Brijendra Singh*. This attempt also failed because, in the words of the Supreme Court, "the said decisions turned upon the express provisions of Article 31-B of the Constitution. Though the observation therein appear to be wide, they have no bearing on the question whether the Act was void before the Constitution came into force. The question whether a particular Act was void before the Constitution came into force would not arise if the Constitution itself included the said Act in the Ninth Schedule and declared that the said Act should not be deemed to be void or ever to have become void. It was possible to construe the expression "any rights conferred by any provision of this Part" so as to include similar pre-existing rights under the Government of India Act, 1935, but such a construction would be quite out of place in the context of the question whether the Legislature had the legislative competency to make the law before the Constitution came into force."

(8) I may here state that the decisions of the Supreme Court in *Gohil's* case and *Brijendra Singh's* case do not appear to have been brought to the attention of the Division Bench of this Court which decided *Mangal Sen's* case. Nor do the above-quoted observations of the Supreme Court in *Jeejeebhoy's* case appear to have been brought to the notice of this Court.

(9) I may also state that the Land Acquisition (Bombay Amendment) Act, 1948, is not included in the Ninth Schedule.

(10) In *Vajravelu Mudaliar's* case, the Supreme Court was considering the Land Acquisition (Madras Amendment) Act, 1961, which provided for compensation on the basis of the value of the land at the date of the publication of the notification u/s 4(1) of the Land Acquisition Act, 1894, or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less; for payment of solarium of only 5 per cent. of such value instead of 15 per cent. and for the exclusion of any compensation by reason of the suitability of the land for any use other than the use for which it was put. This Act is also not included in the Ninth Schedule and it was, Therefore, tested only against Articles 14, 19 and 31(2) of the Constitution. It was struck down on the ground that there was discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes and such discrimination was not sustainable on the principle of reasonable classification founded on intelligible differentia which has a rational relation to the object sought to be achieved. Article 31-B of the Constitution did not have any impact on this case because, as stated earlier, the the Madras

Amendment Act was not included in the Ninth Schedule. This decision would also not be helpful in determining the virus of the two provisos to clause (e) of sub-section (1) of section 7 of the Act with which we are concerned and which is sought to be upheld on the ground that immunity is granted to the Act by reason of Article 31-B of the Constitution.

(11) In Gohil's case, the Supreme Court were considering the validity of the Bombay Taluqdari Tenure Abolition Act, 1949. Challenge to this Act was made on the ground of violation of section 299 of the Government of India Act, 1935. This Act appeared in the Ninth Schedule to the Constitution It was observed by the Supreme Court:-

"WHAT Article 31-B protects is not a mere "contravention of the provisions" of Part Iii of the Constitution but an attack on the grounds that the impugned Act is inconsistent with or takes away or abridges" "any of the rights" conferred by tiny provisions of this Part. One of the rights secured to a person by Part Iii of the Constitution is a right that his property shall be acquired only for public purposes and under a law authorising such acquisition and providing for compensation which is either fixed by the law itself or regulated by principles specified by the law. That is also the very right which was previously secured to the person u/s 299 of the Government of India Act."

(12) The Supreme Court repelled the contention that Article 31-B protects only the violation of the fundamental rights insofar as they were conferred by Part Iii of the Constitution and observed:-

"THIS is clearly a case where the concerned right which was secured u/s 299 of the Government of India Act in the form of a fetter on the competency of the Legislature and which in substance was a fundamental right. was lifted into the formal category of a fundamental right along with other fundamental rights recognised in the present Constitution.

THEREis, Therefore, nothing inappropriate in referring to this right which was pre-existing, "along with" the other fundamental rights for the first time secured by this Constitution, when grouping them to-gether, as fundamental rights "conferred" by the Constitution. What is important to notice in the phraseology of Article 31-B is that the protection "is not merely against the contravention of certain provisions but an attack on the ground of unconstitutional abridgement of "certain rights". It will be illogical to construe Article 31-B as affording protection only so far as these rights are taken away by an Act in violation of the provisions of the new Constitution but not when they are taken away by an Act in violation of section 299 of the Government of India Act which has been repealed.

THE intention of the Constitution to protect each and every one of the Acts specified in the Ninth Schedule from any challenge on the ground of violation of any of the fundamental rights secured under Part Iii of the Constitution irrespective of whether they are pre-existing or new rights, is placed beyond any doubt or question by the very emphatic language of Article 31-B which declares

that none of the provisions of the specified Acts shall be deemed to be void or "ever to have become void" on the ground of the alleged violation of the "rights indicated "and" not with standing any judgment, decree or order of any court or tribunal". That intention is also emphasised by the positive declaration that "each of the said Acts or Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force".

(13) It is to distinguish this case that Mr. A.K. Sen, learned counsel for Shrimati Mohinder Kaur, has pointed out that Article 31(2) of the Constitution, as it exists after April 27, 1955, is different from Article 31(2) as it existed prior to April 27, 1955, and, has argued that the present Article 31(2) contains a right which is different from the right which was contained in Article 31(2) prior to April 27, 1955, and section 299 of the Government of India Act, 1935. On April 27, 1955, came the Constitution (Fourth Amendment) Act, 1955, whereby the words "no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate" were added to Article 31(2) of the Constitution. I do not find any substance in the distinction sought to be made. It is no doubt true that the Supreme Court equated the right which had been conferred by section 299(2) of the Government of India Act, 1935, to the right conferred by Article 31(2) of the Constitution as it was prior to April 27, 1955, but that was a right to obtain compensation in the sense of a just equivalent for the property taken possession of or acquired. After the Constitution (Fourth Amendment) Act, the right has been curtailed or diminished. If, Therefore, the larger right conferred by Article 31(2) as it existed prior to April 27, 1955, could not be claimed by reason of Article 31-B of the Constitution, I fail to see how a curtailed or diminished right can be on a better footing. In fact, the decision in Gohil's case will apply with grater force.

(14) GOHIL'S case was applied in Brijendra Singh's case. In this case the U.P. Land Acquisition (Rehabilitation of Refugees) Act was considered by the Supreme Court and the provisos to sub-section (1) of section 11 of this Act were attacked on the ground of unconstitutionality u/s 299(2) of the Government of India Act, 1935. This Act was included in the Ninth Schedule to the Constitution on April 27, 1955, by the Constitution (Fourth Amendment) Act. The argument before the Supreme Court was that by the inclusion of this Act in the Ninth Schedule the ground of unconstitutionality of the Act because of section 299(2) of the Government of India Act was no longer available and that what was provided as a safeguard in that section had been incorporated in the Constitution and, Therefore, any unconstitutionality arising as a result of contravention of that section was cured by Article 31-B of the Constitution. This argument was accepted following the decision in Gohil's case. It was argued in the Supreme Court that the amendment of the Constitution, which came after the decision of the Allahabad High Court, could not validate the earlier legislation which at the time it was passed was unconstitutional. This argument was repelled by the Supreme Court and it was observed:-

"BUT in the present case the provisions of the Act have been "specifically saved from any attack on their constitutionality as a consequence of Article 31-B read with the Ninth Schedule, the effect of which is that the Act cannot be deemed to be void or ever to have become void on the ground of its being hit by the operation of the Government of India Act."

THESE observations apply in full force to the Act which we are considering.

(15) One other decision needs to be considered as it was considered by the Division Bench of this Court and that decision is of Narula, J. of the Punjab High Court in *Barkat Ram and others v. Union of India*. This very Act was considered by Narula, J. and the two provisos were struck down. Narula, J. also has relied upon the Supreme Court decisions in the two cases of *Bela Banerjee* and *N. B. Jeejeebhoy*. The learned Judge does not appear to have been apprised of the decisions of the Supreme Court in the cases of *Gohil* and *Brijendra Singh*. While considering *Bela Banerjee's* case, the learned Judge has observed that the West Bengal Land Development and Planning Act, 1948, is included in the Ninth Schedule at item No. 20. The fact that the West Bengal Act was included in the Ninth Schedule after the decision in *Bela Banerjee's* case does not appear to have been pointed out to the learned judge.

(16) I am, Therefore, of the view that the decision of the Division Bench of this Court in *Mangal Sen's* case is not correct and the constitutionality of the Act is beyond question by reason of Article 31B of the Constitution as interpreted by the Supreme Court in *Gohil's* case and *Brijendra Singh's* case which are binding on this Court.

(17) The merits of both the appeals involve the interpretation of the two provisos to clause (e) of sub-section (1) of section 7 of the Act. The contention on behalf of the Union of India is that the arbitrator should have determined the compensation according to the first proviso and not according to the second proviso as he has done. The argument on behalf of *Shrimati Mohinder Kaur* is that the arbitrator should have determined the compensation with reference to sub-section (1) of section 23 of the Land Acquisition Act, 1894, and not with reference to the second proviso as he has done. In the alternative, it is contended that compensation has been correctly awarded on the application of the second proviso on the basis of the purchase by the Delhi Land and Finance Limited from H. A. Rehamn for a consideration of Rs. 40,730 by a registered sale deed dated July 23, 1947, which date falls between September 1, 1939 and April, 1, 1948.

(18) Section 7 of the Act speaks of the method of determining compensation. It provides for the payment of compensation. It further provides for the manner and principles for the determination of such compensation. In the absence of fixation of the amount of compensation by agreement, compensation has to be determined under clause (e). Clause (e) first provides that in making his award the arbitrator shall have due regard to the provisions of sub-section (1) of

section 23 of the Land Acquisition Act, 1894. While proceeding under sub-section (1) of section 23 of the Land Acquisition Act, the Court has to take into consideration firstly, the market-value of the land at the date of the publication of the notification u/s 4(1) and secondly, to assess the various types of damages that may have been suffered by reason of the acquisition. Therefore, while fixing compensation u/s 7 of the Act, with which we are concerned, the arbitrator has to take into consideration all the six matters enumerated in section 23(1) of the Land Acquisition Act, 1894. Clause (e) of sub-section (1) of section 7 of the Act uses the words "shall have due regard" to the provisions of section 23(1). No others words could have been used for the reason that the authorities mentioned in section 23(1) of the Land Acquisition Act, 1894, are different authorities than the authority, namely, the arbitrator who determines the compensation u/s 7 of the Act. The first proviso to clause (e) of sub-section (1) of section 7 of the Act goes further and makes it imperative upon the arbitrator to deem the market value of the land to be the market value on the date of publication of the notice u/s 3, or on the first day of September, 1939, with an addition of 40 per cent, whichever is less. The words "whichever is less" indicate clearly that the Legislature did not intend to pay compensation in the sense of its just equivalent unless the just equivalent was less than the market-value of the land on the first day of September, 1939 plus 40 per cent. Mr. Sen has argued that the words "shall have due regard" in clause (e) indicate that the arbitrator is under no duty to keep rigidly within the limits of the statute and relies upon the decisions of the Privy Council in *re. Ryots of Garabandho and other villages v. Zamindar of Parlakimedi and another*. In this very case the Privy Council has observed that the force of this expression must be considered in relation to its context and to its own subject-matter and any general interpretation of such a phrase is dangerous and unnecessary. The language of clause (e) and of its first proviso by its very terms is destructive of the argument. Clause (e) uses the expression "shall have due regard" only with reference to the provisions of section 23(1) of the Land Acquisition Act, 1894. Therefore even clause (e) does not compel the arbitrator to determine the compensation in accordance with the provisions of section 23(1). All that the clause requires is for the arbitrator to have regard to the provisions of section 23(1). When we come to the first proviso the force of the words used therein is much greater. It obliges the arbitrator to fix the lesser compensation whether it be the market-value on the date of the publication of the notice u/s 3 or on the first day of September, 1939, plus 40 per cent. The arbitrator has no choice in the matter in fixing compensation on the basis of a just equivalent unless the just equivalent is lesser in value. Conversely, if the just equivalent is higher in value, the arbitrator has no choice but to fix the compensation the market value on the first day of September, 1939, plus 40 per cent. The words used in the first proviso are not directory but mandatory and I find a compulsion therein for the arbitrator to fix the lesser amount determined. In *Union of India v. Kamalabai Harivandas Parekh and others*, (9) sub-section (3) of section 8 of the Requisitioning and Acquisition of Immovable property Act, 1952, was being considered. This sub-section provided for the determination of

compensation which was to be the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and had been sold on the date of acquisition, or twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, whichever is less. Construing this sub-section the Supreme Court observed that no choice was left to the arbitrator as to which of the two modes of assessing the compensation he was to accept and that the words were mandatory and compelled the arbitrator to accept only the smaller figure arrived at after assessment on the basis of the two modes of valuation. In view of these observations, Mr. Sen's argument that the first proviso leaves a choice to the arbitrator cannot be accepted.

(19) Coming to the alternative argument about the application of the second proviso, the purchase by Harbans Singh, son and predecessor-in-interest of Shrimati Mohinder Kaur, was effected on March 22, 1949, and not between September 1, 1939 and April 1, 1948. The "purchaser" mentioned in the second proviso means the person who was the owner at the time when the notice of acquisition was issued or, in other words, the person who is the owner of the land on the date of publication of the notice of acquisition must himself be the person who had purchased it between September 1, 1939 and April 1, 1948. Therefore, the sale deed dated July 23, 1947 by H. A. Rehman in favor of the Delhi Land and Finance Limited cannot be taken into consideration as the latter were not the owners on the date of the publication of the notice of acquisition.

(20) My conclusion, Therefore, is that the arbitrator was wrong in applying the second proviso to clause (e) of sub-section (1) of section 7 of the Act and he should have determined the market- value of the land on the date of the publication of the notice u/s 3 and on the first day of September, 1939, plus 40 per cent. and determined the amount of compensation at the lesser of the two amounts.

(21) Mr. B. N. Kirpal, who appears for the Union of India in F.A.O. No. 56-D of 1961, has raised the question of court-fee in the F.A.O. and his contention is that the F.A.O. should have borne court-fee ad-valor upon the difference between the compensation claimed by Shrimati Mohinder Kaur in her appeal and the amount awarded to her by the arbitrator. A similar question was raised before the Division Bench of this Court in F.A.O. No. 23-D of 1961 in Mangal Sen's case and this contention was rejected. I am in respectful agreement with the conclusion of the Division Bench on this question and overrule the objection raised by Mr. Kirpal.

(22) In the result, R.F.A. 51-D of 1961 filed by the Union of India is allowed and the award of the arbitrator set aside. F.A.O. 56-D of 1961 filed by Shrimati Mohinder Kaur is dismissed. I further direct that the arbitrator appointed will now determine the compensation in accordance with the observations made in this judgment.

(23) In the circumstances of the case, both parties will bear their respective costs in this Court in both the appeals.

M.R.A. Ansari, J. (Concurring)

(24) I agree,

--- *** --- V.D. Misra, J. (Concurring)

(25) I agree.