

# SUPREME COURT OF INDIA

State of Bihar

Vs.

Kameshwar Singh

(M. Patanjali Sastri, C.J.I., Mehr Chand Mahajan, B. K. Mukherjea, S. R. Das and N. Chandrasekhara Aiyar, JJ.)

05.05.1952

## JUDGEMENT

**PATANJALI SASTRI, C. J. :-** These appeals and petitions which fall into three groups, raise the issue of the constitutional validity of three State enactments called The Bihar Land Reforms Act, 1950 (Bihar Act 30 of 1950).

The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951), and

The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. 1 of 1951). (hereinafter referred to as the Bihar Act, the Madhya Pradesh Act and the Uttar Pradesh Act, respectively). The common aim of these statutes, generally speaking, is to abolish zamindaries and other proprietary estates and tenures in the three States aforesaid, so as to eliminate the intermediaries by means of compulsory acquisition of their rights and interests, and to bring the raiyats and other occupants of lands in those areas into direct relation with the Government. The constitutionality of these Acts having been challenged in the respective State High Courts on various grounds, the Bihar Act was declared unconstitutional and void on the ground that it contravened Art. 14 of the Constitution, the other grounds of attack being rejected, while the other two Acts were adjudged constitutional and valid. The appeals are directed against these decisions. Petitions have also been filed in this Court under Art. 32 by certain other zemindars seeking determination of the same issues. The common question which arises for consideration in all these appeals and petitions is whether the three State Legislatures, which respectively passed the three impugned statutes, were constitutionality competent to enact them, though some special points are also involved in a few of these cases.

1a. As has been stated, various grounds of attack were put forward in the Courts below, and, all of them having been repeated in the memoranda of appeals and the petitions they would have required consideration but for the amendment of the Constitution by the Constitution (First Amendment) Act, 1951 (hereinafter referred to as the Amendment Act) which was passed by the Provisional Parliament during the pendency of these proceedings. That Act by inserting the new Arts. 31-A and 31-B purported to protect, generally, all laws providing for the acquisition of estates or interests therein, and specifically, certain statutes, including the three impugned Acts, from attacks based on Art. 13 read with other relevant articles of Part III of the Constitution. And the operation of these articles was made retrospective by providing, in S. 4 of the Amendment Act, that Art. 31-A shall be "deemed always to have been inserted" and in Art. 31-B, that none of the specified statutes "shall be deemed ever to have become void". The validity of the Amendment Act was in turn challenged in

proceedings instituted in this Court under Art. 32 but was upheld in 'SHANKARI PRASAD SINGH DEO v. UNION OF INDIA; (1952) SCR 89. The result is that the impugned Acts can no longer be attacked on the ground of alleged infringement of any of the rights conferred by the provisions of Part III.

2. It will be noted, however, that Arts. 31-A and 31-B afford only limited protection against one ground of challenge, namely, that the law in question is "inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part". This is made further clear by the opening words of Art. 31-A "notwithstanding anything in the foregoing provisions of this Part". The Amendment Act thus provides no immunity from attacks based on the lack of legislative competence under Art. 246, read with the entries in List 2 or List 3 of the Seventh Schedule to the Constitution to enact the three impugned statutes, as the Amendment Act did not in any way affect the Lists. Mr. P. R. Das, leading counsel for the zemindars, accordingly based his main argument in these proceedings on Entry No. 36 of List 2 and Entry No. 42 of List 3 which read as follows :

"36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of Entry 42 of List 3.

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

3. The argument may be summarised thus. Entry No. 36 of List 2 read with Art. 246(3) was obviously intended to authorise a State Legislature to exercise the right of eminent domain, that is, the right of compulsory acquisition of private property. The exercise of such power has been recognised in the jurisprudence of all civilised countries as conditioned by public necessity and payment of compensation. All legislation in this country authorising such acquisition of property from Regulation I of 1824 of the Bengal Code down to the Land Acquisition Act, 1894, proceeded on that footing. The existence of a public purpose and an obligation to pay compensation being thus the necessary concomitants of compulsory acquisition of private property, the term "acquisition" must be construed as importing by necessary implication, the two conditions aforesaid. It is a recognised rule for the construction of statutes that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation - 'ATTORNEY-GENERAL v. DE KEYSER'S ROYAL HOTEL', (1920) AC 508 at p. 542. The power to take compulsorily raises by implication a right to payment - 'CENTRAL CONTROL BOARD v. CANNON BREWERY', (1919) AC 744. The words "subject to the provisions of Entry 42 of List 3" in Entry 36 reinforce the argument, as the words must be taken to mean that the power to make a law with respect to acquisition of property should be exercised subject to the condition that such law should also provide for the matters referred to in Entry 42, in other words, a two-fold restriction, as to public purpose and payment of compensation (both of which are referred to in Entry 42) is imposed on the exercise of the law-making power under Entry 36. In any case, the legislative power conferred under Entry 42 is a power coupled with a duty to exercise it for the benefit of the owners whose properties are compulsorily acquired under a law made under Entry 36. For all these reasons the State Legislatures, it was claimed, had no power to make a law for acquisition of property without fulfilling the two conditions as to public purpose and payment of compensation.

4. On the basis of these arguments counsel proceeded to examine elaborately various provisions of the impugned Acts with a view to show that the compensation which they purport to provide has by

"various shifts and contrivances", been reduced to an illusory figure as compared with the market value of the properties acquired. The principles laid down for the computation of compensation operated in reality as "principles of confiscation", and the enactment of the statutes was in truth a "fraud on the Constitution", each of them being a colourable legislative expedient for taking private properties without payment of compensation in violation of the Constitution, while pretending to comply with the requirements. Nor were these statutes enacted for any public purpose; their only purpose and effect was to destroy the class of zamindars and tenure-holders and make the Government a "super-landlord". While such an aim might commend itself as a proper policy to be pursued by the political party in power it could not, in law, be regarded as a public purpose.

5. Mr. Somayya, who appeared for some of the zamindars in the Madhya Pradesh group of cases, while adopting the arguments of Mr. Das, put forward an additional ground of objection. He argued that the impugned Acts were not passed in accordance with the procedure prescribed in Art. 31 (3) which provides.

"No such law as is referred to in Cl. (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."

6. Learned counsel stressed the words "law" and "legislature" and submitted that, inasmuch as the legislature of a State included the Governor (Art. 168) and a bill could become a law only after the Governor assented to it under Art. 200, Cl. (3) of Art. 31 must be taken to require that a State law authorising compulsory acquisition of property should receive the Governor's as well as the President's assent, the former to make it a law and the latter to give it "effect". As the relative bills were reserved in each case by the Governor concerned after they were passed by the House or Houses of Legislature as the case may be without giving his assent under Art. 200, the statutes did not satisfy the requirements of Art. 31(3) and so could not have "effect". This ground of attack, it was claimed, was not excluded by Art. 31-A or Art. 31-B as it was not based on infringement of fundamental rights.

7. Dr. Ambedkar, who appeared for some of the zamindars in the Uttar Pradesh batch of cases, advanced a different line of argument. He placed no reliance upon Entry 36 of List 2 or Entry 42 of List 3. He appeared to concede what Mr. Das so strenuously contested, that those entries, concerned as they were with the grant of power to the State Legislature to legislate with respect to matters specified therein, could not be taken, as a matter of construction, to import an obligation to pay compensation. But he maintained that a constitutional prohibition against compulsory acquisition of property without public necessity and payment of compensation was deducible from what he called the "spirit of the Constitution", which, according to him was a valid test for judging the constitutionality of a statute. The Constitution, being avowedly one for establishing liberty, justice and equality and a government of a free people with only limited powers, must be held to contain an implied prohibition against taking private property without just compensation and in the absence of a public purpose. He relied on certain American decisions and text-books as supporting the view that a constitutional prohibition can be derived by implication from the spirit of the Constitution where no express prohibition has been enacted in that behalf. Articles 31-A and 31-B barred only objections based on alleged infringements of the fundamental rights conferred by Part III, but if, from the other provisions thereof, it could be inferred that there must be a public purpose and payment of compensation before private property could be compulsorily acquired by the State, there was nothing in the two articles aforesaid to preclude objection on the ground that the impugned Acts do not satisfy these requirements and are, therefore, unconstitutional.

8. In addition to the aforesaid grounds of attack, which were common to all the three impugned statutes, the validity of each of them or of some specific provisions thereof was also challenged on some special grounds. It will be convenient to deal with them after disposing of the main contentions summarised above which are common to all the three batches of cases.

9. These contentions are, in my judgment, devoid of substance and force and I have no hesitation in rejecting them. The fact of the matter is the zamindars lost the battle in the last round when this Court upheld the constitutionality of the Amendment Act which the Provisional Parliament enacted with the object, among others, of putting an end to this litigation. And it is no disparagement to the learned counsel to say that what remained of the campaign has been fought with such weak arguments as over-taxed ingenuity could suggest.

10. It will be convenient here to set out the material provisions of the Constitution on which the arguments before us have largely turned.

"Art. 31 (2). No property movable or immovable ..... shall be acquired for public purposes under any law authorising.... such acquisition unless the law provides for compensation for the property.... acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given.

(3) No such law as is referred to in Cl. (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.

(4) If any bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of Cl. (2).

(5) Nothing in Cl. (2) shall affect

(a) the provisions of any existing law other than a law to which the provisions of Cl. (6) apply, or

(b) the provisions of any law which the State may hereafter make:

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property..... "

"31-A. 'Saving of laws providing for acquisition of estates, etc.' (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 :.....

"31-B. 'Validation of certain Acts and Regulations': Without prejudice to the generality of the

provisions contained in Article 31-A none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

11. It will be seen that the scope of Article 31 (4) is at once narrower and wider than that of Article 31-A; the former has application only to statutes which were pending in the legislature at the commencement of the Constitution, whereas the latter is subject to no such restriction. Again, Article 31 (4) excludes attack only on the ground of contravention of Article 31 (2), while Article 31-A bars objections based on contravention of other provisions of Part III as well, such as Articles 14 and 19. This indeed was the reason for the enactment of Articles 31-A and 31-B, as the words of exclusion in Article 31 (4) were found inapt to cover objections based on contravention of Article 14. On the other hand, the law referred to in Article 31 (4) covers acquisition of any kind of property, while Article 31-A relates only to the acquisition of a particular kind of property, viz., estates and rights therein, and, what is more important for our present purpose, the 'non obstante' clause in Article 31 (4) overrides all other provisions in the Constitution including the Lists of the Seventh Schedule, whereas a law which falls within the purview of Article 31-A could only prevail over "the foregoing provisions of this Part."

Now, the three impugned statutes fall within the ambit of both Article 31 (4) and Articles 31-A and 31-B. Putting aside the latter articles for the moment, it is plain that, under Article 31 (4), the three impugned statutes are protected from attack in any Court on the ground that they contravene the provisions of Article 31 (2).

These provisions, so far as they are material here, are, (1) that a law with respect to acquisition of property should authorise acquisition only for a public purpose and (2) that such law should provide for compensation, etc. Mr. Das, while admitting that (2) was a "provision" of Article 31 (2), submitted that (1) was not. According to him, Clause (2) assumed but did not "provide" that acquisition should be authorised only for a public purpose. I cannot accept that view. In my opinion, the clause seeks also to impose a limitation in regard to public purpose. The clause was evidently worded in that form as it was copied (with minor variations) from S. 299 (2) of the Government of India Act, 1935, which was undoubtedly designed to give effect to the recommendation of the Joint Parliamentary Committee in para 369 of their Report that two conditions should be imposed on expropriation of private property:

"we think it (the provision proposed) should secure that legislation expropriating or authorising the expropriation of the property of private individuals should be lawful only if confined to expropriation for public purpose and if compensation is determined either in the first instance or in appeal by some independent authority."

It is thus clear that S. 299 (2) was intended to secure fulfilment of two conditions subject to which alone legislation authorising expropriation of private property should be lawful, and it seems reasonable to conclude that Article 31 (2) was also intended to impose the same two conditions on legislation expropriating private property. In other words, Article 31 (2) must be understood as also providing that legislation authorising expropriation of private property should be lawful only if it was required for a public purpose and provisions was made for payment of compensation. Indeed, if this were not so, there would be nothing in the Constitution to prevent acquisition for a non-public

or private purpose and without payment of compensation, an absurd result. It cannot be supposed that the framers of the Constitution, while expressly enacting one of the two well-established restrictions on the exercise of the rights of eminent domain, left the other to be imported from the common law. Article 31 (2) must, therefore, be taken to provide for both the limitations in express terms.

An attack on the ground of contravention of these provisions implies that the law in question authorises acquisition without reference to a public purpose and without payment of compensation. This was precisely the objection raised both by Mr. Das and Dr. Ambedkar to the constitutional validity of the impugned statutes, and such objection really amounts to calling those laws in question on the ground that they contravened the provisions of Article 31 (2), though learned counsel stoutly denied that they were relying on the provisions of Article 31 (2). The denial, however, seems to me to be based on a quibbling distinction without a difference in substance. Their main attack was really grounded on the absence of these two essential prerequisites of valid legislation authorising acquisition of private property, though Mr. Das would deduce them by implication from Entry 36 of List 2 and Entry 42 of List 3, while Dr. Ambedkar sought to derive them from the spirit of the Constitution. But this is only a form of stating the objection which, in substance, is that the statutes are bad because of the absence of a public purpose and the omission to provide for a just compensation. This, in fact, was the burden of the argument before us.

If, then, these two grounds of attack fall within the purview of Article 31 (4), the words "notwithstanding anything in this Constitution" are apt to exclude such grounds howsoever they are derived - whether from the Entries in the legislative Lists or from the spirit of the Constitution - for both alike are covered by those words. Indeed, if the objection based on the absence of a public purpose and of a provision for just compensation were still to be open, Clause (4) of Article 31 would be meaningless surplusage. It is obvious that that clause was specially designed to protect the impugned statutes and other laws similarly enacted from attack in a Court of law on the aforesaid grounds and, if they were nevertheless to be considered as not being within the protection, it is difficult to see what the use of Article 31 (4) would be. Learned counsel were unable to suggest any. The fact is that Article 31 (4) was designed to bar the jurisdiction of Courts to entertain objections to the validity of a certain class of enactments on the two-fold ground referred to above, and its whole purpose would stand defeated if the zemindars' contention were to prevail.

12. Even if it were open to the Court to consider these grounds of objection, they are, in my opinion, unsustainable. As pointed out already, Article 31-A operates as an exception to Article 31 (2) read with Article 13, only in respect of laws authorising acquisition of "estates" and rights therein, and this exception is to be deemed to have been part of the Constitution from its commencement. But it has no application to laws authorising acquisition of other kinds of property and, as regards these, the requirements as to public purpose and payment of compensation are still enforced by the express provisions of Article 31 (2). In the face of the limitations on the State's power of compulsory acquisition thus incorporated in the body of the Constitution, from which "estates" alone are excluded, it would, in my opinion, be contrary to elementary canons of statutory construction to read, by implication, those very limitations into Entry 36 of List 2, alone or in conjunction with Entry 42 of List 3 of the Seventh Schedule, or to deduce them from "the spirit of the Constitution", and that, too, in respect of the very properties excluded.

13. It is true that under the common law of eminent domain as recognised in the jurisprudence of all civilized countries, the State cannot take the property of its subject unless such property it required for a public purpose and without compensating the owner for its loss. But, when these limitations

are expressly provided for and it is further enacted that no law shall be made which takes away or abridges these safeguards, and any such law, if made, shall be void, there can be no room for implication, and the words "acquisition of property" must be understood in their natural sense of the act of acquiring property, without importing into the phrase an obligation to pay compensation or a condition as to the existence of a public purpose.

The Entries in the Lists of the Seventh Schedule are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures, and such context is hardly appropriate for the imposition of implied restrictions on the exercise of legislative powers, which are ordinarily matters for positive enactment in the body of the Constitution.

14. There are indications in Article 31 itself to show that the expression "acquisition of property" in Entry 36 of List 2 does not in itself carry any obligation to pay compensation. Clause (4) of that Article postulates a "law" authorising acquisition of property but contravening the provisions of Clause (2), that is, without a public purpose or payment of compensation. Similarly, Clause (5) (b), which excepts certain categories of "laws" from the operation of Clause (2), contemplates laws being made without a public purpose or payment of compensation. Such laws can be made by a State Legislature only under Entry 36 which must, therefore, be taken to confer a legislative power unfettered by any implied restrictions. It was suggested that the laws referred to in Sub-clause (b) of Clause (5) are laws made in exercise of the taxing power or the police power of the State as the case may be, and that the sub-clause was inserted only by way of abundant caution. This is hardly a satisfactory answer. Whatever may be the position as to a taxing law, in regard to the source of legislative power, laws under heads (2) and (3) of Sub-clause (b) must necessarily be referable to and derive their competence from the legislative power under Entry 36 of List 2, in so far as they purport to authorise acquisition of any property, for the police power of the State is only the general power to regulate and control the exercise of private rights and liberties in the interests of the community and does not represent any specific head of legislative power. And even that answer is not available to Mr. Das in regard to Clause (4).

15. Nor is the position improved for the zemindars by reading Entry 36 of List 2 and Entry 42 of List 3 together. It was said that the words "subject to the provisions of Entry 42 in List 3" must be taken to mean that the law-making power under Entry 36 could only be exercised subject to the two conditions as to public purpose and payment of compensation, both of which are referred to in Entry 42. Those words, in my opinion, mean no more than that any law made under Entry 36 by a State Legislature can be displaced or overridden by the Union Legislature making a law under Entry 42 of List 3. That they cannot bear the interpretation sought to be put upon them by Mr. Das is clear from the fact that similar words do not occur in Entry 33 of List 1 which confers on Parliament the power of making laws with respect to acquisition or requisitioning of property for the purposes of the Union. For, if the restrictive conditions as to public purpose and payment of compensation are to be derived only from those words, then it must follow that in the absence of those words in Entry 33, Parliament can make laws authorising acquisition or requisitioning of property 'without' a public purpose and a provision for compensation. No reason was suggested why parliamentary legislation with respect to acquisition or requisitioning of property is to be free from such restrictive conditions while State legislation should be subject to them. The fact is that the law-making power of both Parliament and State Legislatures can be exercised only subject to the aforesaid two restrictions, not by reason of anything contained in the Entries themselves, but by reason of the positive provisions of Article 31 (2), and, as laws falling under Article 31 (4) or under articles 31-A and 31-B cannot be called in question in a Court of law for non-compliance with those provisions, such laws cannot be struck down as unconstitutional and void.

16. It was further contended that the power to make a law under Entry 42 of List 3 was a power coupled with a duty, because such law was obviously intended for the benefit of the expropriated owners, and where the Legislature has authorised such expropriation, it was also bound to exercise the power of making a law laying down the principles on which such owners should be compensated for their loss. Reliance was placed in support of this somewhat novel contention on the well-known case of 'JULIUS v. BISHOP OF OXFORD', (1880) 5 A C 214. That case, however, has no application here. While certain powers may be granted in order to be exercised in favour of certain persons who are intended to be benefited by their exercise, and on that account may well be regarded as coupled with a duty to exercise them when an appropriate occasion for their exercise arises, the power granted to a legislature to make a law with respect to any matter cannot be brought under that category. It cannot possibly have been intended that the legislature should be under an obligation to make a law in exercise of that power, for no obligation of that kind can be enforced by the Court against a legislative body.

17. Mr. Somayya's argument based on Clause (3) of Article 31, to which reference has been made earlier, is equally untenable. It is true that the "Legislature" of a State included the Governor, and that a bill passed by such Legislature cannot become a law until it receives the Governor's assent. Article 200, however, contemplates one of three courses being adopted by the Governor when a bill is presented to him after it is passed by the House or Houses of Legislature : (1) to give his assent, or (2) to withhold assent, or (3) to reserve the Bill for the consideration of the President. The first proviso to that article deals with a situation where the Governor is bound to give his assent and has no relevance here. The second proviso makes reservation compulsory where the bill would, "if it became law", derogate from the powers of the High Court, but such reservation, it is important to note, should be made without the Governor himself giving his assent to the bill. It is significant that the article does not contemplate the Governor giving his assent and thereafter, when the bill has become a full-fledged law, reserving it for the consideration of the President. Indeed, the Governor is prohibited from giving his assent where such reservation by him is made compulsory. The Constitution would thus seem to contemplate only "bills" passed by the House or Houses of Legislature being reserved for the consideration of the President and not "laws" to which the Governor has already given his assent. It was said that Article 31 (3) provides a special safeguard which, in order to ensure that no hasty or unjust expropriatory legislation is passed by a State Legislature, requires for such legislation the assent of both the Governor and the President, and, to make this clear, the words "law" and "legislature" were deliberately used in Clause (3). I am unable to agree with this view. The term "legislature" is not always used in the Constitution as including the Governor, though Article 168 makes him a component part of the State Legislature. In Article 173, for instance, the word is clearly used in the sense of the "houses of legislature" and excludes the Governor. There are other provisions also where the word is used in contexts which exclude the Governor. Similarly, the word "law" is sometimes loosely used in referring to a bill. Article 31 (4), for instance, speaks of a "bill" being reserved for the President's assent "after it has been passed" by the legislature of a State" and of "the law so assented to." If the expression "passed by the legislature" were taken to mean "passed by the houses of the legislature and assented to by the Governor" as Mr. Somayya would have it understood, then, it would cease to be a "bill" and could no longer be reserved as such. Nor is the phrase "law so assented to" strictly accurate, as the previous portion of the clause makes it clear that what is reserved for the President's assent and what he assents to is a "bill" and not a law. The phrase obviously refers to what has become a law after receiving the assent of the President. Similarly, Article 31 (3) must, in my judgment, be understood as having reference to what, in historical sequence, having been passed by the House or Houses of the State Legislature and reserved by the Governor for the consideration of the President and

assented to by the latter, has thus become a law. If it was intended that such a law should have the assent of both the Governor and the President, one would expect to find not only a more clear or explicit provision to that effect, but also some reference in Article 200 to the Governor's power to reserve a measure for the consideration of the President after himself assenting to it. On the other hand, as we have seen, where reservation by the Governor is made obligatory, he is prohibited from giving his assent.

18. In the view I have expressed above that the objections based on the lack of a public purpose and the failure to provide for payment of just compensation are barred under Article 31 (4) and are also devoid of merits, it becomes unnecessary to consider what is a public purpose and whether the acquisition authorised by the impugned statutes subserves any public purpose. Nor is it necessary to examine whether the scheme of compensation provided for by the statutes is so illusory as to leave the expropriated owners without any real compensation for loss of their property.

19. Turning now to the special points arising in particular cases, it was urged by Mr. Das that Section 4 (b) of the Bihar Act, which provides that all arrears of rent, royalties and cesses due for any period prior to the date of the vesting of the estates in Government "shall vest and be recoverable by the State", was unconstitutional and void. In the first place, there was no public purpose to be served by the acquisition of such property. The Government evidently lacked funds for the payment of even the illusory compensation provided for in the Act, and accordingly, hit upon the device of acquiring these arrears on payment of only 50 per cent. of their value as provided in S. 24. Raising funds for augmenting the Treasury could not be regarded as a public purpose such as would justify expropriation on private property. Secondly, it was said that these arrears would represent so much money when realised, and money could not be the subject of compulsory acquisition as the obligation to pay compensation would practically turn such acquisition into a forced loan. Nor could the payment of 50 per cent of the face-value of the arrears be regarded as compensation for the loss of the total arrears, for, refund of one half of a sum of money taken away could never make good the loss of the balance. The argument proceeds on a misconception. Whatever may be the position as regards the acquisition of money as such, it is not correct to say that a law made under Entry 36 of List 2 cannot authorise acquisition of choses in action like arrears of rent due from the tenants which are covered by the term "property" used in that Entry and in Article 31. It is equally fallacious to argue that a payment in cash or in Government bonds of half the amount of such arrears leaves the zemindar without compensation for the balance. It is unrealistic to assume that arrears which had remained uncollected over a period of years during which the zemindar as landlord had the advantage of summary remedies and other facilities for collection, represented so much money or money's worth in his hands when he was to cease to be a landlord and to have no longer those remedies and facilities. When allowance is made for doubtful and irrecoverable arrears and the trouble and expense involved in the collection of the rest of them, the payment of 50 per cent, of the face-value of the entire arrears must, as it seems to me, be considered reasonable and fair compensation for taking them over. Indeed, the contention leaves one almost wondering what advantage the zemindars would gain by seeking to overthrow a provision in the Act which may well prove beneficial to them. However that may be, for the reasons already indicated, Article 31 (4) bars a challenge on these two grounds, and the objections to S. 4 (b) cannot be entertained.

20. An attack was also directed against S. 23 (1) (f) which provides for a deduction on a percentage basis out of the gross assets as "cost of works of benefit to the raiyats of such estate or tenure", in ascertaining the net assets on which compensation is to be based. It was said that there was no evidence to show that it was usual for the zemindars to incur such expenditure, and that the

deduction was a mere contrivance to reduce the compensation payable for the acquisition of their estates. The provision for such deduction was therefore a fraud on the Constitution. The argument, however, overlooks the well-established obligation of the zemindars to maintain and repair the irrigation tanks and channels in the villages comprised in their estates. As the Privy Council pointed out in "THE MADRAS RAILWAY CO. v. ZEMINDAR OF CARVATENAGARAM", 1 Ind App 365 PC.:

"the zemindars have no power to do away with these tanks in the maintenance of which large numbers of people are interested, but are charged, under Indian law, by reason of their tenure, with the duty of preserving and repairing them."

These are, obviously, the works of benefit to the raiyats of the estate, and their cost, which the zemindars are thus under an obligation to bear, is a perfectly legitimate deduction in computing the net asses of the estate. If the zemindars had, in the past, neglected this duty, that does not affect the propriety of the deduction before determining the compensation payable to them. It is, therefore, idle to say that it is a mere contrivance for reducing the compensation. This apart, if as I have endeavoured to show, payment of compensation is not a justifiable issue in the case of the impugned statutes, having regard to Articles 31 (4), 31-A and 31-B, it is not open to the Court to inquire whether a deduction which results in reducing the compensation is unwarranted and therefore a fraud on the Constitution.

21. Lastly, Mr. Das turned his attack on S. 32 (2) read with S. 43 (2) (p). Under the former provision compensation was payable in cash or in bonds or partly in cash and partly in bonds. The bonds were to be either negotiable or non-negotiable and non-transferable and were payable in forty equal instalments. Power was given to the State Government under S. 43 (2) (p) to frame rules providing for "the proportion in which compensation shall be payable in cash and in bonds and the manner of payment of such compensation. It was argued that, while the Constitution conferred power on the legislatures under Entry 42 of List 3 to make laws with respect to the principles on which compensation for property acquired was to be determined and the form and the manner in which such compensation was to be given, it was not competent for the Bihar Legislature to delegate this essential legislative power to the executive government. Section 43 (2) (p) being thus void and inoperative, S. 32 (2) must also fall to the ground, being vague and incapable by itself of being given effect to and, as payment of compensation was an inextricable part of the scheme of acquisition under the Act, the entire Act must go. I see no force in this argument. The legislature has applied its mind to the form in which compensation has to be paid and has fixed the number of equal instalments in which it should be paid. It has also provided for payment of interest on the compensation amount in the meantime. The proportion in which the compensation could be paid in cash and in bonds and the intervals between the instalments have been left to be determined by the executive government as those must necessarily depend on the financial resources of the State and the availability of funds in regard to which the executive government alone can have special means of knowledge. By no standard of permissible delegation can the vesting of such limited discretion by a legislature in an administrative body be held incompetent. The same remark applies to the delegation of rulemaking powers in regard to payment of compensation under the other two Acts.

22. It was contended by Mr. Somayya that the Madhya Pradesh Act was not duly passed as no question was put by the Speaker, at the third reading of the bill, on the 'notion that it be passed into law, as required by the provisions of Rule 20 (1) of the rules governing legislative business then in force, and that the omission was not a mere "irregularity of procedure" which the Court is barred from enquiring into under Article 212 (1) of the Constitution. Rule 20 (1) reads as follows:

"A matter requiring the decision of the Assembly shall be decided by means of a question put by the Speaker on a motion made by a member."

What appears to have happened is this. One of the Ministers moved that "The C. P. and Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill, 1949, (No. 64 of 1949) as considered by the House be passed into law." Thereupon the Speaker read the motion to the House and this was followed by several speeches welcoming the measure, amid general acclamation in the House, as a great boon to the tillers of the soil. The official report of the proceedings prepared by the Secretary under Rule 115 (1), however, did not record that the Speaker put the question in the usual form: "The "question is etc." and that the motion was carried. It was argued that the official report being the only "authentic record of the proceedings of the Assembly" under Rule 115 (2), it must be taken to be conclusively established that the motion was not put to the House and carried by it. There is in my opinion, no substance in the objection. The original bill signed and authenticated by the Speaker was produced before us, and it contains an endorsement by the Speaker that the Bill was passed by the Assembly on 5th April 1950. The endorsement was signed by the Speaker on 10th May 1950. The official report of the proceedings appears to have been prepared on 21st June 1950, and was signed by the Speaker on 1st October 1950. When he signed the report the Speaker did not apparently notice the omission as to the motion having been put and carried. Such omission cannot, in the face of the explicit statement by the Speaker endorsed on the bill, be taken to establish that the bill was not put to the House and carried by it. In any case, the omission to put the motion formally to the House, even if true, was, in the circumstances, no more than a mere irregularity of procedure, as it is not disputed that the overwhelming majority of the members present and voting were in favour of carrying the motion and no dissentient voice was actually raised.

23. Mr. Somayya raised a further contention that in regard to the malguzari lands covered by the Madhya Pradesh Act. Articles 31-A and 31-B could be of no assistance to the Government, as such lands are not "estates" within the meaning of Clause (2) of Article 31-A with the result that the objection based on Article 14 as to discrimination in the matter of payment of compensation must prevail. It will be recalled that the High Court of Patna held the Bihar Act unconstitutional as being discriminatory in providing for payment of compensation, and it was to overcome that difficulty that Articles 31-A and 31-B were inserted in the Constitution. It was conceded by the learned Advocate-General of Madhya Pradesh that these malguzari lands could not be regarded as estates within the meaning of Article 31-A read with the Tenancy Acts in force in Madhya Pradesh, but he contended that, inasmuch as Art. 31-B purported to validate specifically the Madhya Pradesh Act among others, and as that article was not limited in its application to estates, the objection could not prevail. Mr. Somayya, however, submitted that the opening words of Art. 31-B, namely, "Without prejudice to the generality of the provisions contained in Art. 31-A" showed that the mention of particular statutes in Art. 31-B read with the Ninth Schedule was only illustrative, and that, accordingly, Art. 31-B could not be wider in scope. Reliance was placed in support of this argument upon the decision of the Privy Council in 'EMPEROR v. SIBNATH BANERJI', 1945 FCR 195 (PC). I cannot agree with that view. There is nothing in Art. 31-B to indicate that the specific mention of certain statutes was only intended to illustrate the application of the general words of Article 31-A. The opening words of Article 31-B are only intended to make clear that Article 31-B should not be restricted in its application by reason of anything contained in Art. 31-B and are in no way calculated to restrict the application of the latter article or of the enactments referred to therein to acquisition of "estates". The decision cited affords no useful analogy.

24. In some of the cases the estates sought to be acquired are situated in what was previously the territory of Indian States and belong to their former rulers. On the merger of those States in Madhya

Pradesh or Uttar Pradesh, as the case may be, by virtue of the "covenant of merger" entered into between the rulers and the Government of India the properties in question were recognised to be the "private property" of the rulers. In these cases, it was urged that the estates sought to be acquired formed part of the Rulers' "personal rights" guaranteed to them under the instrument of merger, and that neither the impugned statutes nor the notifications issued thereunder could deprive the Ruler of such properties in contravention of Art. 362. The Attorney-General had several answers to this argument, including the bar under Art. 363 to interference by Courts in disputes arising out of agreements, covenants, etc. by Rulers of Indian States to which the Government of India was a party. But a short and obvious answer in that there was no contravention of any guarantee or assurance given by the Government under the covenant of merger, as the estates in question are sought to be acquired only as the "private property" of the Rulers and not otherwise the compensation provided for, such as it is, is in recognition of their private proprietorship, as in the case of any other owner. There is, therefore, no force in this objection. In Appeal No. 285 of 1951 preferred by the Raja of Kapurthala, where a similar objection was raised, it was further alleged that the privy purse of the Ruler was fixed at a low figure in consideration of the Oudh Estate being left to be enjoyed by him as his private property, and that its compulsory taking over would deprive him of the means of discharging his liability to maintain the members of his family. In the absence of any material to establish the facts, the allegation calls for no consideration.

25. Certain other minor points were also raised in some of the cases but they are not worth mentioning as they proceed either on a misapprehension or were palpably unsound.

26. Thus all the objections raised to the constitutional validity of the Bihar Act, the Madhya Pradesh Act and the Uttar Pradesh Act or any part thereof fail and are overruled.

27. **MAHAJAN J.** : This is an appeal under Art. 132 (3) of the Constitution of India from a judgment of the Full Bench of the High Court of Judicature at Patna, dated the '12th March, 1951', whereby the High Court declared the "Bihar Land Reforms Act, 1950" 'ultra vires' on the ground of its infringement of Art. 14 of the Constitution, but decided against the respondent on all other points.

28. On the 30th December, 1949, a bill intituled the "Bihar Land Reforms Bill" was introduced in the Legislative Assembly of Bihar and was passed by both the Houses of Legislature, and after having been reserved for the consideration of the President of India, received his assent on the 11th September 1950. The Act was published in the Bihar Government Gazette on the 25th September, 1950 and on the same day a notification under S. 1 (3) of the Act was published declaring that the Act would come into force immediately. On the same day, a notification under S. 3 of the Act was published stating that the estates and tenures belonging to the respondent and two others passed to and became vested in the State of Bihar under the provisions of the Act. The respondent filed a petition in the High Court of Judicature at Patna under Art. 226 of the Constitution, challenging the constitutionality of the said Bihar Land Reforms Act and praying for a writ in the nature of 'mandamus' to be issued on the State of Bihar restraining it from acting in any manner by virtue of, or under the provisions of, the said Act. This application was heard along with three title suits and other similar applications filed by various zamindars of Bihar by a Special Bench of the High Court. By three separate but concurring judgments, the Court declared the Act to be unconstitutional and void on the ground of its infringement of fundamental right under Art. 14 of the Constitution.

29. The validity of the Act was attacked before the High Court on the following grounds:

1. That the Bihar Legislature had no competence to pass it.
2. That it contravened Cl. 1 of Art.31 of the Constitution.
3. That the vesting of the estates in the State of Bihar under the Act being in effect an acquisition of the estates, it was invalid as that acquisition was not for a public purpose and the provision for compensation was illusory.
4. That it contravened Art. 19 (1) (f) of the Constitution.
5. That some of its provisions were invalid on the ground of delegation of legislative powers.
6. That it was a fraud on the Constitution.
7. That it was unconstitutional as it contravened Art. 14 of the Constitution.

The Court held as follows:

1. That the Bihar Legislature was competent to enact the legislation.
2. That the act did not contravene Art. 31 (1) of the Constitution.
3. That the acquisition of the estates and tenures was for a public purpose.
4. That the subject-matter of the Act fell under Art. 31 (4) of the Constitution.
5. That Art. 19 (1) (f) had no application.
6. That whatever powers were delegated to the executive were permissible.
7. That the Act was not a fraud on the Constitution.
8. That the Act was unconstitutional as it contravened Art. 14 of the Constitution.

30. During the pendency of the appeal against the decision of the High Court, the Union Government with a view to put an end to the litigation of the zamindars brought forward a Bill to amend the Constitution and this was passed by the requisite majority as the Constitution (First amendment) Act, 1951. The zamindars brought petitions under Art. 32 of the Constitution impugning the Amendment Act itself as unconstitutional and void. All these petitions were disallowed by this Court on the '5th October, 1951', (1952 SCR 89) and it was held that the Constitution (First Amendment) Act, 1951, had been validly enacted. In view of the Amendment Act any argument regarding the unconstitutionality of the Bihar Act based on the ground that the provisions of that Act contravened Art. 14, 19 or 31 of the Constitution does not survive and the Act is not open to challenge on any such ground. As the Act has been held invalid by the High Court solely on the ground that it violated the provisions of Art. 14 of the constitution, the basis of the judgment declaring the Act to be unconstitutional is no longer tenable and it has therefore to be reversed, in case this Court agrees with the decision of the High Court on the points decided against the respondent.

31. Mr. P. R. Das for the respondent frankly conceded that no objection to the validity of the Act at this stage could be raised on the ground that it contravened any of the provisions of Part III of the

Constitution. He, however, supported the decision of the Court on grounds decided against him by that Court and urged the following points:

1. That it was not within the competence of the Bihar State Legislature to enact the impugned Act.
2. That the acquisition of the estates not being for public purpose, the Act was unconstitutional.
3. That the legislative power in various sections of the Act has been abdicated in favour of the executive and such abdication of power was unconstitutional.
4. That the Act was a fraud on the Constitution and that certain parts of the Act were unenforceable on account of vagueness and indefiniteness.

The foundation of Mr. P. R. Das's attack on the 'vires' of the Act mainly rests on the contention that it is implicit within the language of entry 36 of List II of the Seventh Schedule of the Constitution that property could not be acquired without payment of compensation, the only effect of a compulsory power of acquisition against the individual being that there is the power to oblige him to sell and convey property when the public necessities require it, but that the power to take compulsorily raises by implication a right to payment; in other words, there is a concomitant obligation to pay and the power to acquire is inseparable from the obligation to pay compensation and as the provisions of the statute in respect of payment of compensation are illusory, it is unconstitutional.

31. As regard Art. 31 (2) of the Constitution, it is said that it deals with the fundamental right regarding property which is expressed in the clause in negative language. In entry 36 it is expressed in an affirmative form. The provisions of Arts. 31 (4) and 31-A and 31-B, though they deprive the expropriated proprietor of his rights provided in Part III of the Constitution, do not in any way affect the ambit of entry 36 and empower the State Legislature to make a law for compulsory acquisition of property without payment of compensation in the true sense of that term. Emphasis is laid on the words "subject to the provisions of entry 42" contained in entry 36 and it is contended that the exercise of legislative power under entry 36 is conditional on exercise of power under entry 42, that one could not be exercised without the other and that the power conferred by the two entries had to be construed on the assumption that the acquisition was to be paid for. It is further contended that the legislative power in entry 42 is a power coupled with duty which the legislature was bound to exercise for the benefit of the person whose property was taken in exercise of the legislative power under entry 36. It is also said that the Bihar Legislature had legislated both under entry 36 and entry 42 and intended to take the property conditional on payment of compensation out if it transpires that the provisions it has made about payment of compensation are illusory, then that part of the Act would be void and as it could not have been intended by the legislature to pass the Act in any truncated form in which it would remain if the provisions regarding compensation are taken out of it, the whole Act should be held unconstitutional.

32. To appreciate the contentions raised by Mr. Das on the question of the competence of the Bihar Legislature to enact the Bihar Land Reforms Act, 1950, it is necessary to refer to its provisions and to see on what subjects the legislature has purported to enact the law.

33. The title of the Act indicates that the law provides for some kind of land reform in Bihar. Its preamble gives no indication as to the nature of these reforms except that it provides for the constitution of a Land Commission to advise the State Government on the agrarian policy, whatever

that expression may mean. The dominant purpose of the Act is that of transference to the State of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests including the interests in trees, forests, fisheries, jalkars, ferries, huts, bazars, mines and minerals. Section 3 provides that the Government may, from time to time, by notification declare the estates or tenures mentioned therein to have passed and become vested in the State.

Section 4 mentions the consequences of such vesting. It enacts that the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, huts, bazars and ferries and all other sairati interests as also his interest in the subsoil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under-raiyats) shall vest absolutely in the State free from all incumbrances. Clause (b) provides that all arrears of rents, including royalties and all cesses together with interest, if any, due thereon for any period prior to the date of vesting, which were recoverable in 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. The expression "arrears of rent" includes arrears in respect of which suits were pending on the date of vesting or in respect of which decrees whether having the effect of rent decree or money decree were obtained before the date of such vesting and had not been satisfied and were not barred by limitation and also includes the costs allowed by such decrees. In other words, all outstandings in the nature of rents and rent decrees that were due to the proprietors or tenure-holders before the date of vesting and before the State had any right, title or interest in the estate would also pass to it.

This seems to be a peculiar and rather extraordinary consequence of the vesting of an estate. Normally it has no relation to and cannot be regarded as an incident of the transference of the estates. The clause is in effect an independent provision laying down that monies due to the proprietor or tenure-holder during the period antecedent to the vesting and not realized by him but which were in the course of realization, whether by private effort or by means of pending suits or decrees including the costs of those suits and decrees will stand forfeited to the State. In Cl. (c) the liability of the proprietors or tenure-holders for payment of, arrears of revenue and cesses to the Government prior to the date of vesting is kept alive. The other consequences of vesting are that no suit can be maintained for recovery of any money from a proprietor or tenure-holder which is secured by a mortgage or charge on the estate and no such estate or tenure covered by the Act is liable to attachment. The Collector is entitled to take charge of the estate and to inspect the documents and accounts which he thinks necessary to do for the management of the estate or tenure.

Section 5 permits the proprietors and tenure-holders to retain their homesteads but only in the capacity of tenants free from the obligation to pay rent. Section 6 allows them to retain possession of lands in their khas possession, or in the possession of lessees under them, on payment of rent as raiyats to the State in the status of occupancy tenants. Section 7 provides that buildings together with lands on which such buildings stand and in the possession of proprietors and tenure-holders and used as golas, factories or mills shall be retained by them on payment of rent. Section 8 gives a right of appeal to a party aggrieved against the Collector's order. In S. 9 it is provided that all mines comprised in the estate or tenure as were in operation at the commencement of this Act and were being worked directly by the proprietor or tenure-holder shall be deemed to have been leased by the State Government to the proprietor or tenure-holder. This section does not include within its scope mines on which considerable money might have been spent but which are actually not in operation.

An artificial definition has been given in S. (2) sub-cl. (m) to the expression "mines in operation" as meaning mines regarding the working of which notice has been served on Government under the Indian Mines Act. Section 10 keeps alive subsisting lease of mines and minerals, the lessee being deemed to be a lessee under the Government. Buildings and lands appurtenant to a mine stand transferred to the State under the provisions of S. 11 and they are to be deemed to be leased by the State to the lessee with effect from the date of vesting.

Section 12 lays down the constitution of a Mines Tribunal. Section 13 provides for the management of the estates and tenures that vest in the State. Sections 14, 15, 16, 17 and 18 make provisions relating to the investigation of debts of proprietors and tenure-holders and lay down the procedure for payment of those debts. In S. 19, provision is made for the appointment of compensation officer. Certain directions are given in Ss. 20 and 21 regarding the procedure to be adopted by the compensation officer when the proprietor has only a certain share in an estate and where certain trusts have been created by the tenure-holder or proprietor. Section 22 defines "previous agricultural year" and the phrase "gross assets" with reference to a proprietor or tenure-holder. "Gross assets" in the Act means the aggregate of the rents including all cesses, which were payable in respect of the estates or tenures of such proprietor or tenure-holder for the previous agricultural year, whether payable by a subordinate tenant or the raiyats. Certain details are laid down for the assessment of those rents. In the expression "gross assets" is also included the gross income of the previous agricultural year from fisheries, trees, jalkars, ferries, huts, bazars and sairati interests. Gross income from forests has to be calculated on the basis of the average gross annual income of twenty-five agricultural years preceding the agricultural year in which the date of vesting falls, which in the opinion of a forest officer, the forests would have yielded if they had been placed during the said period of twenty-five years under the management of the State.

34. Section 23 lays down the method of computation of net income. It provides that the net income of a proprietor or tenure-holder shall be computed by deducting from the gross asset of such proprietor or tenure-holder, as the case may be, the following:

- (a) any sum payable as land revenue or rent;
- (b) any sum payable by such proprietor as agricultural income-tax in respect of any agricultural income derived from such estate or tenure for the previous agricultural year;
- (c) any sum payable by such proprietor or tenure-holder as income-tax in respect of any income derived from such estate or tenure, other than royalties for the previous agricultural year;
- (d) any sum payable as chaukidari tax or municipal tax;
- (e) cost of management of such estate or tenure at rates varying from five to twenty per cent, according to the amount of the gross asset. The lowest limit fixed is at Rs. 2,000, and the highest at any amount exceeding Rs. 15,000.

These rates appear to have been fixed in an arbitrary manner bearing no relation whatsoever to the actual cost of management. To illustrate, in the case of the Maharaja of Darbhanga whose estate has a gross income of nearly forty-eight lakhs, the cost of management, according to this calculation, would work, out to a sum of nine and a half lakhs, which on the face of it looks startling;

it can hardly have any relation to the costs actually incurred. The expense ratio under the head "management would ordinarily be lowest for the highest gross income. It goes up in proportion to

the reduction in the amount of gross income. The Act has, however, reversed this rule of economics with the result that part of the money that on the principles stated for determining compensation would be payable by way of compensation to the proprietor or tenure-holder stands forfeited by this artificial reduction of the net income.

Clause (f) provides for deduction from the gross assets of costs of works of benefit to the raiyats of such estates or tenures at rates varying from four to twelve and a half per cent., the rate of four per cent, being applicable where the gross-asset does not exceed Rs. 5,000, and the rate of twelve and half per cent. being applicable if the gross asset exceeds Rs. 25,000. It is obvious that the calculation of the cost of works of benefit to the raiyats at a flat rate without any reference to the actual expenses that might have been incurred is a provision of a confiscator character. It artificially reduces the net income which is the basis of the assessment of compensation. The last clause (g) of this section allows deduction of any other tax or legal imposition, payable in respect of such estate or tenure not expressly mentioned in the earlier clauses.

Section 24 provides the manner of determination of the compensation payable to the proprietor or tenure-holder. It lays down a sliding scale for the assessment of compensation. Where the net income does not exceed Rs. 500, the compensation payable is twenty times the net income and where the net income computed exceeds Rs. 1,00,000, it is payable at three times the amount. The compensation in such cases is merely nominal. In the case of the Maharaja of Dharbhanga, the estate acquired also comprised land purchased by him by spending about a crore of rupees and also comprised mortgages to the tune of half a crore. All these vest in the Bihar State along with the inherited zamindaris of the Maharaja and arrears of rent amounting to Rs. 30,00,000 while the total compensation payable is nearly a sum of Rs. 9,00,000. This section further provides that to the amount thus payable shall be added the amount of fifty per cent, of the arrears of rent referred to in Cl. (b) of S. 4 along with the amount of compensation payable in respect of mines and minerals as determined under S. 25. The section also lays down the method of assessment of compensation in the case of persons who have only a share in the zamindari or have other minor interests in the tenures or estates or where the estate or tenure is held in trust etc., or where they are of an impartible nature. In the case of mines and minerals the method of assessment is laid down in S. 25. It has either to be fixed by agreement or by a tribunal appointed for the purpose.

The subsequent sections provide for the preparation of compensation roll and for hearing of appeals etc. S. 32 lays down the method and manner of payment of compensation. Sub-s. (2) of this section enacts that the amount of compensation shall be paid in cash or in bonds or partly in cash and partly in bonds. The bonds shall be either negotiable or non-negotiable and non-transferable and be payable in forty equal instalments to the person named therein and shall carry interest at two and a half per cent, per annum with effect from the date of issue. Any disputes about compensation between the proprietors or tenure-holders have to be determined by a tribunal appointed by the State Government. Section 34 provides for the constitution of a commission called the Bihar Land Commission. The other provisions of the Act are of a miscellaneous character and require no special mention. The last section authorizes the State Government to make rules for carrying out the provisions of the Act.

35. From this survey of the Act, it appears that the law enacted might be taken to relate to several items in the legislative lists, i.e., rights in or over land and land tenures, forests, fisheries, mines and minerals, acquisition of property and also principles on which compensation for property acquired is to be determined. The pith and substance of the legislation however, in my opinion, is the transference of ownership of estate to the State Government and falls within the ambit of legislative

head entry 36 of List II. There is no scheme of land reform within the framework of the statute except that a pious hope is expressed that the commission may produce one. The Bihar Legislature was certainly competent to make the law on the subject of transference of estates and the Act as regards such transfers is constitutional.

36. The Act further deals with the realization of arrears of rents due before the date of vesting of the estates to the zamindars and forfeits fifty per cent, of such realization to the State exchequer. It also in an indirect manner forfeits to the State exchequer part of the compensation money which would have been payable to the proprietors or tenure-holders if the net income was not reduced by deduction from the gross income of items of artificial nature which have no relation to any actual expenses. Both these provisions will be separately dealt with hereinafter as, in my opinion, the enactment of these provisions is unconstitutional.

37. Having held that the Bihar Act is constitutional as regards transfer of estates to the State and that this is mainly an enactment under legislative head 36 of List II, it is convenient now to examine the contention of Mr. Das to the effect that in the contents of the power conferred on the legislature by this entry there exists a concomitant obligation to pay compensation and that as the provisions regarding payment of compensation are illusory, the Act is unconstitutional and that Art. 31 (4) of the Constitution does not afford any protection against this attack.

38. For a proper appreciation and appraisal of the proposition of Mr. P. R. Das that the obligation to pay compensation is implicit in the language of Entry 36 of List II of the Seventh Schedule and that the power to take compulsorily raises by implication a right to payment, the power to acquire being inseparable from the obligation to pay compensation, it is necessary to examine briefly the origin of the power of the State on the subject of compulsory acquisition of property. this power is a sovereign power of the State. Power to take property for public use has been exercised since olden times. Kent speaks of it as an inherent sovereign power. As an incident to this power of the State is the requirement that property shall not be taken for public use without just compensation. Mr. Broom in his work on Constitutional Law says,

"Next in degree to the right of personal liberty is that of enjoying private property without undue interference or molestation, and the requirement that property shall not be taken for public use without just compensation is but an affirmance of the great doctrine established by the common law for the protection of private property. It is founded in natural equity and is laid down as a principle of universal law."

In the words of Lord Atkinson in 'CENTRAL CONTROL BOARD v. CANNON BREWERY CO. LTD.', (1919) AC 744, the power to take compulsorily raises by implication a right to payment.

39. On the continent the power of compulsory acquisition is described by the term "eminent domain". This term seems to have been originated in 1625 by Hugo Grotius, who wrote of this power in his work "de Jure Belli et Pacis" as follows:

"The property of subjects is under the eminent domain of the State, so that the State or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the State is bound to make good the loss to those who lose their property."

The relationship between the individuals' right to compensation and the sovereign's power to condemn is discussed in Thayer's Cases on Constitutional Law (Vol. I, p. 953) (mentioned on page 3 of Nichols on Eminent Domain) in these words:

"But while this obligation (to make compensation) is thus well established and clear, let it be particularly noticed upon what ground it stands, viz., upon the natural rights of the individual. On the other hand, the right of the State to take springs from a different source, viz., a necessity of government. These two, therefore, have not the same origin; they do not come, for instance, from any implied contract between the State and the individual, that the former shall have the property, if it will make compensation; the right is no mere right of pre-emption, and it has no condition of compensation annexed to it, either precedent or subsequent; but there is a right to take, and attached to it as an incident, an obligation to make compensation; this latter, morally speaking, follows the other, indeed like a shadow but it is yet distinct from it, and flows from another source."

Shorn of all its incidents, the simple definition of the power to acquire compulsory or of the term "eminent domain" is the power of the sovereign to take property for public use without the owner's consent. The meaning of the power in its irreducible terms is (a) power to take, (b) without the owner's consent, (c) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power. Courts have defined "eminent domain" so as to include this universal limitation as an essential constituent of its meaning. Authority is universal in support of the amplified definition of "eminent domain" as the power of the sovereign to take property for public use without the owner's consent upon making just compensation.

40. It is clear, therefore, that the obligation for payment of just compensation is a necessary incident of the power of compulsory acquisition of property, both under the doctrine of the English Common Law as well as under the continental doctrine of eminent domain, subsequently adopted in America.

41. The question for consideration is whether this obligation to pay compensation for compulsory acquisition of property has been impliedly laid down by the constitution makers in our Constitution under legislative head in Entry 36 of List II and Entry 33 of List I, or whether this all-important obligation which follows compulsory acquisition as a shadow has been put in express and clear terms somewhere else in the Constitution. To my mind, our Constitution has raised this obligation to pay compensation for the compulsory acquisition of property to the status of a fundamental right and it has declared that a law that does not make provision for payment of compensation shall be void. It did not leave the matter to be discovered and spelt out by learned arguments at the Bar from out of the contents of Entry 36; they explicitly provided for it in Article 31 (2) of the Constitution. As the obligation to pay has been made compulsory part of a statute that purports to legislate under Entry 33 of List I and Entry 36 of List II, it is not possible to accede to the contention of Mr. P. R. Das, that the duty to pay compensation is a thing inherent in the language of Entry 36. I agree with the learned Attorney-General that the concept of acquisition and that of compensation are two different notions having their origin in different sources. One is founded on the sovereign power of the State to take, the other is based on the natural right of the person who is deprived of property to be compensated for his loss. One is the power to take, the other is the condition for the exercise of that power. Power to take was mentioned in Entry 36, while the condition for the exercise of that power was embodied in Art. 31(2) and there was no duty to pay compensation implicit in the content of the entry itself.

42. Reference in this connection may be made to the Government of India Act, 1935. By S. 299 of that statute a fetter was imposed on the power of legislation itself. The Constitution, however declared laws not providing for compensation as void and it not only placed a fetter on the power of legislation but it guaranteed the expropriated proprietor a remedy in Art. 32 of the Constitution for enforcement of his fundamental right. I am therefore of the opinion that Mr. Das is not right in his contention that unless adequate provision is made by a law enacted under legislative power conferred by Entry 36 of List I for compensation, the law is unconstitutional as Entry 36 itself does not authorize the making of such a law without providing for compensation.

Then it was said that Entry 36 of List II was linked up with Entry 42 of the Concurrent List by the words "subject to" occurring therein and that the validity of any law made in exercise of legislative power under Entry 36 was conditional on the simultaneous exercise of the legislative power under Entry 42 and because there has been no valid exercise of this power (the provisions of the impugned Act regarding the determination of compensation being illusory), the legislation under Entry 36 fails. In my opinion, this contention is unsound. The two entries referred to above are merely heads of legislation and are neither interdependent nor complementary to one another. It is by force of the provision of Art. 31 (2) that it becomes obligatory to legislate providing for compensation under Entry 42 of the Concurrent List in order to give validity to a law enacted under Entry 36 and not by reason of the use of the words "subject to" in the wording of the Entry. No such words occur in Entry 33 of the Union List. It cannot reasonably be argued that Parliament could make a law for compulsory acquisition of property for its purposes without fulfilling the condition of making a law under Entry 42 of the Concurrent List, but a State Legislature in this respect is in a different situation. Such a contention, in my opinion, is untenable. The only purpose of the words "subject to" occurring in Entry 36 is to indicate that legislation under Entry 36 should be subject to any law made by Parliament in exercise of its legislative power under Entry 42 of the Concurrent List. Both legislatures can legislate under Entry 42 but the Parliamentary statute made in exercise of powers under this entry would have preference over a State law in case of repugnancy and it was for this reason that reference was made to Entry 42 in the head of legislation mentioned in the State List under Entry 36. In other words, it only means that whenever a law is made by a State Legislature in exercise of its legislative power under Entry 36, that law will be subject to the provisions of a Parliamentary statute made in exercise of its legislative powers under Entry 42 of the Concurrent List.

43. Lastly, it was urged that the legislative power conferred in Entry 42 of the Concurrent List is a power conferred for the benefit of the expropriated owner and that the legislature is bound to exercise this power for his benefit whenever it takes property under its compulsory powers; in other words, it was said that the power conferred by the entry was coupled with a duty to exercise it. Reference was made in this connection to the observations of Lord Cairns in 'Julius v. Bishop of Oxford'. The principles of that decision is that where power is conferred in the nature of a trust there is an obligation to exercise it for the benefit of the 'cestui que trust'. These observations do not have any apposite application to the case of legislative powers conferred by a constitution. The entries in the lists are merely legislative heads and are of an enabling character. Duty to exercise legislative power and in a particular manner cannot be read into a mere head to legislation. If the argument of the learned counsel was sound, then it would be open to this Court to issue a 'mandamus' to the legislature to exercise its power of legislation under Entry 42, if it failed to do so. Mr. Das, when faced with this question, had to admit that he could not seriously contend that a legislature could be directed to enact a statute if it did not wish to do so. Failure to make a law under Entry 42 cannot make a law made under Entry 36 bad. In my opinion, the decision in the case of 'JULIUS v. BISHOP OF OXFORD', (1880) 5 AC 214 has no relevancy to the matter before us.

44. The crucial point for determination in these appeals is to discover the extent to which Art. 31 (4) of the Constitution or the new Arts. 31-A and 31-B have deprived the expropriated proprietor of his rights or remedies in respect of this matter and of the guaranteed right to get compensation for property acquired. Article 31 (4) is in these terms:

"If any Bill pending at the commencement of this Constitution in the legislature of a State has, after it has been passed by such Legislature been reserved for the consideration of the President and has received his assent, then, 'notwithstanding anything in this Constitution', the law so assented to shall not be called in question in any Court on the ground that it contravenes the provision of Cl. (2)."

Articles 31-A and 31-B are in these terms:

"31-A. (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 his assent.

(2) In this article :

(a) the expression 'estate' shall in relation to any local area have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or musafi or other similar grant;

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

31-B. Without prejudice to the generality of the provisions contained in Art. 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force."

The language of Art. 31(4) is unequivocal in its terms and states that when a Bill has received the assent of the President according to the procedure prescribed in Art. 31 (3) and (4) then, notwithstanding anything in this Constitution, the law so assented shall not be called in question in any Court on the ground that it contravenes the provisions of Cl. (2).

45. In order to determine the scope of this clause, it is necessary to determine what are the specific provisions of cl. (2) which clause (4) makes unjusticiable. A strict construction has to be placed on the language of this clause, it being in the nature of a debarring provision. In my opinion, the provisions of sub-cl. (2) made unjusticiable by Cl. (4), relate to the determination and payment of compensation. The whole purpose of the clause is to make the obligation to pay compensation a condition precedent to the compulsory acquisition of property. The words of the clause preceding

the word "unless" are merely descriptive of the law; the validity of which would be questionable if there was no provision for determination and for payment of compensation for the property taken in its contents. The use of the word 'such' fully supports this interpretation. The mandate of the clause is that such a law must contain a provision for payment of compensation to the expropriated proprietor. According to the Oxford dictionary, (Vol. 8, p. 1526) the expression "provision" when used in statutes, has reference to what is expressly provided therein. What Article 31(4) really says is that the contravention of the express provisions of Art. 31 (2) relating to payment of compensation will not be a justiciable issue. It has no reference to anything that may be implied within the language of that clause. The existence of a "public purpose" is undoubtedly an implied condition of the exercise of compulsory powers of acquisition by the State, but the language of Art. 31 (2) does not expressly make it a condition precedent to acquisition. It assumes that compulsory acquisition can be for a "public purpose" only, which is thus inherent in such acquisition. Hence Art. 31 (4), in my opinion, does not bar the jurisdiction of the Court from inquiring whether the law relating to compulsory acquisition of property is not valid because the acquisition is not being made for a public purpose. This is also the view taken by the learned Judges of the Patna High Court. The sovereign power to acquire property compulsorily is a power to acquire it only for a public purpose. there is no power in the sovereign to acquire private property in order to give it to private persons. Public purpose is a content of the power itself. Reference in this connection may be made to Willoughby's Constitutional Law (page 795). Therein it is stated:

"As between individuals, no necessity, however great, no exigency, however imminent, no improvement, however valuable, no refusal, however un-neighbourly, no obstinacy, however unreasonable, no offers of compensation, however extravagant, can compel or require any man to part with an inch of his estate."

Public purpose is an essential ingredient in the very definition of the expression eminent domain" as given by Nichols and other constitutional writers, even though obligation to pay compensation is not a content of the definition but has been added to it by judicial interpretation. The exercise of the power to acquire compulsorily is conditional on the existence of a public purpose and that being so, this condition is not an express provision of Art. 31 (2) but exists 'aliunde' in the content of the power itself and that in fact is the assumption upon which this clause of the article proceeds.

46. The result of this discussion is that the scope of Art. 31 (4) is limited to the express provisions of Art. 31 (2) and Courts cannot examine either the extent or the adequacy of the provisions of compensation contained in any law dealing with the acquisition of property compulsorily for public purpose but the barring provisions of Article 31 (4) do not in any way touch the powers of the Court to see whether the acquisition has been made for public purpose. The provisions of this clause also do not take away the Court's power to examine whether the legislature that made the law has acted in exercise of its law making power within the lists or has merely made some other law though it has ostensibly exercised its powers under a certain legislative head which cannot be used to support the legislation.

47. As regards the new clauses A and B of Article 31 (sic), they merely place beyond the reach of the Court any enactment dealing with compulsory acquisition of property which may infringe any of the provisions of Part III of the Constitution; in other words, Article 13 (2) of the Constitution cannot be called in aid to impugn the validity of such statutes.

48. Having determined the scope of Article 31 (4), it is now convenient to examine the extent of the protection given by Article 31 (4) to the impugned statute.

49. Mr. Das is to a great extent right in his contention - the point was not seriously challenged by the learned Attorney-General, - that the law under challenge in the matter of compensation is highly unjust or inequitable to certain persons and in certain matters, and compensation in some cases is purely illusory. Be that as it may, the Constitution in express terms prohibits an enquiry in a Court of law into those matters. The same Constituent Assembly that provided the guarantees in Article 31 (2) in respect of payment of compensation and provided the remedy in Article 32 for enforcing the guaranteed right, took away that remedy in the case of the Bihar and other zamindari estates and substituted for it the procedure of Article 31 (3) and (4), compliance with which would be sufficient to make the laws valid and effective. However repugnant the impugned law may be to our sense of justice, it is not possible for us to examine its contents on the question of quantum of compensation. It is for the appropriate legislature to see if it can revise some of its unjust provisions which are repugnant to all notions of justice and are of an illusory nature. The Courts' hands are tied by the provisions of Article 31 (4) and that which has been declared by the Constitution in clear terms not to be justiciable, cannot be made justiciable in an indirect manner by holding that the same subject-matter which is expressly barred is contained implicitly in some other entry and therefore open to examination. None of these provisions, however, fetter the power of the Court to inquire into any other matters the cognizance of which is not expressly taken away by the provisions of Clause (4) and Clauses A and B of Article 31.

50. Therefore, the material point for determination is whether the acquisition of the estates is for any public purpose and if it be not so, the law can certainly be held to be unconstitutional. Mr. Das contended, and in my opinion rightly, that jurisdiction to acquire private property by legislation can only be exercised for a public purpose. It may be the purpose of the Union, or the purpose of the State or any other public purpose. Private property cannot be acquired for a private purpose. The right to legislate under Entry 36 postulates the existence of a public purpose and the contention is that there was no public purpose behind the Act. The learned Judges of the High Court negatived this contention on the ground that the question whether there was a public purpose in support of the acquisition of the estates had been by implication decided by the Constituent Assembly and therefore the Court could not go into this matter. Shearer, J., said as follows:

"We are, in my opinion, estopped from saying that the acquisition of estates and tenures is not an acquisition for such a purpose. That it is, has been decided by the Constituent Assembly itself."

This decision was reached in view of the provisions of Clauses (4) and (6) of Article 31 which were interpreted to mean that the Constituent Assembly gave their express approval to this legislation. Reuben, J., observed as follows:

"From Article 31, Clause (2) it is clear that the Constituent Assembly considered two requirements as essential for compulsory acquisition, namely, a public purpose and provision for compensation. The protection which the Constituent Assembly gave under Clauses (4) and (6) was confined to the latter requirement. Evidently, therefore, the Constituent Assembly thought that protection was not required under the other head, that is to say, the Constituent Assembly regarded the nationalization of land as itself constituting a public purpose.

I would therefore, hold that there is a public purpose for the impugned Act within the meaning of Clause (2) of Article 31."

Das, J., said as follows:

"There is, I think, clear indication in the Constitution of India itself that the expression 'public purpose' is to be understood in a wide and comprehensive sense. Furthermore, there is indication that the Constituent Assembly, representing the people of India which made the Constitution, was itself aware of the existence of legislation of the nature of impugned Act. This is clear from Clause (4) of Article 31. As a matter of fact, that Land Reforms Bill was pending at the commencement of the Constitution.... If the legislation then pending was not for a public purpose, it was, indeed, surprising that the Constituent Assembly tried to save such legislation by means of the provisions of Clause (4) of Article 31. One may, I think, say that there was an implied declaration by the Constituent Assembly that such legislation was for a public purpose and such declaration will be given deference by the Courts until it is shown to involve an impossibility.

For the reasons given above. I hold that the impugned Act does not fall for want of a public purpose."

Learned counsel challenged this view of the High Court and contended that Article 31 (4) of the Constitution is no answer on this point and that the Act was bad as it was silent on the question as to why the zamindaris were being acquired; that it only provided for the interception of rents which instead of being realized by the zamindars would go into the coffers of the Government without any benefit being derived by the tenants, that private property could not be acquired for merely augmenting the revenues of the State, and that the only purpose that could be gathered from this Act was the ruination of a large class of persons without any corresponding benefit to any section of the community. It is said that there are 13,35,000 land-owners and tenure-holders in Bihar and if an average family be taken to consist of four persons, five and a half million people will be ruined by this legislation, while the ryots will not benefit in any manner because all the lands excepting the waste lands sought to be transferred are in the possession and cultivation of the ryots and no part of the rent realisable from them is being committed for their benefit. It is pointed out that the waste lands were sufficient to meet the requirements of villagers for grazing cattle and for pasture and that in effect the acquisition of the estates was for the purpose of creating one machine-ridden and red-tapist super-landlord by depriving a substantial portion of the public of their means of livelihood.

51. The learned counsel proceeded to say that nationalization of land may be the policy of the party in power but this is not a public purpose which involves benefit to the community. Reference in this connection was made to the decision in 'HAMABAI FRAMJEE v. SECRETARY OF STATE FOR INDIA'. 42 Ind App 44 PC, where it was observed that the phrase "public purpose" whatever it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. The impugned Act, it was contended, did not fall within this definition of "public purpose." Reference was also made to Vol. II of Cooley's Constitutional Limitations, at page 744, wherein it is said as follows:

"The purpose must be public and must have reference to the needs of convenience of the public and no reason of general public policy will be sufficient to validate other transfers when they concern existing vested rights."

Finally, it was urged that there was nothing definite or tangible in the Act or in the views of the legislatures which gave any indication of the public purpose for which the estates were being acquired and all that could be gathered was that the legislature did not know its own mind at all and on a vague notion of some future policy directed the acquisition of the estates.

52. In my opinion, it will not serve any useful purpose to examine each and every argument that was addressed to us by the learned counsel. There can be no manner of doubt that acquisition of private property by legislation under Entries 33, 36 and 42 can only be made either for purposes of the Union or for purposes of the State or for a public purpose and that it is unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purpose of the State or of purposes of the public and that the intention was to benefit the community at large. It may be conceded that the present statute does not disclose the legislature's mind as to what it would ultimately do after the estates are vested in the State Government. Perhaps the State Government has not yet made up its mind how and for what purposes the lands and the tenures acquired will be utilized. The statute provides in Section 34 for the establishment of a land commission whose function it will be to advise the Government as to its agrarian policy. Be that as it may, it seems to me that in spite of the criticism levelled against the Act by the learned counsel, it cannot be said that the Act would fall because it fails to postulate a public purpose. The Act is intituled "The Bihar Land Reforms Act, 1950." The preamble of the Constitution says that India has been constituted into a Sovereign Democratic Republic to secure to all its citizens justice, social, economic and political. Article 39 of the Directive Principles of State Policy states as follows:

"The State shall, in particular, direct its policy towards securing, that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of the acquisition contemplated by the impugned Act therefore is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come in the hands of the State as to subserve the common good as best as possible. In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India. It is fallacious to contend that the object of the Act is to ruin five and a half million people in Bihar. All lands in khas possession of all these persons have not been made the subject-matter of acquisition. Their homesteads, their mineral wealth except mines not in operation have not been seriously touched by the provisions of the Act. Various other exemptions have also been made in their favour in the Act, apart from the provisions as to compensation which in the case of small zamindaris can by no means be said to be of an illusory character. It is difficult to hold in the present day conditions of the world that measures adopted for the welfare of the community and sought to be achieved by process of legislation so far as the carrying out of the policy of nationalization of land is concerned can fall on the ground of want of public purpose. The phrase "public purpose" has to be construed according to the spirit of the times in which particular legislation is enacted and so construed, the acquisition of the estates has to be held to have been made for a public purpose.

53. These observations, however, have no application to the acquisition of arrears of rent. On the face of the statute, acquisition of fifty per cent of these arrears was for the private purpose of the

zamindars and the other fifty per cent. was either for supplementing the revenues of the State or for securing means for payment of compensation to the zamindars. The purpose is to discharge the obligation of the acquirer to pay the price. The same observations apply to Clause 23 (f) of the statute. That provision has been made for the purpose of negating partially the provisions of the Act regarding payment of compensation. Clause (4) of Article 31 affords no protection against the invalidity of these clauses.

54. The learned Attorney-General contended that the acquisition of arrears was an acquisition of choses in action and that the compensation paid for it was fifty per cent of the amount of arrears. I regret I am unable to accept this suggestion. It is a well accepted proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State.

"The principle of compulsory acquisition of property," says Gooley (in Vol. II. At p. 113, Constitutional Limitations) "is founded on the superior claims of the whole community over an individual citizen but is applicable only in those cases where private property is wanted for public use, or demanded by the public welfare and that no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise and the exercise of such a power is utterly destructive of individual right. Taking money under the right of eminent domain, when it must be compensated in money afterwards is nothing more or less than a forced loan. Money or that which in ordinary use passes as such and which the Government may reach by taxation, and 'also rights in action which can only be available when made to produce money', cannot be taken under this power."

55. Willis in his Constitutional Law, at page 816, offers the same opinion.. Nichols on "EMINENT DOMAIN", (Vol. I, at page 97) has expressed a contrary opinion and reference has been made to the decision in 'CINCINNATI v. LOUISVILLE ETC., R. CO.', (1912) 223 U S 390. An examination of this case, however, does not disclose that any such proposition was stated therein. It was held in that case that a Bill to restrain the enforcement of a State statute regulating fire insurance rights was a valid law in the State of Kansas. It was not necessary to decide in this case whether under compulsory acquisition power the State has the power to acquire choses in action or money, but it cannot be seriously disputed that such an acquisition amounts to a forced loan and that the desired result can be more appositely obtained in exercise of the police power of the State than of the power of eminent domain or compulsory acquisition of property and that compensation in such a case is the same amount of money that is being taken and in the case of a chose in action the amount of money that it would produce. In this situation it cannot be held that fifty per cent, of the outstanding arrears was compensation in any sense of that expression for this acquisition, The true position is that the State took over all the arrears and decided to refund fifty per cent, of them and forfeit the rest. The validity of this acquisition has to be decided independently of the acquisition of the estates. It has no connection with land reform or with any public purpose. It stands on the same footing as other debts due to zamindars or their other movable properties, which it was not the object of the Act to acquire. As already stated, the only purpose to support this acquisition is to raise revenue to pay compensation to some of the zamindars whose estates are being taken. This purpose does not fall within any definition, however wide, of the phrase "public purpose" and the law therefore to this extent is unconstitutional.

56. One or two illustrations of the public purpose involved in this provision will bring out its true character. In Appeal No. 299 of 1951, the arrears of Darbhanga Raj on 26th September 1950 was a sum of Rs. 30,81,967. Half of this amount is payable to the Raj and the other half stands forfeited.

In the case of Raja P. C. Lal (Appeal No. 330 of 1951), the rents due were Rs. 10,26,103, and in Appeal No. 339 of 1951, the amount is Rs. 9,52,937.

57. Next it was contended that the impugned Act is a fraud on the Constitution and therefore void. It was said that the Act, while pretending to comply with the Constitution, evades and invades it; that the Act merely pretends to comply with the Constitution when it says that it provides for payment of compensation but in effect it has produced a scheme for non-payment of compensation by shift and contrivance. Reference was made to certain provisions of the Act of a confiscatory nature, already noticed in this judgment. Section 9 was mentioned under which mines in the course of development and fetching no income yet vest in the State without payment of compensation. No compensation has been made payable in respect of forests or trees which were not fetching any income at the date of vesting. In a nutshell, it was contended that the object of the Act was to acquire properties of the zamindars by payment of compensation (so-called) out of the moneys belonging to the zamindars themselves and that in some cases they had not only to give up their estates for nothing but would have to pay something, in addition, to the State, if the principles specified in the Act were to apply. It was pointed out in the case of Maharaja of Darbhanga that his zamindari would be acquired by the State Government without paying anything but that the Maharaja would have to pay out of his own money six lakhs to the Government. In case No. 330 of 1951 (Raja P. C. Lal), it was said that Government would get the zamindari free, while in Case No. 339 of 1951 the State will get the zamindari and two and half lakhs out of the arrears, while in Case No. 331 of 1951 (Chota Nagpur appeal) the zamindari will be acquired on payment of a small sum of Rs. 14,000 only. Nothing will be payable to the zamindars out of the public exchequer. Attention was drawn to the observations of Shearer, J., in the following passage:

"The legislature, it is clear, are optimistic enough to hope that this reform may conceivably be effected without raising any great loan. The conclusion, to my mind, is irresistible that the intention is to take over the great estates in the province, paying no compensation or the most inadequate compensation, and out of the considerable profits which are likely to be derived from them, to take over, in course of time, the remaining estates and tenures. In other words, a comparatively small minority belonging to this particular class are to be expropriated without compensation or with the most inadequate compensation in order that, when the great majority are expropriated, they receive compensation which will not be inadequate and may, quite possibly, in many cases, be more than adequate."

Mr. Das vehemently contended that the statute was a fraud on republican constitution which promised to deprive no one of his property without payment of compensation; that is pretended to make elaborate provisions for paying it but that by shift and contrivance it has provided for the evasion of its payment. Reference was made to a passage in 'MORAN PROPRIETARY LTD. v. DY. COMMISSIONER OF TAXATION FOR NEW SOUTH WALES', (1940) A C 838 at p. 858, which is in these terms:

"Cases may be imagined in which a purported exercise of the power to grant financial assistance under S. 96 would be merely colourable, Under the guise or pretence of assisting a State with money, the real substance and purpose of the Act might simply be to effect discrimination in regard to taxation. Such an Act might well be 'ultra vires', the Commonwealth Parliament. Their Lordships are using the language of caution because such a case may never arise, and also because it is their usual practice in a case dealing with constitutional matters to decide no more than their duty requires. They will add only that, in the view they take of the matter, some of the legislative expedients - objected to as 'ultra vires' by Evatt, J., in his forcible dissenting judgment - may well be

colourable, and such Acts are not receiving the approval of their Lordships."

It was urged that a statute could be declared to be a fraud on the constitution on the same principles that are applicable to cases of corporations or of executive bodies, whenever they Act in excess or in abuse of their statutory powers. Reliance was placed in this connection on the observations of Abbott, C. J., in 'FOX v. BISHOP OF CHESTER', (1824) 107 E R 520 at p. 527, which are in these terms:

"Our judgment is founded upon the language of the Statute 31 Eliz. c. 6, and the well-known principle of law, that the provisions of an Act of Parliament shall not be evaded by shift or contrivance."

In 'FOX v. BISHOP OF CHESTER', (1829) 6 E R 581, it was said that there may be fraud on the law, an insult to an Act of Parliament, though in the language and text of the law no such fraud may have been mentioned. In 'WESTMINSTER CORPORATION v. LONDON and NORTH WESTERN RAILWAY', (1905) AC 426 at p. 430, it was observed:

"It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first."

In 'LUCHMESWAR SINGH v. CHAIRMAN OF THE DARBHANGA MUNICIPALITY', 17 Ind App 90 (PC), it was pointed out that the offer and acceptance of one rupee was a colourable attempt to obtain a title under the Land Acquisition Act without paying for the land. In 'ALEXANDER v. BRAME', (1855) 44 E R 205, it was observed that if it had appeared that sufficient ground existed for holding that the deed in question was a device on the part of Mr. Brame for the purpose of evading and eluding the statute by keeping seemingly and colourably clear of it, while meaning substantially to infringe it, a view might have been taken favourable to the appellants.

58. All these principles are well-settled. But the question is whether they have any application to the present case. It is by no means easy to impute a dishonest motive to the legislature of a State and hold that it acted 'mala fide' and maliciously in passing the Bihar Land Reforms Act or that it perpetrated a fraud on the constitution by enacting this law. It may be that some of the provisions of the Act may operate harshly on certain persons or a few of the zamindars and may be bad if they are in excess of the legislative power of the Bihar Legislature but from that circumstance it does not follow that the whole enactment is a fraud on the constitution. 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. At best they are illusory only in the case of some only of the large body of persons affected by it.

59. Section 23 (f), however, in my opinion, is a colourable piece of legislation. It has been enacted under power conferred by legislative Entry 42 of List III. It is well-settled that Parliament with limited powers cannot do indirectly what it cannot do directly. (Vide 'SOUTH AUSTRALIA v. THE COMMONWEALTH', 65 C L R 373 AND 'MADDEN v. NELSON and PORT SHEPPARD R. W. CO.', (1899) A C 626. In 'DEPUTY FEDERAL COMMISSIONER OF TAXATION (N.S.W.) v. W. R. MORAN PROPRIETARY LTD.', 61 C L R 735 at p. 793, it was observed as follows:

"Where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature is really doing. In such cases the Court is not to be over persuaded by the appearance of the challenged legislation..... In that case, this Court applied the well-known principle that in relation to constitutional prohibitions binding a legislature, that legislature cannot disobey the prohibition merely by employing an indirect method of achieving exactly the same result..... The same issue may be whether legislation which at first sight appears to conform to constitutional requirements is colourable or disguised. In such cases the Court may have to look behind names, forms and appearances to determine whether or not the legislation is colourable or disguised."

The provision herein impeached has not been arrived at by laying down any principles of paying compensation but in truth, is designed to deprive a number of people of their property without payment of compensation. The State legislature is authorised to pass an Act in the interests of persons deprived of property under Entry 42. They could not be permitted under that power to pass a law that operates to the detriment of those persons and the object of which provision is to deprive them of the right of compensation to a certain extent.

60. In this connection it is now convenient to examine the contention of the learned Attorney-General as to the interpretation of legislative head Entry 42 of List III. He contended that under this head it was open to the Parliament or the State Legislature to make a law laying down the principles which may result in non-payment of compensation or which may result in not paying any compensation whatsoever. I cannot possibly assent to any such construction of this entry. The entry reads thus:

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

This head of legislation seems to have been expressly mentioned in the Concurrent List not only in view of the accepted principle of 'law that in cases of compulsory acquisition of property compensation has to be made, but also in view of the clear and mandatory provisions of Art. 31 (2) which require that a law authorising the taking or acquisition of property for payment of compensation for the property acquired or does not either fix the amount of compensation or specify the principles on which and the manner in which the compensation is to be determined and 'given'. The power of legislation in Entry 42 is for enacting the principles of determining such compensation and for paying it. The principles to be enacted are for determining the equivalent price of the property taken away. It may be that the determination of the equivalent may be left for ascertainment on the basis of certain uniform rules; for instance, it may be laid down that the principles for determining compensation will be the rental basis or the market value of the property etc. but it is difficult to imagine that there can be any principles for non-payment of compensation or for negating the payment of compensation. No principles are required to be stated for non-payment of compensation. A simple statement that no compensation will be paid is quite enough to attain the object. I know of no principles for determination of compensation which result in its non-payment except in the Act under notice. All legislative heads have to be reasonably construed and the power given under Entry 42 is a positive power given to bring about the result of payment of compensation and not non-payment of the same. The key words in the entry are "compensation" and "given". Anything that is unrelated to compensation or the giving of it cannot be justified by legislation under Entry 42.

Reference was made in this connection to the 'UNITED PROVINCES v. ATIQA BEGUM', 1940 FCR 110 at p. 135, in which it was held that the descriptive words under the legislative head "collection of rents" are wide enough to permit legislation in respect of remission of rents and that under item 22 of the Government of India Act, 1935, the legislative head "forests" include the power to legislate with respect not only to afforestation but also to disafforestation and that the legislative head "fisheries" would include the power to legislate on the prohibition of fishing altogether. In my opinion, these analogies have no application to the construction of the language employed in Entry 42. These entries are not 'in pari materia' to Entry 42.

Perhaps a more analogous case on the point is the decision in 'ATTORNEY-GENERAL FOR ONTARIO v. ATTORNEY-GENERAL FOR THE DOMINION', (1896) AC 348. The question there was whether the legislative head "Regulation of Trade and Commerce" included the power to abolish it also. Their Lordships of the Privy Council made the following observations which appear at page 363 of the report:

"A power to regulate assumes the conservation of the thing which is to be made the subject of regulation. In that view, their Lordships are unable to regard the prohibitive enactments of the Canadian statute as regulations of trade and commerce.... there is marked distinction between the prohibition or prevention of a trade and the regulation or governance of it."

An entry concerning payment of compensation in no sense includes legislative power of non-payment of compensation. The whole purpose of this head of legislation is to provide payment of compensation and not the confiscation of property.

61. The provision that four per cent to twelve and a half per cent, has to be deducted out of the net income on account of costs of works for the benefit of raiyats etc. has no relation to real facts. Even the earlier provision in Cl. (d) that costs of management have to be deducted up to twenty per cent. has in its entirety no real relation to actual state of affairs. As already pointed out it is partially of a confiscatory character in sufficient number of cases. The deduction under Cl. (f) from the gross income is merely a deduction of an artificial character, the whole object being to inflate the deductions and thus bring about non-payment of compensation. Such legislation, in my opinion, is not permitted by Entry 42 of List III. Suppose, for instance, instead of a twelve and a half per cent. it declared that a deduction of seventy per cent, be made on that account. Could it be said by any reasonable person that such a piece of legislation was legislation on principles of determining compensation or of making payment of compensation. This provision, therefore, in my opinion, has been inserted in the Act as a colourable exercise of legislative power under Entry 42 and is unconstitutional on that ground. The power has not been exercised under any other legislative head authorizing the State legislature to pass such a law. Legislation ostensibly under one or other of the powers conferred by the Constitution but in truth and fact not falling within the content of that power is merely colourably constitutional but is really not so. (Vide 'ATTORNEY-GENERAL FOR QUEBEC v. QUEEN INSURANCE CO.' (1878) 3 AC 1090; 'RUSSELL v. THE QUEEN', (1862) 7 AC 829 at p. 841. Reference in this connection may also be made to the decision of the Privy Council in 'MADAN v. NELSON and FORT SHEPPARD R. W. CO.' (1899) AC 626. This clause therefore is unconstitutional legislation made colourably valid under exercise of legislative power under Entry 42 of List III.

62. It was contended by Mr. Das that if some provisions in the Act are 'ultra vires', the statute as a whole must be pronounced to be 'ultra vires' and that it could not be presumed that the legislature intended to pass it in what may prove to be a truncated form. The real question to decide in all such

cases is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive, or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is 'ultra vires'. Looking at the Act as a whole, it seems to me that the offending provisions of the Act are not so inextricably bound up with the part that is valid as to hit or kill the remainder also. In this case a presumption cannot be drawn that the legislature would not have enacted the Act leaving out the two or three provisions which have to be declared to be invalid.

63. Mr. Das also raised a minor point that the Bihar Act was unenforceable. Reference was made to S. 32 (2) of the Act which runs as follows:

"The amount of compensation so payable in terms of a Compensation Assessment-roll as finally published shall be paid in cash or in bonds or partly in cash and partly in bonds. The bonds shall be either negotiable or non-negotiable and non-transferable and be payable in forty equal instalments to the person named therein and shall carry interest at two and a half per centum per annum with effect from the date of issue."

It was contended that as no date has been mentioned for payment of compensation and no interval has been stated between the instalments mentioned therein and it has not been mentioned how much would be payable in cash and how such in bonds, the Act could not be enforced. Section 43 of the Act empowers the State Government to make rules for carrying out the purposes of the Act. Clause (p) is in these terms:

"The proportion in which compensation shall be payable in cash and in bonds and the manner of payment of such compensation under sub-ss. (2) and (3) of S. 32."

It seems clear that the Act has made sufficient provision for enforcing its provisions if S. 32 (2) is read with the provisions contained in S. 43 and it cannot be said that the Act is unenforceable for this reason.

64. The last point urged by Mr. Das was that S. 32 (2) of the Act was void as in it legislative functions had been abdicated by the legislature in favour of the executive. A two-fold attack was levelled against this provision. Firstly, it was said that the Constitution having in Entry 42 of List III of the Seventh Schedule vested authority in the legislature to make laws on the question of the principles as to the payment of compensation and the manner and form of its payment, in other words, it having trusted these matters to the care, judgment and wisdom of the legislature, it had no power to delegate these matters to the executive. Secondly, it was contended that S. 32 (2) delegated essential legislative power to the executive which it was incompetent to do. Reference was made to the opinion of this Court in 'IN RE THE DELHI LAWS ACT', 1952 etc.; 'SPECIAL REFERENCE NO. 1 OF 1951', (AIR 1951 SC 332).

65. The matters alleged to have been delegated are these:

1. The determination of the proportion of the cash payment to the payment by giving bonds, negotiable or non-negotiable.
2. The determination of the period of redemption of these bonds.
3. The period of interval between the several instalments.

The section enacts that the compensation payable shall be paid in cash or in bonds or partly in cash and partly in bonds. It therefore determines the principle that the payment of compensation will be in these two forms. It further enacts that bonds shall be either negotiable or non-negotiable and non-transferable. It therefore also determines the nature of the bonds that would be issued. It further enacts that the payment, if made in bonds, will be paid in forty equal instalments. It is obvious that the time of redemption of the bonds will be co-terminous with the period of the instalments. It has further enacted that the bonds will carry interest at the rate of two and a half per cent. What has been left to the executive is the question of the determination of the proportion in which compensation is to be paid in cash or in bonds and the fixation of the interval of the instalments. It seems to me that the delegation to this extent is permissible in view of the decision of this Court in 'STATE OF BOMBAY v. NAROTTAMDAS JETHABHAI', AIR 1951 SC 69 and the decision of their Lordships of the Privy Council in 'QUEEN v. BURAH', 5 Ind App 178 (PC).

The legislature applied its mind to the question of the method and manner of payment of compensation. It settled its policy and the broad principles. It gave the State Government the power to determine matters of detail after having settled vital matters of policy. It cannot be said that the legislature did not apply its mind to the subject-matter of the legislation and did not lay down a policy. The proportion in which compensation was payable in cash or in bonds or whether the whole of it was to be paid in cash is a matter which only the State Government could fix and similarly, the interval of instalments and the period of redeemability of the bonds were also matters of detail which the executive could more appositely determine in exercise of its rule-making power. It cannot be said in this case that any essential legislative power has been delegated to the executive or that the legislature did not discharge the trust which the constitution had reposed in it. If the rule-making authority abuses its power or makes any attempt to make the payment illusory, the expropriated proprietor will not be without a remedy.

66. For the reasons given above, I am of the opinion that' S. 32 (2) of the Act cannot be held bad on the ground that it is a piece of unregulated delegation of legislative power.

67. Mr. Das' contention in Cases Nos. 319, 327, 330 and 332 of 1951 and in the other cases in which he appeared were the same.

68. Mr. Choudhury appearing in Cases Nos. 309 and 328 of 1951 raised a large number of points, some of which are covered by the arguments of Mr. P. R. Das, which I have discussed already. The rest seem to me to be unsubstantial but it is necessary to notice a few of them upon which great stress was laid by the learned counsel. Mr. Choudhury contended that the field of legislation on the question of principles of determination of compensation and the mode and manner of payment of such compensation was already occupied by the Land Acquisition Act which was an existing law of Parliament and, therefore, the State Legislature could not enter on this field and legislate on the principles of payment of compensation. This argument really has no force, because the provisions as to assessment of compensation enacted in the Land Acquisition Act only apply to acquisitions that are made by notification under Act. Its provisions have no application to acquisitions made under either local or central laws unless they are specifically made applicable by the provisions of these statutes.

69. Another point put forward by him, that Arts. 31-A and 31-B of the Constitution cannot affect pending cases cannot be seriously entertained because retrospectively is writ large on the face of those articles. Similarly, I cannot but regard as unsubstantial his contention that transference of estates of zamindars to the State under the provisions of a statute requires registration. The only

other point seriously pressed by him is that the Bihar Legislature had no power to issue bonds without complying with the procedure laid down in Art. 293 of the Constitution. It is enough to state with regard to this point that the stage for issuing bonds has not arrived as yet. When the State legislature issues bonds which are unenforceable or which it is not competent to issue, the contention can possibly be raised.

70. Mr. Chakravarty who appeared in three cases, Nos. 326, 337 and 344 of 1951, urged that as regards trust properties, the Bihar legislature had no power to acquire them without payment of full compensation as certain educational and charitable institutions would thereby be seriously affected. He was, however, unable to point out how the Bihar Legislature had no power to acquire trust properties.

71. Mr. Raghav Saran who appeared in Cases Nos. 310, 311 and 329 of 1951, raised a novel point that the Act not being reasonable and just, the Supreme Court had jurisdiction to declare it void on that ground. He was unable to support his argument on any reasonable basis. The constitutionality of a statute passed by a competent legislature cannot be challenged on the ground that the law made is not reasonable or just.

72. Counsel who appeared in Cases Nos. 307, 313, 315, 320, 322 and 331 and Petition No. 612 of 1951 merely adopted the points urged by Mr. P. R. Das.

73. The result is that the provisions of the Bihar Land Reforms Act contained in Ss. 4 (b) and

23 (f) are held not constitutional. The rest of the Act is good. The appeals are therefore allowed except to the extent indicated above. A writ of 'mandamus' will issue to the State Government not to give effect to the two provisions mentioned above and held unconstitutional. Petition No. 612 of 1951 under Art. 32 is dismissed as it is not maintainable; no infringement of any fundamental right has been alleged therein. There was no appearance for the respondents in Cases Nos. 18 of 1950 and 299 of 1951 and no opposition to the appeals being allowed. They are accordingly allowed. I will make no order as to costs in any of these appeals and petition.

74. **B. K. MUKHERJEA, J.** : I had the advantage of going carefully through the judgment of my learned brother Mahajan, J. and I concur entirely in the conclusions arrived at by him. In my opinion, the Bihar Land Reforms Act of 1950 is not, unconstitutional, with the exception of the provisions contained in Ss. 4 (b) and 23 (f) of the Act and these provisions alone must be held to be void and inoperative.

75. As regards S. 23 (f) of the Bihar Land Reforms Act, my learned brother has based his decision on the ground that the provision of this clause constitutes a fraud on the Constitution, and although in enacting the provision, the legislature purported to exercise its powers under Entry 42 of the Legislative List III in Schedule VII of the Constitution, in reality, it is a colourable exercise of that power under which a thing has been done which is not contemplated by that Entry at all and lies outside its ambit. I agree with the line of reasoning adopted by my learned brother in this connection and there is nothing further which I can usefully add.

76. As regards S. 4 (b) it has been held by my learned brother that the provision of this clause is unconstitutional as it does not disclose any public purpose at all. The requirement of public purpose is implicit in compulsory acquisition of property by the State or, what is called, the exercise of its power of 'Eminent Domain'. This condition is implied in the provision of Art. 31 (2) of the

Constitution and although the enactment in the present case fulfills the requirements of Cl. (3) of Art. 31 and as such attracts the operation of Cl. (4) of that Article, my learned brother had taken the view that the bar created by Cl. (4) is confined to the question of compensation only and does not extend to the existence or necessity of a public purpose which, though implicit in, has not been expressly provided for by Cl. (2) of the Article. For my part I would be prepared to assume that Cl. (4) of Art. 31 relates to everything that is provided for in Cl. (2) either in express terms or even impliedly and consequently the question of the existence of a public purpose does not come within the purview of our enquiry in the present case. Even then I would hold that the same reasons, which have weighed with my learned brother in declaring Section 23 (f) of the impugned Act to be unconstitutional, apply with equal, if not greater, force to S. 4(b) of the Act and I have no hesitation in agreeing with him as regards his decision on the constitutionality of this provision of the Act though I would prefer to adopt a different line of reasoning in support of the same.

77. Section 4 (b) of the Bihar Land Reforms Act lays down, as one of the results of the publication of a notification under S. 3 (1) of the Act that

"all arrears of rents..... and all cesses together with interest; if any, due thereon for any period prior to the date of vesting which were recoverable in respect of the estate or tenure by the proprietor of tenure-holder and the recovery of which was not barred by any law of limitation shall vest in and be recoverable by the State."

The explanation attached to the clause further provides that for purposes of the clause the expression "arrears of rent" shall include arrears in respect of which suits were pending on the date of vesting or in respect of which decrees were obtained before that date together with costs allowed by such decrees. Under S. 24 of the Act, 50 per cent of these arrears of rent are directed to be added to the amount of compensation money payable for the estate or interest calculated in accordance with the provisions of the Act.

78. The arrears of rent whether merged in decrees or not, which were due to the landlord for a period anterior to the date of notification under S. 3 (1) of the Act, were undoubtedly the property of the landlord, irrespective of his interest in the estate or tenure which is the subject-matter of acquisition. Such arrears could not vest in the State as a normal result of acquisition of any estate or interest therein, and it is conceded by the learned Attorney-General that Art. 31-A of the Constitution has no application so far as these arrears of rent are concerned. The arrears of rent, therefore, are the subject-matter of separate and independent acquisition under the Bihar Land Reforms Act, if the word "acquisition" can at all be appropriate to cases of this description.

79. It cannot be disputed that in every Government there is inherent authority to appropriate the property of the citizens for the necessities of the State and constitutional provisions do not confer this power though they generally surround it with safe-guards. The restraints invariably are that when private property is taken, a pecuniary compensation must be paid (Vide Cooley on Constitutional Limitations, Vol. II. P. 1110). Thus Eminent Domain' is an attribute of sovereign power supposed to be tempered by a principle of natural law which connects its exercise with a duty of compensation. (Vide Encyclopaedia of Social Science, Vol. V. p. 493.

80. Possibly under the impression that the sacredness of private property should not be confided to the uncertain virtues of the party in power for the time being, the Constitution-makers of our country have declared it as one of the fundamental rights that no property shall be taken possession of or acquired for public purpose unless the law directing its appropriation makes provision for

compensation in the manner laid down in Art. 31 (2), Cl. (4) of Art. 31 does not do away with the obligation to pay compensation; it merely lays down that laws which are referred to in Cl. (3) of the Article would be immune from judicial scrutiny on the ground of inadequacy of the amount of compensation or the impropriety of the principle for assessing the same as provided for in the enactment. The clause presupposes however that the enactment is the result of a valid exercise of a legislative power conferred on the legislature by the appropriate entries in the Legislative Lists and if the legislature acts outside these entries or under the pretence of acting within them does something which is in flat contradiction with its contents. Cl. (4) of Art. 31 could not be invoked to afford any protection to such legislation.

81. Clause 4(b) of the impugned Act read with the provision of S. 24 of the same empowers the State Government to appropriate all the arrears of rent due to a landlord at a particular time and the only obligation it casts on the Government in the respect is to allow 50 per cent, of the amount thus appropriated as 'solatium' for the so-called acquisition. On the face of it the legislative provision purports to have been made in exercise of the powers conferred on the State legislature under Entry 36 of List II and Entry 42 of List III of Schedule VII of the Constitution. In my opinion, this is a mere device or pretence and the real object which the legislation intended to accomplish is to deprive a man of his money which is not ordinarily a subject-matter of acquisition, in exercise of what are known as powers of 'Eminent Domain' by the State, without giving him anything in exchange; and under the guise of acting under Entry 42 of List III, the legislature has in truth and substance evaded and nullified its provisions altogether.

82. The general principles, which distinguish the powers of 'Eminent Domain' from other powers of the State under which the sacrifice of the proprietary interest of a citizen could be demanded or imposed, are fairly well-known. As has been observed by Cooley in his "Constitutional Limitations" every species of property which the public needs may require and which the Government cannot lawfully appropriate under any other right, is subject to be seized and appropriated under the right of 'Eminent Domain' (See Cooley on Constitutional Limitations, Vol., II, P. 1113). Money as such and also rights in action are ordinarily excluded from this List by American jurists and for good reasons. (Cooley, Vol. II, p. 1113; Willis on Constitutional Law p. 816). There could be no possible necessity for taking either of them under the power of 'Eminent Domain'. Money in the hands of a citizen can be reached by the exercise of the power of taxation, it may be confiscated as a penalty under judicial order and we can even conceive of cases where the State seizes or confiscates money belonging to or in the hands of a citizen under the exercise of its 'police powers' on the ground that such fund may be used for unlawful purpose to the detriment of the interest of the community. But, as Cooley has pointed out (Vide Cooley on Constitutional Limitations, Vol. II, p. 1118, FB), taking money under the right of 'Eminent Domain' when it must be compensated by money afterwards could be nothing more or less than a forced loan and it is difficult to say that it comes under the head of acquisition or requisitioning of property as described in Entry 36 of List II and is embraced within its ordinary connotation.

83. It is said by the learned Attorney-General that the subject-matter of acquisition in the present case is not money but choses in action. It seems to me that there is no difference in principle between them because a chose in action can be available to the acquiring authority only when it is made to produce money; Otherwise it is useless altogether (Vide Cooley on Constitutional Limitations, Vol. II, p. 1118 (F.N.)

84. Assuming however that Entry 36 of List II is wide enough to include acquisition of money or a right of action, I have no hesitation in holding that in providing for compensation in respect of such

acquisition the legislature has made a colourable use of Entry 42 of List III and has thereby defeated the purpose of that Entry altogether. Entry 42 of List III speaks of

"principles on which compensation for property acquired 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."

This is a description of legislative head and I agree with the learned Attorney-General that in deciding the competency of the legislation under this entry, we are not concerned with the justice or property of the principles upon which the assessment of compensation is to be made under a particular legislation nor are we concerned with the justice or otherwise of the form or manner in which such compensation is to be given.

I do not, however, agree with the learned Attorney-General for the reasons already given by my learned brother in his judgment that legislation under this head need not provide for any compensation at all and that a legislative provision which declares that no compensation is to be given comes within the ambit of this legislative head. Such construction is repelled by the very language of the Entry which speaks of giving compensation and not of denying or withholding it.

Stripped of all disguise, the net result of the impugned provision is that it would be open to the State Government to appropriate to itself half of the arrears of rent due to the landlord prior to the date of the acquisition without giving him any compensation whatsoever. Taking of the whole and returning a half means nothing more or less than taking half without any return and this is naked confiscation, no matter in whatever specious form it may be clothed or disguised. The impugned provision, therefore, in reality does not lay down any principle for determining the compensation to be paid for acquiring the arrears of rent, nor does it say anything relating to the form of payment, though apparently it purports to determine both. This, in my opinion, is a fraud on the Constitution and makes the legislation, which is a colourable one, void and inoperative.

The learned Attorney-General has contended that it is beyond the competency of the Court to enter into a question of 'bona fides' or 'mala fides' of the legislature. In a sense this is true. If the legislature is omnipotent, the motives, which impel it to enact a particular law, are absolutely irrelevant; and, on the other hand, if it lacks competence the question of motives does not at all arise. But when a legislature has a limited or qualified power and has got to act within a sphere circumscribed by legislative entries, the question, whether in purporting to act under these entries, it has, in substance, gone beyond them and has done certain things which cannot be accomplished within the scope of these entries, is really a question affecting the competency of the legislature. In such cases, although the legislation purports to have been enacted under a particular entry, if it is really outside it, it would be void. (See Lefroy on Canadian Constitution, pp. 79-80.)

It has been suggested in course of the argument on behalf of the State that in the present case the Government in the exercise of its powers of acquisition could acquire the arrears of rent and as the arrears were still unrealised, it was quite legitimate and proper for the Government to deduct half of the gross amount as consideration for the trouble and expense that it would have to undergo in the matter of realising these arrears. This would mean that what the legislature intended is simply to enable the Government to help the zamindars in realising the arrears of rent and as a return for the help which it is to render, the Government is given the right to retain half of the arrears that were actually due. This could not possibly have been the real intention of the legislature and I do not think that there is any item in the long legislative lists framed by the Constitution which empowers

the legislature to interfere with the legal rights of the landlord in this manner apart from special circumstances like indebtedness or otherwise and impose upon him an onerous obligation to which he is not a consenting party. A legislation of this character is a complete novelty, the like of which has seldom been witnessed before. The result is that I concur in the order which has been made by my learned brother **Mahajan, J.** in this case and I allow the appeals subject to the two modifications indicated above. There would be no order as to costs.

85. DAS J. : The proceedings out of which these appeals have arisen were initiated by different proprietors of estates in Bihar challenging the constitutional validity of the Bihar Land Reforms Act 1950 (Bihar Act XXX of 1950) which will hereafter in this judgment be referred to as "The Act".

86. On January 26, 1950, when our Constitution came into force, the Bill which eventually became the Act was pending before the Legislature of the State of Bihar. After the Bill had been passed by the State Legislature, it was reserved for the consideration of the President. On September 11, 1950, that Bill received the assent of the President and became the Act. The provisions of the Act have been analysed and summarised in the judgment just delivered by Mahajan, J. and it is not necessary for me to burden this judgment by recapitulating the same. On September 25, 1950, the text of the Act was published in the Official Gazette with a notification under Section 1 (3) dated September 24, 1950 bringing the Act into operation. A notification under Section 3 of the Act dated September 25, 1950 vesting the estates of certain named proprietors was published in the Official Gazette on the next day.

This notification having been published in the Official Gazette, some of the proprietors affected thereby instituted suits in the Subordinate Courts in Bihar after giving the requisite notice under Section 80 of the Code of Civil Procedure and prayed for a declaration that the Act was unconstitutional and void and that their title to the properties remained unaffected. Some of the other proprietors filed applications in the High Court at Patna under Article 226 of the Constitution praying for the issue of appropriate writs, directions or orders. The State of Bihar filed its written statements in the suits which were transferred to the High Court for disposal in exercise of its extraordinary Original Civil Jurisdiction. The suits and the applications were heard together. As the issues involved grave questions of interpretation of the Constitution, the suits and applications were placed before a special Bench of the Patna High Court and were disposed of on March 12, 1951. All the learned Judges, for one reason or another, repelled all the main contentions of the proprietors but held that the Act was unconstitutional in that it denied to the proprietors equal protection of the laws guaranteed by Article 14 of the Constitution. The High Court rejected the plea of the State that Article 31 (4) of the Constitution by reason of the words "notwithstanding anything in this Constitution" excluded Article 14 at least in its application to the alleged inequality of compensation. Article 31 (4) is in these terms:

"If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of Clause (2)."

The State of Bihar obtained leave of the Patna High Court under Article 132 (1) of the Constitution to appeal to this Court and preferred these appeals before us.

87. It may be mentioned here that the States of Uttar Pradesh and Madhya Pradesh also passed

legislation for the abolition of zamindaris in their respective States and the validity of those legislations was also contested by the proprietors affected thereby. The respective High Courts of those States, however, upheld the validity of the respective State legislations and the aggrieved proprietors came up to this Court either on appeal or on substantive application under Article 32. It was at that stage that the Constituent Assembly passed the Constitution (First Amendment) Act, 1951. Sections 4 and 5 of the Act which are material for our purpose are as follows:

Insertion of new Art. 31 A. 4. After Art. 31 of the Constitution the following article shall be inserted, and shall be deemed always to have been inserted, namely:-

31-A Saving of laws providing for acquisition of estates, etc. (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 his assent.

(2) In this article,-

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

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

Insertion of new Art. 31-B. 5. After Art. 31-A of the Constitution as inserted by S. 4 the following article shall be inserted, namely:-

31-B. Validation of certain Acts and Regulations. Without prejudice to the generality of the provisions contained in Art. 31-A, none of the Acts and Regulations specified in the Ninth Schedule or any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force."

A new Schedule called the Ninth Schedule specifying thirteen several Acts and Regulations of which the Bihar Land Reforms Act, 1950 was the first was added to the Constitution. The legal validity of the Constitution (First Amendment) Act, 1951 has been recently upheld by this Court and all Courts must give effect to the two new Articles which are now substantive parts of our Constitution. Article 31-A relates back to the date of the Constitution and Article 31-B to the respective dates of the Acts and Regulations specified in the Ninth Schedule. It has not been disputed that the provisions of the above two newly added Articles have to be taken into consideration in disposing of these appeals.

88. Learned counsel appearing for the respondents accept the position that as a result of the constitutional amendments the impugned Act has been removed from the operation of the provisions of Part III of the Constitution, including Article 14 and that the respondents cannot, therefore, complain of the breach of the equal protection of the laws under Article 14 which was the only ground on which the respondents succeeded in the High Court. Learned counsel, however, maintain that although they cannot now challenge the constitutionality of the Act on the ground that it contravenes or is inconsistent with or takes away or abridges any of the rights conferred by any of the provisions of Part III of the Constitution: it is, nevertheless, open to them to call the Act into question on other grounds founded on other parts of the Constitution or on general principles of law. Accordingly, Mr. P. R. Das formulates the following five principal grounds of attack against the Act, namely:

A. On a proper interpretation of Articles 245 and 246 read with Entry 36 in List II and Entry 42 in List III the Bihar Legislature had no power to enact the said Act inasmuch as it makes no provision for the payment of just compensation for the proposed acquisition of the Zamindaries and tenures.

B. Even if the Court does not accept the correctness of the arguments based on Entry 36 in List II and Entry 42 in List III and holds the respondents barred from going into the question of compensation by reason of Articles 31 (4), 31-A and 31-B the respondents are still entitled to challenge the Act on the ground that the proposed acquisition is not for a public purpose.

C. The Act constitutes a fraud on the Constitution, that is to say, while it purports to be in conformity with the Constitution it, in fact, constitutes a defiance of it.

D. The Act is unenforceable in that Section 32 (2) provides for payment of compensation in 40 equal instalments without specifying the period of interval between the instalments.

E. The Act delegated essential legislative functions to the executive Government.

The heads of objection thus formulated by Mr. P. R. Das apparently look formidable and it is necessary, therefore, to consider with close attention the arguments advanced by him in support of each of them.

89. 'Re Ground A': That Article 31 (2) imposes upon a law for the compulsory acquisition of private property the obligation to provide for compensation and that such obligation is, therefore, a provision of Article 31 (2) is not challenged. Nor is it claimed, in view of Articles 31 (4), 31-A and 31-B, that it is still open to the respondents to call in question the validity of the impugned Act on the ground that it contravenes or is inconsistent with or takes away or abridges the provision for compensation made in Article 31 (2). What is urged is that the obligation to provide for compensation is not a provision to be found exclusively in Article 31 (2) but that it is also provided for in other parts of the Constitution and that, in so far as such obligation is found provided elsewhere, the impugned Act can well be challenged on the ground that it contravenes or is inconsistent on the ground that it contravenes or is inconsistent with or takes away or abridges the provisions of those other parts of the Constitution, for that ground of challenge has not been taken away by Articles 31 (4), 31-A and 31-B, by reason of the delimiting words used therein.

The argument is developed in the following way: The State's power to acquire private property is, in essence, a power to compel the owner to sell his property when the public interest requires it. Authority for this proposition is to be found in Blackstone's Commentary (Broom's Edn.) p. 165 and

in Cooley's Constitutional Limitations, 8th Edn. Vol. II, p. 1201, Footnote (3), Indeed, in some of the English statutes for compulsory acquisition of lands and hereditaments (e.g., 5 and 6 Vic., C 94 and 8 and 9 Vic. C 18), the word "purchase" was used to denote acquisition. As there can be no sale without a price, there can be no compulsory acquisition of private property without a provision for payment of just compensation, i.e., its equivalent value in money. That the obligation to pay just compensation for compulsory acquisition of private property is a principle of natural equity recognised by all temperate and civilized governments, that the right to compensation is an incident to the exercise of the power to eminent domain and that the one is so inseparably connected with the other that they may be said to exist, not as separate and distinct principles but, as parts of one and the same principle are well-established by a series of decisions of the American Courts quoted by Harln, J., in CHICAGO, BURLINGTON AND QUINCY RAILROAD CO. v. CHICAGO', (1897) 166 U S 226 : 41 L Ed 979. In England Lord Dunedin in 'ATTORNEY-GENERAL v. DE KEYSER'S ROYAL HOTEL LTD.', (1920) A C 503, described the obligation to pay compensation as "a necessary concomitant to taking."

It follows, therefore, that the obligation to pay compensation is inseparable from and is implicit in the power of acquisition. This obligation flows from the mere use of the word "acquisition" in entry 36 in List II, as in Entry 33 in List I. That word, by itself, according to Mr. P. R. Das, connotes a compound concept, namely, the concept of a power of taking on just terms and confines the very legislative competency under those entries within the limits of that compound concept.

If, however, the word "acquisition" in Entry 36 in List II and Entry 33 in List I does not by itself imply the obligation to pay just compensation, then, urges Mr. P. R. Das in the alternative, the words "subject to the provisions of Entry 42 of List III" occurring at the end of Entry 36 in List II certainly bring in that obligation. On a plain reading of Entry 36 in List II the power to make law with respect to matters specified therein is "subject to", that is to say, "conditional upon" the exercise of legislative power under Entry 42 in List III. Those concluding words, Mr. P. R. Das say a, import the obligation to provide for compensation as provided in Entry 42 in List III into Entry 36 in List II and thereby enlarge the content of the last mentioned entry so as to make it a legislative head comprising the compound concept referred to above.

The third alternative position is that if the word "acquisition" in Entry 36 in List II does not, by itself, imply the obligation to provide for compensation and if the words "subject to the provisions of Entry 42 of List III" do not import that obligation as stated above, Entry 42 in List III should, nevertheless, be construed as conferring a power coupled with a duty, so that if the law-making power under Entry 33 in List I or Entry 36 in list II is at all exercised the law-making power under Entry 42 in List III must, on the principle laid down by the House of Lords in 'JULIUS v. LORD BISHOP OF OXFORD', (1880) 5 A C 214 and adopted by this Court in 'CHIEF CONTROLLING REVENUE AUTHORITY v. MAHARASHTRA SUGAR MILLS LTD.', 1950 SCR 536 also be exercised. It is urged that the Bihar Legislature having purported to exercise its powers to make a law for compulsory acquisition of property under Entry 36 in List II but not having made any law laying down any principle for determining what may, in the eye of the law, be regarded as just compensation at all, the Act is 'ultra vires;' and void. The arguments thus developed by Mr. P. R. Das undoubtedly have the merit of attractive ingenuity and apparent cogency and certainly call for very careful consideration.

90. To cut at the root of the above argument, the learned Attorney-General appearing for the Appellant State contends that the impugned Act is a law made with respect to matters mentioned in Entry 18 in List II and not under Entry 36 in List II. The contention is that it is essentially a

legislation for land reforms and alteration of land tenures. It is pointed out that the Act eliminates the interests of all Zamindars and intermediate tenure-holders so that the State and the actual tiller of the soil may be brought into direct relationship. Incidental to this primary object is the acquisition of the various interests in the land. Reference is made to the cases of 'UNITED PROVINCES v. MT. ATIQA BEGUM', (1940) FCR 110 at p. 134: 'JAGANNATH BAKSH SINGH v. UNITED PROVINCES', (1946) FCR 111 at p. 119 and 'MEGH RAJ v. ALLAH RAKHIA', (1947) FCR 77, in support of the proposition that each entry in the list, which is a category or head of the subject-matter of legislation, must be construed as widely as possible so as to include all ancillary matters. This line of reasoning found favour with Shearer, J., but was rejected by Reuben, J., and S. K. Das, J.

There is no doubt that "land" in Entry 18 in List II has been construed in a very wide way but if "land" or "land tenure" in that entry is held to cover acquisition of land also, then Entry 36 in List II will have to be held as wholly redundant, so far as acquisition of land is concerned, a conclusion to which I am not prepared to assent. In my opinion, to give a meaning and content to each of the two legislative heads under Entry 18 and Entry 36 in List II the former should be read as a legislative category or head comprising land and land tenure and all matters connected therewith other than acquisition of land which should be read as covered by Entry 36 in List II. Further, the impugned Act purports to acquire all arrears of rent and a law for acquisition of the arrears of rent cannot possibly be said to be a law with respect to matters specified in Entry 18 in List II for it cannot be supposed to be a law relating to the collection of rent with the meaning of that entry. On this point I find myself in agreement with Reuben, J., and S. K. Das, J and I cannot accept the arguments of the learned Attorney-General to the contrary. Therefore, the arguments of Mr. P. R. Das founded on Entry 36 in List II and Entry 42 in List III cannot be rejected 'in limine' but have to be considered and I proceed to do so immediately.

91. That the obligation to pay compensation is concomitant to that is to say, accompanies, the power of compulsory taking of private property by the State cannot be disputed. The first important question is whether this obligation is implicit in the term "acquisition" as used in Entry 36 in List II. or in other words whether this obligation is to be inferred simply from the use of that term as a part of the content or meaning thereof. In 'ATTORNEY-GENERAL v. DE KEYSER'S ROYAL HOTEL LIMITED', (1920) AC 508 (supra) Lord Dunedin pointed out that the power of acquisition was, in its origin, derived from the prerogative of the Crown and that the payment of compensation was originally a matter of negotiation and bargain between the Crown and the subject, but came to be determined later on by statutes of local application and finally by statutes of general application and that, therefore, the Crown, which is an assenting party to every statute, must, in effect, be regarded as having consented to the exercise of its prerogative being made subject to payment of compensation regulated by statutes. In that case, however, it was not disputed in arguments that the taking itself was a matter of prerogative right.

In the United States of America the power of eminent domain was not originally, in terms, conferred on the United States by any provision of the Federal Constitution, but this power has always been recognised to exist as an inherent attribute of the sovereignty of the State. So far as the United States are concerned, the fifth Amendment by providing that private property shall not be taken for public use without just compensation gave a constitutional recognition to the right of eminent domain and, to protect the subjects, imposed a limitation on the exercise of that right by the State.

This indicate that the power of acquisition and the obligation to pay compensation are two separate

and distinct concepts although the second follows the first. If the obligation to pay compensation were an integral part of the concept or the meaning of "taking" itself, then this part of the Fifth Amendment was wholly unnecessary. It follows, therefore, that the expression "acquisition" does not, by itself and without more, import any obligation to pay compensation. It is urged by Mr. P. R. Das that Entry 42 in List III really implements the obligation implicit in Entry 36 in List II and the two entries are complementary to each other. If this obligation were not implicit in entry 36 in List II then where else, it is asked, is the obligation to pay compensation to be found?

The obvious answer is that that obligation is to be found in Article 31 (2) in Part III of our Constitution. The obligation to pay compensation may be introduced as a part of the legislative power itself, in which case it becomes a composite power, namely, a power to make law with respect to acquisition circumscribed by the obligation to provide for compensation. Thus in Section 31 (XXXI) of the Commonwealth of Australia Constitution Act the acquisition of property on just terms has been made a head or category of legislative power of the Commonwealth Parliament. There the power is not to make a law for the acquisition of property simpliciter but is to make a law for the acquisition of property on just terms which connotes that the legislative power itself is circumscribed by the necessity for providing just terms. But there is no overriding necessity of constitutional law that I know of, or that has been brought to our notice, which requires that the obligation to pay compensation for the acquisition of property must be made part and parcel of the very legislative power to make a law with respect to the compulsory acquisition of private property. It must depend on the provisions of the particular constitution under consideration.

What do we find in our Constitution? we find that under Article 246, Parliament has exclusive power to make laws with respect, 'inter alia', to matters specified in Entry 33 in List I, namely, "acquisition or requisitioning of property for the purposes of the Union", that the State Legislatures have exclusive power to make laws with respect, 'inter alia', to matters specified in Entry 36 in List II, namely, the "acquisition or requisitioning of property except for the purpose of the Union subject to the provision of Entry 42 of List III" and that both Parliament and the State Legislatures may make laws with respect to matters set forth in Entry 42 in List III, namely, the principles for determining the compensation and the form and manner of giving such compensation. This legislative power of Parliament or of the State Legislatures is, by Article 245, made "subject to the provisions of this Constitution."

One of the provisions of the Constitution is, Article 31 (2) which no property can be "taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for compensation for the property and either fixes the amount of compensation or specifies the principles on which, and the manner in which the compensation is to be determined and given."

The scheme of our Constitution obviously is to provide the three things separately, namely, the power of making a law for acquisition of property in Article 246 read with Entry 33 in List I and Entry 36 in List II, the obligation of such law to provide for compensation in Article 31 (2) and the power of making a law laying down the principles for determining such compensation in Article 246 read with Entry 42 in List III. According to this scheme it is not necessary at all to regard Entry 33 in List I and Entry 36 in List II, which are mere head of legislative power, as containing within themselves any obligation to provide for the payment of compensation. In other words, it is not necessary to treat the obligation to pay compensation as implicit in or as a part or parcel of these legislative heads themselves, for it is separately and expressly provided for in Article 31 (2).

The well-known maxim 'expressum facit cessare tacitum' is, indeed, a principle of logic and common sense and not merely a technical rule of construction (see Broom's Legal Maxims, 10th Edn. p. 443 at p. 452). The express provision in Article 31 (2) that a law of acquisition, in order to be valid, must provide for compensation, will, therefore, necessarily exclude all suggestion of an implied obligation to provide for compensation sought to be imported into the meaning of the word "acquisition" in Entry 36 in List II. In the face of the express provision of Article 31 (2) there remains no room for reading any such implication in the legislative heads.

92. Mr. P. R. Das suggests, in the alternative, that if the obligation to provide for compensation is not implicit in the word "acquisition" itself as used in Entry 36 in List II that obligation is attracted and made a part and parcel of that Entry by reason of the words "subject to the provisions of Entry 42 of List III." The last mentioned words are, however, not to be found in Entry 33 in List I and this part of Mr. P. R. Das's argument would lead to this anomalous result that while the obligation to provide for compensation is made a part of the legislative power under Entry 36 in List II by virtue of its last few words quoted above, no such obligation is attracted and made part of the legislative power under Entry 33 in List I, and that, therefore, in making a law with respect to acquisition of property under Entry 33 in List I Parliament, unlike the State Legislatures, will not be bound to provide for any compensation at all.

This cannot possibly be the intention of the framers of our Constitution. Further, Mr. P. R. Das reads the words "subject to" as meaning "conditional upon" the exercise of the legislative power under Entry 42 in List III, that is to say, conditional upon fulfilling the obligation to provide for compensation and the form and the manner in which such compensation is to be given. I agree with S. K. Das, J., that the words "subject to" have not the meaning sought to be given to them by Mr. P. R. Das but that they mean "but Not" so as to indicate that the scope of Entry 36 in List II is restricted, that is to say, that the subject-matter of Entry 42 in List III is not within the content of Entry 36 in List II. If Entry 42 in List III were, by reason of the words "subject to the provisions of Entry 42 of List III" occurring in Entry 36 in List II, to be read as having been made a part of the content of Entry 36 in List II then it may well be argued that, in view of Article 246, Parliament will not be competent to maintain law with respect to principles on which compensation is to be determined. It is in order to prevent this argument and out of abundant caution that the subject-matter of Entry 42 in List III has been excluded from the content of Entry 36 in List II by the words "subject to" etcetera and Parliament may, therefore, freely make a law with respect to the matters thus excluded from Entry 36 in List II and set forth as a separate and independent item in Entry 42 in List III. This consideration was not material in connection with Entry 33 in List I which explains the omission of the words "subject to" etcetera from that entry.

93. Mr. P. R. Das finally urges that if the obligation to provide for compensation is not implicit in the word "acquisition" in Entry 36 in List II and if that obligation is not to be read into that entry even in view of the words "subject to ..... " at the end of it, even then if the State exercises its power to make a law with respect to acquisition of property under Entry 36 in List II it is the duty of the State Legislature to make a law also with respect to matters specified in Entry 42 in List III on the principle that as Entry 42 in List III confers a power on the Legislature for the protection of the interest of persons whose property is compulsorily acquired, such power must, therefore, be regarded as coupled with a duty to exercise it. No authority has been brought to our notice establishing or even suggesting that the principle laid down by the House of Lords in *JULIUS v. LORD BISHOP OF OXFORD*, (1880) 5 A C 214 (supra) has been extended to the exercise of legislative power and I am not prepared to assent to the proposition. Article 246 does not make it obligatory for Parliament or the State Legislatures to make a law under any of the entries in any of

the Lists in the Seventh Schedule. Entry 42 in List III does not, therefore, impose any duty upon Parliament or the State Legislatures to make any law for payment of compensation. What requires Parliament or State Legislatures, when making a law for compulsory acquisition of private property to provide for compensation and either to fix the amount thereof or specify the principles on which and the manner in which the compensation is to be determined and given is the provision of Article 31 (2). Entry 42 in List III only constitutes legislative head under which Parliament or the State Legislatures may make a law so as to give effect to the obligation expressly imposed on them by Article 31 (2). In view of the clear provision of that Article it is wholly unnecessary to read Entry 42 in List III as imposing an implied duty on the Legislature on the principle referred to in the House of Lords case.

94. That the obligation to provide for compensation is not included in the content of the legislative power under Entry 36 in List II by itself or read with Entry 42 in List III will be made further clear when we come to consider closely Clauses (4) and (5) of Article 31 and Article 31-A. Article 31 (4) protects a law of the description mentioned therein against the provisions of Article 31 (2). It follows, therefore, that what is sought to be protected by Article 31 (4) is a law for the acquisition or taking possession of property which does not, amongst other things, provided for compensation or does not fix the amount or specify the principles on which and the manner in which the compensation is to be determined and give, for otherwise there would be no necessity for any protection. The question at once arises as to whether there is any legislative Entry in List II under which a law for acquisition or taking possession of property without compensation can be made by a State Legislature. To test the validity of Mr. P. R. Das's argument and to avoid the complication arising out of the residuary powers of Parliament under Article 248 and Entry 97 of List II, I have taken the case of a law of acquisition made by the legislatures of a State which also come within Article 31 (4). Is there, then, any entry in List II under which a State Legislature can make a law for acquisition without compensation or public purpose? Obviously there is none, except Entry 36 in List II. If that entry by itself or read with Entry 42 in List III has any implication as suggested, namely, that a law for acquisition of property made under Entry 36 in List II without a provision for compensation will be beyond the legislative competency of the State Legislatures then there is no other entry under which such a law can be made by a State Legislature and there can, therefore, be no point in making a provision in Article 31 (4) for protecting, against Article 31 (2), a law which, on this hypothesis, cannot be made at all.

Article 31 (4) postulates a law which offends against Art. 31 (2) and so far as the State Legislatures are concerned there is no entry in List II except Entry 36 under which such an offending law may be made by the State Legislatures. The circumstance unmistakably establishes that Entry 36 in List II, by itself or read with Entry 42 in List III, has not any such implication as is imputed to it. Likewise take Article 31 (5) (b) (ii), which protects the provisions of any law which the State any hereafter make for the promotion of public health or the prevention of danger to life or property. The law which is thus sought to be protected must also involve acquisition of property without any provision for compensation, for otherwise there can be no occasion or necessity for any protection against Article 31 (2). A law of this kind, in so far as such law provides for acquisition of property must necessarily be made by a State Legislature, if at all, under Entry 36 in List II. Mr. P. R. Das's contentions were correct, a law for the promotion of health or the prevention of danger to life or property involving the acquisition of property without a provision for compensation, which is what is sought to be protected from Article 31 (2), can never be made, for the obligation to provide for compensation is, according to him implicit in Entry 36 in List II by itself or read with Entry 42 in List III, and there is no other entry under which a law may be made by a State Legislature with respect to acquisition of property. It is futile to attempt to get over this anomaly by suggesting that

Clauses (4) and (5) (b) (ii) of Article 31 had been inserted in the Constitution 'ex abundanti cautela', for, if Mr. P. R. Das were correct in his submission, no amount of caution was necessary for protecting a law that, 'ex hypothesis', cannot be made at all.

Similar arguments may as well be founded on Article 31-A, for that Article also protects a law from Article 31(2) which is in Part III of the Constitution. It is suggested that Article 31-A postulates a valid law made by a competent legislature with the ambit of its legislative powers. If a State Legislature is making a law for the acquisition of property for a public purpose under Entry 36 in List II must provide for compensation then a law made conformably with this supposed requirement of that entry by a State Legislature will require no protection at all against Article 31 (2) and Article 31-A must be regarded as meaningless and unnecessary. Surely, that conclusion is manifestly untenable. In my opinion Clauses (4) and (5) (b) (ii) of Article 31 and Article 31-A clearly negative Mr. P. R. Das's proposition. In my judgment, for reason stated above, the major premise in the arguments advanced by Mr. P. R. Das under the first head, namely, that the obligation to pay compensation is implicit in Entry 36 in List II by itself or read with Entry 42 in List III is unsound. The obligation to provide for compensation being, as I hold, a provision of Article 31 (2) and not being implicit in or a part and parcel of the legislative power itself under Entry 36 in List II read by itself or in conjunction with Entry 42 in List III, the impugned Act cannot, by virtue of Articles 31 (4), 31-A and 31-B, be called in question on the ground that it contravenes or is inconsistent with or takes away or abridges any of the rights conferred by the provisions of Clause (2) of Article 31, that is to say, that it does not provide for compensation.

95. Assuming that the obligation to pay compensation which is expressly provided in Article 31 (2) is also implicit in Entry 36 in List II by itself or read with Entry 42 in List III, the respondents cannot, even then, be permitted to call in question the validity of the impugned Act on the ground that it does not provide for compensation, for then they will be doing exactly what they are forbidden to do by Article 31 (4) and the newly added Articles. Article 31 (4) and the added Articles debar the respondents from questioning the validity of the Act on the ground, 'inter alia', that it contravenes or is inconsistent with or takes away or abridges any of the rights conferred by the provisions of Clause (2) of Article 31. The emphasis in those Articles is rather on the "provisions" than on the number of the Article or the Part of the Constitution. It is obvious that the real substance of the matter is that Articles 31 (4), 31-A and 31-B expressly seek to prevent a challenge to the validity of the Act based on the ground, 'inter alia', that it does not provide for compensation. This obligation to provide for compensation is not doubt one of the provisions of Article 31 (2) but if, as contended by Mr. P. R. Das, the self-same provision be found elsewhere in the same Constitution', e.g., Entry 36 in List II or Entry 42 in List III, then that "provision" must also be regarded as having been covered by Article 31 (4) and the two added Articles for otherwise those Articles will be rendered nugatory. In my opinion, if two constructions are possible, the Court should adopt that which will implement and discard that which will stultify the apparent intention of the makers of the Constitution. Further, it must be borne in mind that Article 31 (4) which applies "notwithstanding anything in this Constitution" will, by force of the very words, protect the Act against even legislative incompetency, if any, arising out of the alleged non-compliance with the suggested implied provisions, if any, of Entry 36 in List II and Entry 42 in List III. In my judgment the respondents are not, by reason of Articles 31 (4), 31-A and 31-B, entitled to call the Act in question on the ground that it does not provide for compensation, whether the ground is formulated as a breach of Article 31 (2) or of the implied provision, if any, of the legislative heads mentioned above.

96. It will be noticed that the argument that the Act is unconstitutional is founded on the assumption

that it has not laid down any principle for determining compensation as required by Entry 42 in List III and that the provision for compensation is wholly illusory. Chapter V of the Act deals with assessment of compensation. Shortly put, the scheme is to start with the gross assets which are taken to be synonymous with the gross income and then to make certain deductions therefrom and to arrive at the net assets. Then the compensation is to be calculated at a sliding scale of rates varying from 20 to 3 times of the net income. To the amount thus determined is to be added a moiety of the accumulated arrears of rent etc., and the compensation for the mines and minerals as determined under Section 25, 'Ex facie', it cannot be disputed that the Act does prescribe some principles for determining the compensation payable to the proprietor or tenure-holder. It is, however, pointed out that the deduction of 5 to 20 per cent, of the gross assets as and by way of cost of management is quite arbitrary. It is said that although it is well known that the percentage of cost of management in relation to the income of a small estate is greater than that of a larger estate, yet the Act provides for deducting 20 per cent, of the gross assets in the case of proprietors of the larger estates but only 5 per cent. in the case of the smaller estates.

Objection is next taken to the deduction of any amount under the head of works of benefit to the 'raiyats' and also to the scale of such deduction. These arguments, to my mind, do not, on close scrutiny, amount to saying that the Act does not lay down any principle for determining the compensation. The real underlying implication of these arguments, as I understand them, is that the principles are not good enough in that they do not produce fair compensation. I do not think the Court can go into the policy of the legislation. All that the Court is concerned with is to see whether any principle has been laid down as mentioned in Entry 42 in List III. It is true that the percentage of cost of management calculated on the basis of the income of a big estate is less than that of a smaller estate, but it is quite clear that the Act has fixed the scale of deduction under this head and under the head of works of benefit according to the capacity of the proprietor or tenure-holder to bear it. It is impossible to say that the provision for deduction for works of benefit to the raiyat is not supported by any principle. A landlord is expected to spend money on works of benefit to his 'raiyats', e.g., providing tanks and wells, irrigation, charitable dispensary, schools and so forth and be it said to the credit of some of the landlords that in practice they do spend money on this account. Therefore, there is nothing wrong, when calculating the net income of a landlord, to deduct something which the landlords should and some of them often do, in practice, spend under this head. I see no absence of principle in this provision. The rate of deduction I have said, has been fixed according to the capacity of the proprietors or tenure-holders. It has been shown, and it is not denied, that in many cases a calculation of the net income on the basis of the principles laid down in the Act operates to reduce the gross income to a vary small net income.

To take only one instance, the gross annual income of the Darbhanga estate is about Rs. 47,85,069, the deduction allowed by the Act is about Rs. 44,88,585 and the net income computed according to the principles laid down in the Act comes to about Rs. 2,96,484 or say Rs. 3 lacs and the compensation payable to the Maharajadhiraj of Darbhanga will be only Rs. 9 lacs. It has also been shown that at least in one case, e.g. in the case of the Raja of Purnea the compensation calculated according to the principle laid down in the Act works out at a deficit figure. The fact that in one isolated case the calculation may work out in this way, does not, however, prove that no principle has been laid down. Indeed, in all other cases the principle laid down in the Act actually produces compensation, however inadequate it may be said to be in some cases.

If a principle has been laid down then the provisions of Entry 42 in List III are amply satisfied and no question of legislative incompetency can arise. If a principle has been laid down in the Act but that principle does not in fact produce any compensation in any rare case or adequate compensation

in some cases then the real complaint should be, not that no principle has been laid down but, that the principle laid down does not produce 'what may be called just compensation. That result may offend against the provisions of Art. 31 (2) but certainly not against entry 42 in List III and in view of Arts. 31(4), 31-A and 31-B the Act cannot be challenged for non-compliance with Art. 31 (2).

On the other hand, even if it is held that no principle has, in fact, been laid down by the Act, as contended, then that fact not only amounts to a breach of the provisions of Entry 42 in List III but also constitutes a breach of the provisions of Art. 31 (2) which clearly and emphatically requires the law to either fix the compensation or lay down the principles on which and the manner in which the compensation is to be given and a breach of this "provision", call it a provision of Art. 31 (2) or one of Entry 42 in List III cannot, for reasons already stated, be questioned in view of Arts. 31 (4), 31-A and 31-B. It should also be remembered that Art. 31 (4) by reason of the words "notwithstanding anything in this Constitution" occurring therein will also protect the Act even against the alleged legislative incompetency arising out of the non-compliance with all provisions of the Constitution relating to the payment of compensation or the existence of a public purpose including the supposed requirement of producing actual compensation said to be implicit in the provisions of Entry 42 in List III. In my judgment, the Act cannot be called in question on the ground of legislative incompetence of the Bihar Legislature to enact it under Entry 36 in List II or Entry 42 in List III.

97. What I have stated above is sufficient to repel the first ground of attack levelled against the Act by Mr. P. R. Das. But before passing on to the second main ground of attack I think it right to deal with a few subsidiary points canvassed before us.

98. It is said that S. 3 of the Act, which is its main operative section, does not contemplate or authorise the acquisition of arrears of rent at all for the notification under that section only refers to the vesting of the estates or tenures in the State. It is, however, to be noticed that the consequence of issuing that notification is that the arrears of rent including all that are mentioned in Cl. (b) of S. 4 are also to vest in and be recoverable by the State. This vesting of the arrears of rent in the State necessarily implies the transfer of the rights of the proprietors or tenure-holders to the State and this process must, therefore, amount to the acquisition of that right by the State. Therefore, in effect, the Act does contemplate the acquisition of the arrears of rent by the State.

99. On the authority of a passage in Willis' Constitutional Law, p. 816, it is argued that the power of eminent domain cannot be exercised with respect to money and choses in action besides certain other unusual forms of property. This passage is founded on certain earlier decisions of the American Courts. It is however, clear from Nichols on Eminent Domain, Vol. I p. 99, para, 2 and the case of 'CINCINNATI v. LOUISVILLE and N. R. CO., (1912) 223 US 390: 50 Law Ed 481, cited therein that the modern view is that the right of eminent domain can be exercised on choses in action. In any case, we are to consider whether arrears of rent are "property" in the sense in which that expression is used in our Constitution and understood in our law. What are the arrears of rent but rents that have fallen due but have not been paid? It is not at all money in the till of the landlord but it is debt due by the tenants. It is, therefore, nothing but an actionable claim against the tenants which is undoubtedly a species of "property" which is assignable. Therefore, it can equally be acquired by the State as a species of "property."

100. It is finally urged that the Act makes no provision for payment of compensation for taking this item of property. It is true that in S. 24 the word "compensation" is used in connection with the taking of the estates or tenures and also the taking of mines and minerals but not in connection with the fifty per cent, of the arrears of rent which are direct to be added to the compensation. But this

provision for adding the fifty per cent, of the arrears also appears in the chapter headed "Assessment of Compensation" and , therefore, the fifty per cent, of the arrears is added in the process of the assessment of the compensation. Further, why is this fifty per cent, given to the proprietors or tenure-holders-at all unless it were for compensation? It is pointed out that when the State takes away a lac of rupees and returns 50,000 rupees, it, in reality, pays no compensation but by this shift and contrivance only takes away the other 50,000 rupees for nothing. This argument sounds plausible at first but is not founded on any good principle. This argument arises only because a moiety is paid back, as it were, in the same coin. If compensation for money were made, say, by giving some land of the value of a moiety of the money taken, the same argument would not have been available and all that could be said would have been that the land so given, not being equivalent in value to the money compulsorily taken away, could not be said to be a just compensation. That argument, in view of Arts.31 (4), 31-A and 31-B, would, of course, have been futile. But I see no difference in principle or law when compensation for acquisition of arrears is made in money. In such a case, if only a moiety of the amount of arrears is returned, the obvious complaint will be that the return of 50,000 rupees is not fair or adequate compensation for taking away Rs. 1,00,000 and that complaint may have prevailed had there been no provision like those we have in Arts. 31 (4), 31-A and 31-B, Apart from this, the argument completely overlooks the fact that the arrears of rent are not really cash in the till of the proprietor or tenure-holder but is only a debt due by the tenants. What is the market value of this book debt? This debt will have to be realised, possibly but suit followed by execution proceedings involving time and money in costs. Part of it, quite conceivably, may not be realised at all. Therefore the State takes the risk of realising or not realising the arrears of rent but irrespective of the results of its efforts for their realisation the fifty per cent, of arrears is in a lump added to the compensation. This, to my mind, indicates clearly that compensation is in face paid for the arrears of rent and I am not prepared to say that the payment of a moiety of the book debts as compensation is so illusory as to amount to nothing, as contended by Mr. P. R. Das, Even if it be inadequate, the grievance will be, not that no principle has been laid down in the Act as required by Entry 42 in List III but, that the principle so laid down, does not produce adequate compensation and there is, therefore, a contravention of the provisions of Article 31 (2). That defect cannot, however, be made a ground of attack in view of Articles 31 (4), 31-A and 31-B for reasons explained above.

101. 'Re Ground B': The second point urged by Mr. P. R. Das is that even if the Court does not accept the argument as to the necessity for providing for compensation being implicit in Entry 36 in List II and Entry 42 in List III and holds that the respondents are, by reason of the provisions of Article 31 (4) 31-A and 31-B, debarred from questioning the validity of the Act on the ground that it does not provide for compensation the respondents are, nevertheless, entitled to challenge the Act on the ground of the absence of a public purpose. That the existence of a public purpose is an essential prerequisite to the exercise of the power of compulsory acquisition has not been disputed by the learned Attorney-General. The contention put forward on behalf of the respondents is that the necessity for the existence of a public purpose as a condition precedent to compulsory acquisition of private property is not a "provision" of Article 31 (2) but is a requirement of Entry 36 in List II or Entry 42 in List III. the words "for public purposes" do occur in Article 31 (2) but it is said that there is a distinction between a "provision" and an assumption. It is urged that. Article 31 (2) assumes a law authorising the taking of possession or the acquisition of property for a public purpose and provides that the property shall not be taken possession of or acquired even for that public purpose unless the law also provides for compensation. It is, therefore, concluded that the only "provision" of Article 31 (2) is that the law authorising the taking of possession or the acquisition of property for a public purpose must provide for compensation and it is this "provision"

only that cannot be made a ground of attack on the Act by reason of Articles 31 (4), 31-A and 31-B of the Constitution. This argument had found favour with Reuben, J., and S. K. Das, J. the latter learned Judge, after referring to a passage in his own judgment in the earlier case of SIR KAMESHWAR SINGH v. THE PROVINCE OF BIHAR', AIR 1950 Pat 392 SB, concludes as follows :

"Clause (2), strictly speaking, does not, in express words, make "public purposes" a condition precedent to compulsory acquisition but rather assumes that such acquisition can be for public purpose only; it does so by necessary implication."

The learned Judge then refers to the following passage in the judgment of my learned brother Mukherjea, J. in 'CHARANJIT LAL v. UNION OF INDIA',. 1950 SCR 869:

"Article 31 (2) of the Constitution prescribes a two-fold limit within which such superior right of the State should be exercised. One limitation imposed upon the acquisition or taking possession of private property which is implied in the clause is that such taking away must be for public purpose. The other condition is that no property can be taken unless the law which authorises such appropriation contains a provision for payment of compensation in the manner laid down in the clause."

I do not, however, see how the above observations of Mukherjea, J. in any way support the arguments of Mr. P. R. Das that the existence of a public purpose is not a provision of Article 31 (2) but is an inherent condition of any legislation for compulsory acquisition of private property. It is significant that Mukherjea, J., recognises that Article 31 (2) "prescribes" a two-fold limit. Surely, a limit which is "prescribed" by the Article must be by a provision thereof. In any case, what is implied in the clause must, nevertheless, be a provision of the clause, for the expression "provision", is certainly wide enough to include an implied as well as an express provision. Be that as it may. I am prepared to go further and say, for reasons I shall presently explain, that the requirement of a public purpose as an essential prerequisite to compulsory acquisition is, if anything, essentially a provision of that clause and an integral part of it.

102. Article 31 is one of a group of Articles included in Part III of the Constitution under the heading "Fundamental Rights." It confers a fundamental right in so far as it protects private property from State action. Clause (1) of the Article protects the owner from being deprived of his property save by authority of law. A close examination of the language of Clause (1) will show that this immunity is a limited one and this will at once be clearly perceived if we convert the negative language of Clause (1) into positive language. In its positive form Clause (1) will read: "Any person may be deprived of his property by authority of law."

The only limitation put upon the State action is the requirement that the authority of law is a prerequisite for the exercise of its power to deprive a person of his property. This confers some protection on the owner in that he will not be deprived of his property save by authority of law and this protection is the measure of the fundamental right. It is to emphasise this immunity from State action as a fundamental right that the clause has been worded in negative language. Likewise, Clause (2) is worded in negative language in order to emphasise the fundamental right contained therein. The enunciation of this fundamental right necessarily requires a statement of the ambit and scope of the State action and to fix the ambit and scope of the State action it is necessary to specify the limitations on the State action, for that limitation alone is the measure of the fundamental right. Clause (2) of the Article, in its positive form, omitting words unnecessary for our present purpose,

will read as follows:

"Any property, ..... may be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition if the law provides for compensation for the property taken possession of, or acquired....."

Put in the above form, the clause makes it clear at once and beyond any shadow of doubt that there are three limitations imposed upon the power of the State, namely, (1) that the taking of possession or acquisition of property must be for a public purpose. (2) that such taking of possession or acquisition must be under a law authorising such taking of possession or acquisition and (3) that the law must provide for compensation for the property so taken or acquired. These three limitations constitute the protection granted to the owner of the property and is the measure of his fundamental right under this clause. Unless these limitations were provisions of the Article, the Article would have afforded no immunity at all. I am, therefore, clearly of opinion that the existence of a public purpose as a prerequisite to the exercise of the power of compulsory acquisition is an essential and integral part of the "provisions" of Clause (2). If the requirement of a public purpose were not a provision of Article 31 (2), then it will obviously lead us to the untenable conclusion that Parliament will be free under its residuary powers under Article 248 and Entry 97 of List I of the Seventh Schedule to make a law for acquiring private property without any public purpose at all and to the still more absurd result that while Parliament will have to provide for compensation under Article 31 (2) in a law made by it for acquisition of property for a public purpose it will not have to make any provision for compensation in a law made for acquisition of property to be made without a public purpose. Such could never have been the intention of the framers of our Constitution. The existence of a public purpose as a condition precedent to the exercise of the power of compulsory acquisition being then, as I hold, a "provision" of Art. 31 (2), and infringement of such a provision cannot, under Articles 31 (4), 31-A and 31-B, be put forward as a ground for questioning the validity of the Act.

103. Mr. P. R. Das's second line of argument on this main head is that the necessity for the existence of a public purpose is implicit in Entry 36 in List II and that the existence of a public purpose is also a requirement of Entry 42 in List III which is made a part of Entry 36 in List II by virtue of the words "subject to" etc., appearing at the end of that entry and his conclusion is that in the absence of a public purpose the Bihar Legislature had no legislative competency under those two entries to enact the impugned Act and that this ground of attack is still available to him notwithstanding the provisions of Articles 31 (4), 31-A and 31-B. He does not rely of any other part of the Constitution as insisting on the existence of a public purpose as a prerequisite for compulsory acquisition of private property.

Entry 36 covers any purpose except the purpose of the Union and is not, in terms, limited to public purpose. Secondly, the argument based on the words "subject to" etc., at the end of Entry 36 in List II which are supposed to import the provisions of Entry 42 in List III into Entry 36 in List II is not well founded and it becomes obvious when we look at Entry 33 in List I. There are no words at the end of that entry as "subject to" etc., and, therefore, the alleged requirement of a public purpose under Entry 42 in List III cannot be said to be incorporated in Entry 33 in List I. It would, therefore, follow that whereas under Entry 36 in List II which is to be read with Entry 42 in List III by reason of the words "subject to" etc., in Entry 36 in List II the Legislature of a State can only make a law for compulsory acquisition of property for a public purpose, Parliament may, under Entry 33 in List I which does not attract entry 42 in List III, make a law for compulsory acquisition of property without a public purpose. Such a result could never have been intended by the Constitution.

Besides, turning to Entry 42 in List III, I find nothing in support of Mr. P. R. Das's contention. The words "acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose" in that entry are merely words descriptive of the preceding word "property." The matter comprised in Entry 42 in List III, as a legislative head, are the principles for the determination of compensation and the form and manner of giving the compensation for property which is described as having been acquired or requisitioned for the stated purposes. That entry cannot possibly be regarded as a legislative head for acquisition of property and much less is the purpose of province of that entry to lay down any requirement of a public purpose as a condition precedent for the acquisition of any property. In my opinion Entry 42 in List III is of no assistance to Mr. P. R. Das for this part of his argument.

Further, the reasons for which I have discarded his arguments as to the obligation to provide for compensation being implied in Entry 36 in List II by itself or read with Entry 42 in List III will also apply to this contention 'mutatis mutandis' and they need not be restated here. To put in shortly, the provisions of Article 31 (2) which, as I have explained, require the existence of a public purpose, will exclude the implication sought to be read into Entry 36 in List II and Entry 42 in List III. Secondly, what Article 31 (4), 31-A and 31-B exclude is a challenge to the Act on the ground of contravention of the "provision" of Clause (2). If the "provision" of Clause (2) of Article 31 as to the necessity for the existence of a public purpose as a prerequisite to compulsory acquisition of property is also to be regarded as implicit in those two legislative entries, surely Articles 31 (4), 31-A and 31-B and in particular Article 31(4) which contain the words "notwithstanding anything in this Constitution" will protect the Act from such implied provision, for reasons I have already explained, Mr. P. R. Das's second main point must accordingly be rejected as untenable.

104. Assuming that the necessity for the existence of a public purpose is not a provision of Article 31 (2) but is a provision only of Entry 36 in List II and / or of Entry 42 in List III and that consequently Articles 31 (4), 31-A and 31-B do not preclude the respondents from challenging the validity of the Act on the ground of the legislative incompetency arising out of the absence of a public purpose, the question still remains whether there is in fact a public purpose within the meaning of our Constitution to support the Act. It is to be noted that there is no recital of any public purpose in the Act itself, but it is conceded that this circumstance is not fatal to the validity of the Act. It is, however, urged that this circumstance nevertheless, shows that the Legislature had, at the time of the passing of the Act, no public purpose in its view. It is claimed that, apart from the absence of any such recital, there is no indication whatever as to the existence of any public purpose in any of the operative provisions of the Act. It is not disputed that as a result of this enactment a very large sum of money now payable by the tenants as and by way of current rent and arrears of rent to their respective landlords will be intercepted by the State but it is urged, on the authority of certain passages in Cooley's Constitutional Limitations, 8th Edn., Vol. II, p. 1118 (Footnote 1) and in Professor Willis Constitutional Law, p. 817 that the exercise of the power of taxation and not that of the power of eminent domain is the legitimate means for swelling the public revenue.

That the Act has no public purpose to support it is sought to be established by saying that in Bihar the recorded proprietors are about 13,35,919 in number and that assuming that there are four number and that assuming that there are four persons in a family, nearly five and a half million people will be ruined as a result of this legislation, although the actual tillers of the soil will derive no benefit whatever therefrom, for they will remain where they are and will have to continue, as here to fore, to pay their rent, instead of to their present landlords, to the State which, they will find, is no better than a ruthless machine unsusceptible to any humane feeling. The contention is that the public purpose must be something definite, something tangible and something immediate and that

there must be some indication of its existence in the Act itself and that the State cannot take private property today and say that it will think of the public purpose at its leisure. This leads me to a consideration of what is a public purpose within the meaning of our Constitution.

105. We have been referred to some American authorities for ascertaining the meaning and implication of "public use" an expression which obviously is of a more limited import than the expression "public purpose" used in our Constitution. Apart from this, a perusal of the text books, e.g., Constitutional Law by Professor Willis, P. 817 et seq,' will immediately make it clear that the notion as to what is a "public use" is rapidly changing in America. Formerly "public use" meant a use by the public use" meant useful to the public. The passage in Cooley's Constitutional Limitations, Vol. II, pp 1139-40 quoted by S. K. Das, J, of the Patna High Court summarises the position thus :

"No satisfactory definition of the term "public use" has ever been achieved by the Courts. Two different theories are presented by the judicial attempts to describe the subjects to which the expressions would apply. One theory of "public use" limits the application to "employment" "occupation". A more liberal and more flexible meaning makes it synonymous with "public advantage", "public benefit". A little investigation will show that any definition attempted would exclude some subjects that properly should be included in and include some subjects that must be excluded from the operation of the words "public use". As might be expected, the more limited application of the principle appears in the earlier cases and the more liberal application has been rendered necessary by complex conditions due to recent developments of civilization and the increasing density of population. In the very nature of the case, modern conditions and the increasing interdependence of the different human factors in the progressive complexity of a community make it necessary for the Government to touch upon and limit individual activities at more points than formerly."

To the like effect are the following observations to be found in Corpus Juris, Vol. XX. Article 39, at pp. 552 and 553 under the caption "What is a public use" ;

"No general definition of what degrees of public good will meet the constitutional requirements for a "public use" can be framed, as it is in every case a question of public policy. The meaning of the term is flexible and is not confined to what may constitute a public use at any given time, but in general it may be said to cover a use affecting the public generally, or any number thereof as distinguished from particular individuals. Some Courts have gone so far in the direction of a liberal construction as to hold that "public use" to synonymous with "public benefit", "public utility", or "public advantage", and to authorise the exercise of the power of eminent domain to promote such public benefit, etc., especially where the interests involved are of considerable magnitude and it is sought to use the power in order that the natural resources and advantages of a locality may receive the fullest development in view of the general welfare."

The learned author thereupon proceeds to discuss the more restricted meaning given to that expression, Mr. P.R. Das has drawn our attention to the decision of the Judicial Committee in 'HAMABAI FRAMJEE V. SECRETARY OF STATE, 42 Ind App 44 PC. It should be borne in mind that the Judicial Committee in that case had to consider meaning of the words "public purposes' occurring in a lease of the 19th century. Even in 1914 the Judicial Committee did not think fit to attempt a precise definition of the expression 'public purpose' and was content to quit with approval the following passage from the judgment of Batchelor, J :

"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease; it is enough to say that, in my opinion, the phrase whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

And it is well that no hard and fast definition was laid down for the concept of "public purpose" has been rapidly changing in all countries or the world. The reference in the above quotation to "the general interest of the community", however, clearly indicates that it is the presence of this element in an object or aim which transforms such object or aim into a public purpose.

106. From what I have stated so far, it follows that whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. With the onward march of civilization our notions as to the scope of the general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community. The emphasis is unmistakably shifting from the individual to the community. This modern trend in the social and political philosophy is well reflected and given expression to in our Constitution.

Our Constitution, as I understand it, has not ignored the individual but has endeavored to harmonise the individual interest with the paramount interest of the community. As I explained in 'A K. GOPAL V. STATE OF MADRAS', 1950 SCR 88 and again in 'CHIRANJIT LAL'S CASE', 1950 SCR 869 (supra) our Constitution protects the freedom of the citizen by Article 19 (1) (a) to (e) and (g) but empowers the State, even while those freedoms last, to impose reasonable restrictions on them in the interest of the State or of public order or morality or of the general public as mentioned in Clauses (2) to (6). Further, the moment even this regulated freedom of the individual becomes incompatible with and threatens the freedom of the community the State is given power by Article 21, to deprive the individual of his life and personal liberty in accordance with procedure established by law, subject, of course, to the provisions, of Article 22.

Likewise our Constitution gives protection to the right of private property by Article 19(1) (f) not absolutely but subject to reasonable restrictions to be imposed by law in the interest of the general public under Clause (5) and, what is more important, as soon as the interest of the community so requires, the State may, under Article 31, deprive the owner of his property by authority of law subject to payment of compensation if the deprivation is by way of acquisition or requisition of the property by the State. It is thus quite clear that a fresh outlook which places the general interest of the community above the interest of the individual pervades our Constitution. Indeed, what sounded like idealistic slogans only in the recent past are now enshrined in the glorious preamble to our Constitution proclaiming the solemn resolve of the people of this country to secure, to all citizens justice, social, economic and political, and equality of status and of opportunity. What were regarded only yesterday, so to say, as fantastic formulae have now been accepted as directive principles of State policy prominently set out in Part IV of the Constitution.

The ideal we have set before us in Article 38 is to evolve a State which must constantly strive to promote the welfare of the people by securing and making as effectively as it may be a social order in which social, economic and political justice shall inform all the institutions of the national life. Under Article 39 the State is enjoined to direct its policy towards securing, 'inter alia' that the ownership and control of the material resources of the community are so distributed as to subserve

the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The words "public purposes", used in Article 23 (2) indicate that the Constitution uses those words in a very large sense. In the never ending race the law must keep pace with the realities of the social and political evolution of the country as reflected in the Constitution. If therefore, the State is to give effect to these avowed purposes of our Constitution we must regard as a public purpose all that will be calculated to promote the welfare of the people as envisaged in these directive principles of State Policy whatever else that expression may mean.

In the light of this new outlook what, I ask, is the purpose of the State in adopting measures for the acquisition of the Zamindaries and the interests of the intermediaries? Surely, it is to subserve the common good by bringing the land, which feeds and sustains the community and also produces wealth by its forest, mineral and other resources, under State ownership or control. This State ownership or control over land is a necessary preliminary step towards the implementation of the directive principles of State policy and it cannot but be a public purpose. It cannot be overlooked that the directive principles set forth in Part IV of the Constitution are not merely the policy of any particular political party but are intended to be principles fixed by the Constitution for directing the State policy whatever party may come into power.

Further, it must always be borne in mind that the object of the impugned Act is not to authorize the stray acquisition of a particular property for a limited and narrow public purpose but that its purpose is to bring the bulk of the land producing wealth under State-ownership or control by the abolition of system of land tenure which has been found to be archaic and non-conducive to the general interests of the community. The Act also sets up a Land Commission to advise the State Government generally with regard to the agrarian policy which it may from time to time follow. It is impossible to say that there is no public purpose to support the Act. This very Bihar Act was before the Constituent Assembly when it passed Article 31 (4) and again when it took the trouble of amending the Constitution for saving this very Act. Would the Constituent Assembly have thought fit to protect these Acts unless it were convinced that this Act was necessary in the general interest of the community? I find myself in agreement with Reuben, J., and S. K. Das, J., that these circumstances also clearly indicate that the Constituent Assembly regarded this Act as well supported by a public purpose. To put a narrow construction on the expression "public purpose" will, to my mind, be to defeat the general purpose of our Constitution and the particular and immediate purpose of the recent amendments. We must not read a measure implementing our mid-twentieth century Constitution through spectacles tinted with early nineteenth century notions as to the sanctity or inviolability of individual rights. I therefore agree with the High Court that the impugned Act was enacted for a public purpose.

107. Mr. P. R. Das then puts up a narrow argument. Assuming says he, that there is in the Act a general public purpose for compulsory acquisition of Zamindaries and tenures, there cannot conceivably be any public purpose in support of the Act in so far as it authorises the taking of the arrears of rent or the taking away of 4 to 12 1/2 per cent, of the gross assets on the specious plea that the landlords must be supposed to spend that percentage of their gross income on works of benefit to the Rayats of the estates and, therefore, that part of the Act is beyond the legislative competence of the Bihar Legislature. I regard this argument as unsound for more reasons than one. In the first place, the existence of a public purpose being, as I hold, a provision of Article 31 (2), its absence, if any, in relation to the arrears of rent cannot, by reason of Articles 31 (4) 31-A and 31-B be made a ground of attack against the Act. Secondly, it is an entirely wrong approach to pick out an item out of a scheme of land reforms and say that that item is not supported by a public purpose. One may

just as well say that there is no public purpose in the acquisition of forests or of mines and particularly of undeveloped mines, for such acquisition has no bearing on a scheme of agrarian reforms in that it does not improve or affect the conditions of the tillers of the surface of the soil. This, I apprehend, is not the right way of looking at things. The proper approach is to take the scheme as a whole and then examine whether the entire scheme of acquisition is for public purpose. Thirdly, I do not regard the deduction of 4 to 12 1/2 percent, of the gross assets as acquisition or confiscation at all, but I regard it, for reasons stated above, as a part of a principle laid down by the Act for the purpose of determination the amount of compensation as required by Article 31 (2) and Entry 42 in List III.

Finally, I do not see why the taking over of the arrears of rent, in the context of the acquisition of Zamindaries, is not for a public purpose. As I have said, the acquisition of Zamindaries and tenures is a scheme for bringing about agrarian reforms is a scheme for bringing about agrarian reforms and ameliorating the conditions of the tenants. The object is, inter alia to bring the tillers of the soil in direct contact with the State so as to free them from the clutches or rapacious landlords and make them the masters of their holdings subject to payments of the dues to the State. It is well known that the bulk of the tenants are in arrears with their rents and once the rents fall into arrear the tenants find it difficult to pay the current rent after liquidating a part of the arrears so that while they clear part of the old arrears the current rent falls into arrear According to annexure B (2) to the affidavit of Lakshman Nidhi affirmed on January 22, 1951, the total amount of Raiyati rent payable by the various tenants in the different circles of the Darbhanga Estate alone will exceed rupees three lacs. It is not quite clear whether all these arrears are due from the actual Rayats in the sense of actual tillers of the soil. But leaving out from consideration for the present purposes the arrears of rent due by the tenure-holders to their immediate superior tenure-holder or to the Zamindar it can safely be taken that the bulk, if not all, of the actual Rayats or tillers of the soil are habitually and perpetually in arrear with rent of their holdings on account of financial stringency resulting from their chronic indebtedness.

In these circumstances if the Zamindaries and the tenures only are acquired under the Act leaving the Zamindars and the tenure-holders free to realise the huge arrears of rent due by the actual cultivating tenants by legal process it will eventually result in the sale of the holdings of the actual tenants or, at any rate, of their right, title and interest therein and the possible purchase thereof by the Zamindars or tenure-holders them selves at Court sales in execution of decrees or by private sales forced upon the tenants. The bulk of the actual tillers of the soil will then become landless labourers and the entire scheme of land reforms envisaged in the Act will be rendered wholly nugatory. If the acquisition of the Zamindaries and the tenures is, as I hold, dictated or inspired by the sound public purpose of ameliorating the economic and political conditions of the actual tenants, the self-same public purpose may well require the acquisition of the arrears of rent so as to avert the undesirable but inevitable consequences I have mentioned. The Bihar Legislature have better treatment and a more reasonable accommodation, in the matter of the liquidation of the huge arrears, from the State which will act under the guidance of the Land Commission than from the expropriated landlords whose sole surviving interest in their erstwhile tenants will only be to realise as much of the arrears as they can from the tenants and within the shortest possible time without any mercy or accommodation. The same remarks apply to the acquisition of decrees for arrears of rent. The overriding public purpose of ameliorating the conditions of the cultivating Rayats may well have induced the Legislature to treat the arrears of rent and the decrees for rent differently from the other ordinary movable properties of the Zamindars or tenure-holders, e.g., their money in the Bank or their jewellery or ornaments with which the Rayats have no concern and to provide for the acquisition of the arrears and the decrees. In the premises, the second main ground of attack levelled

by Mr. P. R. Das against the Act must be rejected.

I am, however, free to confess that if I could agree with Mr. P. R. Das, that these provisions of the impugned Act are bad for want of a public purpose, I am not at all sure that I would not have found it extremely difficult to resist his further argument that the entire Act was bad, for it might not have been very easy to presume that if the Bihar Legislature had known that these provisions of the Act might be held bad it would nevertheless have passed the other parts of the Act in that truncated form. The acquisition of the arrears of rent appears to me to be an integral part of the scheme and inextricably interwoven with it. Indeed, it may well have been that the scheme of agrarian reform was not considered by the Bihar Legislature to be at all capable of easy implementation by the State without the acquisition of the arrears of rent. As, however, I have taken the view that no part of the Act is bad for want of a public purpose, I need not pursue any further the question of the severability of the Act or to refer to the judicial decisions relied on by learned counsel on both sides.

108. 'Re. Ground C' : Mr. P. R. Das's third point is that the Act constitutes a fraud on the Constitution, that is to say, while it purports to be in conformity with the Constitution, it in effect, constitutes a defiance of it. The Act, according to him, pretends to comply with the constitutional requirements in that it sets out to lay down certain principles on which compensation is to be determined and the form and the manner in which such compensation is to be given but, in effect, makes out a scheme for non-payment of compensation. The Act, he urges, purports to pay back fifty per cent of the arrears of rent as compensation but in reality confiscates the other fifty percent without any compensation. Further, under the guise of deducting 4 to 12 1/2 per cent of the gross income the State is in reality appropriating a large sum under this head. All this, he concludes is nothing but pretence or a mere shift and contrivance for confiscating private property.

The argument, when properly understood, will be found to resolve itself into an attack on the legislative competency of the Bihar Legislature to pass this Act. On ultimate analysis it amounts to nothing more than saying that while pretending to give compensation the Act does not really give it. It is the absence of a provision or just and adequate compensation that makes the Act bad, because, according to Mr. P. R. Das, the legislative power under Entry 36 in List II and Entry 42 in List III requires the making of such a provision. The failure to comply with this constitutional condition for the exercise of legislative power may be overt or it may be covert. When it is overt, we say the law is obviously bad for non compliance with the requirements of the Constitution, that is to say, the law is 'ultra vires'. When however, the non-compliance is covert, we say that it is a fraud on the constitution, the fraud complained of being that the Legislature pretends to act within its power while in fact it is not so doing. Therefore, the charge of fraud on the Constitution is on ultimate analysis, nothing but a picturesque, and epigrammatic way of expressing the idea of non-compliance with the terms of the Constitution. Take the case of the acquisition of the arrears of the rent. It is said that the provision in the Act for the acquisition of arrears of rent is a fraud on the legislative power given by the Constitution. I ask myself as to why must it be characterize as a fraud? I find nothing in the Constitution which says that the arrears of rent must not be acquired and, therefore, there is no necessity for any covert attempt to do what is not prohibited.

I have already explained that in a scheme of land reforms such as is envisaged in the Act the acquisition of the arrears of rent may properly accompany the acquisition of the Zamindaries and the tenures. Where, then, does this theory of fraud come in? The answer must eventually be that a moiety of arrears are taken away without compensation. Again, take the case of the acquisition of non-income-yielding properties. Why, I ask, is it called a fraud on the Constitution to take such property? Does the Constitution prohibit the acquisition of such property? Obviously it does not.

Where, then, is the fraud? The answer that comes to my mind is that it is fraud because the Act provides for compensation only on the basis of income and, therefore, properties which are at present non-income-yielding but which have very rich potentialities are acquired without any compensation at all. Similar answer becomes obvious in connection with the deduction of 4 to 12 1/2 per cent of the gross assets under the head "Works of Benefit to the Rayats". On ultimate analysis, therefore, the Act is really attacked on the ground that it fails to do what is required by the Constitution to do namely, to provide for compensation for the acquisition of the properties and is, therefore, 'ultra vires'. This, to my mind, is the same argument as to the absence of just compensation in a different form and expressed in a picturesque and attractive language.

I have already dealt with the question of absence of a provision for just compensation while dealing with Mr. P. R. Das's first point and I repeat that the obligation to provide for compensation is not implicit in Entry 36 in List II by itself or read with Entry 42 in List III but is to be found only in Article 31 (2), that under Entry 42 in List III the Act has laid down a principle for determining compensation and, therefore, there can be no question as to legislative incompetency for any alleged noncompliance with any supposed requirement said to be implicit in these entries. If the principles so laid down in the Act do not in any rare case produce any compensation or do not produce adequate compensation in some cases, such absence of compensation may be a contravention of Article 31 (2) but in view of Articles 31 (4) 31-A and 31-B and particularly due to the words "notwithstanding anything in this Constitution" occurring in Article 31 (4), it cannot be made a ground of attack on the Act, even though such ground is formulated in a different but attractive language, namely, as a fraud on the Constitution. Accordingly, this point must also be rejected. I, however, repeat that if I took a different view I would still have the same difficulty as to the inseparability of the different provisions of the Act as I have hereinbefore indicated.

109. 'Re. Ground D' : Mr. P. R. Das's fourth point is that the Act is unenforceable in that Section 32 (2) provides for compensation in forty equal instalments without specifying the period of interval between the instalments. In course of arguments, however, Mr. P. R. Das has thought fit not to press this point and accordingly it does not require any refutation.

110. 'Re Ground E': Mr. P. R. Das's last main point is that the Act has delegated essential legislative functions to the Executive government and is, therefore, invalid. Article 31 (2) requires that the law authorising the taking possession of or the acquisition of land for public purpose should provide for compensation for the property taken possession of or acquired and should either fix the amount or specify the principles on which and the manner in which the compensation is to be determined and given. Entry 42 in List III talks of principles on which compensation is to be determined and the form and the manner in which such compensation is to be given. The argument is that the Constitution has left to Parliament the State Legislature the duty of specifying the principles on which, and the form and manner in which the compensation is to be determined and given but the Bihar Legislature by Section 32 (2) of the Act has simply provided that the amount or compensation shall be paid in cash or in bonds or partly in cash and partly in bonds and that the bonds shall be either negotiable or non-negotiable and non-transferable and be payable in forty equal instalments and has not laid down any decisive provision but has left the matter to the State Government to decide. It has, therefore failed to discharge the duty which was expressly left to its knowledge, wisdom and patriotism. Mr. P. R. Das complains that the Legislature has shirked its responsibility and delegated this essential legislative power to the State Government to be exercised under rules made by itself under its rule-making power under Section 43 (2) (p).

The question of the propriety and legality of the delegation of legislative power has recently been

considered by this Court in *In Re : "THE DELHI LAWS ACT, 1912, ETC."*, (1951) SCR 747. If I were to deal with this matter according to my own notions, I would have dismissed this argument 'in limine', for here the Legislature has not abdicated or effaced itself in the sense I have explained in my opinion in that case. When I look at the matter on the basis of the principles laid down in that case by the late Chief Justice and my learned Brothers to which Mr. P. R. Das has referred. I have to overrule his contention all the same. Here Section 32 clearly indicates that the Legislature has applied its mind to the problem and it has laid down the principle that the compensation may be paid in cash or in bond or partly in cash and partly in bonds and that if a payment is to be made either wholly or partly in bonds these bonds may be either negotiable or non-negotiable and non-transferable. Having laid down the principle, the Legislature has, by a rule made under Section 43 (3) (p), left it to the Executive to determine the proportion in which, the compensation shall be payable in cash and in bonds and the manner of such payment of compensation. These details, it will be observed, depend on special circumstances, e.g., the extent of the ability of Government to pay, the extent of the necessities of the proprietors and many other considerations, with which the Executive Government would be more familiar than the Legislature itself. I am unable to accept Mr. P. R. Das's contention that this amounts to a delegation of an essential legislative function within the meaning of the decision of my learned Brothers.

111. Mr. Sanjiva Chowdhuri has urged that the Land Acquisition Act, 1894 being continued by the Constitution and that Act which is a Central Act having been extended by notification in 1899 to Ramgarh State for which he appears, the Central Act must apply to Ramgarh until the notification is withdrawn and the impugned Act cannot apply for determining the compensation, for the field is already occupied by the Central Act of 1894. It may, however, be noticed that the provision for compensation in that Act applies only to lands acquired under that Act. It has no application to lands acquired under other statutes and, therefore, the provision for compensation of the Land Acquisition Act cannot apply to acquisitions under the Bihar Act and, therefore, the doctrine of occupied field can have no application. In my opinion there is no substance in this contention.

112. For reasons stated above, I allow these appeals.

113. **CHANDRASEKHARA AIYAR, J.** : The facts which have given rise to these cases have been fully set out in the judgment just now delivered by my learned brother Mahajan, J., and need not be repeated. The conclusions reached by him and Mukherjea, J., have my concurrence. Ordinarily I would have stopped with the expression of any agreement, but having regard to the importance of the question argued and the stakes involved I desire to add a few words of my own on some of the points discussed.

114. Article 31 (1) of our Constitution provides "No person shall be deprived of his property save by authority of law."

115. There are three modes of deprivation : (a) destruction, (b) acquisition and (c) requisition. Destruction may take place in the interests of public health or the prevention of danger to life or property, but with this we are not now concerned. In the case of 'acquisition' there is an element of permanency, and in the case of 'requisition' there is an element of temporariness. Except for this distinction, both modes stand on the same footing as regards the rights of the same footing as regards the rights of the State 'vis-?is' the rights of the private citizens.

116. Under the Constitution, when property is requisitioned or acquired, it may be for a Union purpose or a State purpose, or for any other public purpose. Entry 33 in List I (Union List) of the

seventh Schedule to the Constitution speaks of acquisition or requisitioning of property for the property for the purposes of the Union. When we come to Entry 42 of List III (Concurrent List), we find these words: "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

117. From very early times, law has recognized the right of Government compulsorily to acquire private properties of individuals for a public purpose and this has come to be known as the law of eminent domain. But it is a principle of universal law that the acquisition can only be on payment of just compensation. Story on the Constitution, Vol. 2, page 534, paragraph 1790 has the following passage in discussing the concluding clause of the Fifth Amendment of the American Constitution :

"The concluding clause is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the Government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and the rulers."

118. The payment of compensation is an essential element of the valid exercise of the power to take. In the leading case of 'ATTORNEY-GENERAL v. DE KEYSER'S ROYAL HOTEL LTD.', (1920) A C 508, Lord Dunedin spoke of the payment of compensation as a necessary concomitant to the taking of property. Bowen, L. J., said in 'LONDON AND NORTH WESTERN RLY. CO. v. EVANS', (1893) 1 Ch 16 at p. 28 :

"The Legislature cannot fairly be supposed to intend, in the absence of clear words showing such intention, that one man's property shall be confiscated for the benefit of others, or of the public without any compensation being provided for him in respect of what is taken compulsorily from him. Parliament in its omnipotence can, of course, override or disregard this ordinary principle ....if it sees fit to do so, but it is not likely that it will be found disregarding it, without plain expressions of such a purpose."

119. This principle is embodied in Article 31 (2) of our Constitution in these terms :

"No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired 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.

120. We shall not here trouble ourselves with Sub-clauses 3 and 4 of the Article and with Articles 31-A and 31-B which were introduced by way of amendment under the Constitution First Amendment Act 1951, dated 18-6-1951. They will be considered later.

121. The argument of Shri P. R. Das that the payment of compensation is a concomitant obligation to the compulsory acquisition of properties by the State can be accepted as sound; but when he went

further and urged that it was found in an implicit form in Entry 42 of the Concurrent List, he was by no means on sure ground. The entries give us the bare heads of legislation. For ascertaining the scope or extent or ambit of the legislation and the rights and the duties created thereby, we must examine the legislation itself or must have resort to general and well-recognized principles of law of jurisprudence. No resort can be had to anything implicit or hidden when the statute makes an express provision on the same subject. As just compensation has to be paid when property is acquired for a public purpose the legislation has to formulate the principles for determining the compensation and the form and the manner in which it is to be given. Entry 42 means nothing more than a power conferred on the Legislature for achieving this end. The power is conferred but there is no duty cast to provide for compensation. For any statement that the payment of compensation is a primary condition for acquisition of property for a public purpose, we have to look at the provisions of the Constitution itself and this we find in Article 31 (2) as stated already. Mr. Das was obliged to take up the untenable position that Entry 42 of its own force implies an obligation to pay compensation, as he could not otherwise jump over the hurdles created in his way by sub-sections 3 and 4 of Article 31 and the new Articles 31-A and 31-B.

122. The learned Attorney-General contended in dealing with Entry 42 that legislation under Entry 42 can also lay down principles that would lead to the non-payment of any compensation and the cited 'ATIQUA BEGUM'S CASE', 1940 FCR 110, as an authority in his support. This contention appears to me to be as unsound as Mr. Das's argument that the obligation to pay or given compensation was implicit in the said entry. As there can be no acquisition without compensation, the terms of Entry 42 enable the legislature to lay down the principles and provide further for the form and manner of payment. If the principles are so formulated as to result in non-payment altogether, then the legislature would be evading the law not only covertly but flagrantly.

There is nothing in 'ATIQUA BEGUMS CASE', that supports the argument. It was there held that under the head 'payment of rent' there could be legislation providing for remission of rent. Payment of rent is not a legal obligation of every tenure and the legislature can enact that under certain circumstances or conditions there shall be remission of rent. But as regards compensation for State acquisition, its payment is a primary requisite universally recognized by law. This is the essential distinction to remember when we seek to apply the case quoted. The last words in Entry 42 "form and the manner in which such compensation is to be given" clearly mean that the principles determining compensation must lead to the giving or payment of some compensation. To negate compensation altogether by the emulation of principles leading to such a result would be to contradict the very terms of the entry and such a meaning could not be attributed to the framers of the Lists.

123. This, however, does not carry Shri P. R. Das anywhere near success. Article 31 (4) is the first stumbling block in his way. It provides :

"If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then notwithstanding anything in this Constitution the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of Clause (2)."

124. The bill which subsequently became 'The Bihar Land Reforms Act 1950' was pending at the commencement of the Constitution in the Legislature of the State, and after it was passed by the Legislature, it was reserved for the consideration of the President and received his assent. Therefore the bar that it shall not be called in question in any Court on the ground that it contravenes the

provisions of Clause (2) becomes applicable. True, compensation has to be provided for by reason of Sub-clause (2) of the Article, but Sub-clause (4) postulates an exception and the right to challenge the validity of the Act on the ground that no compensation has been provided for or that the compensation is really illusory or inadequate is taken away. As if this were not enough two mere stiles have been erected in his way and they are the new Articles 31-A and 31-B brought in by way of amendment. Article 31-A, Sub-clause (1) is in these terms :

"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 his assent."

125. Article 31-B provides :

"Validation of certain Acts and Regulations : Without prejudice to the generality of the provisions contained in Article 31-A none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

126. When we look at the ninth Schedule to the amending Act, the very first item mentioned is "The Bihar Land Reforms Act, 1950'.

127. In the face of these almost insuperable obstacles, Shri P. R. Das candidly admitted that he could urge nothing as regards the adequacy or the illusory nature of the compensation provided in the Act, if he was not able to convince the Court on his main point that he could challenge the offending Act on grounds other than those mentioned in Part III of the Constitution, and that there was something in Entries No. 36 of the State List and No. 42 of the Concurrent List read together which imposed on the State legislature an obligation to provide for the payment of just or proper compensation and that the non-observance of this obligation entitles him to challenge the validity of the Act as unconstitutional.

128. The acquisition of property can only be for a public purpose. Under the Land Acquisition Act I of 1894, a declaration by the Government that land is needed for a public purpose shall be conclusive evidence that the land is so needed and Courts cannot go into the question whether the public purpose has been made out or not. There is no such provision in any Article of the Constitution with which we have to deal. It is true that Sub-clause (2) of Article 31 speaks of property being acquired for public purposes. The bar created by Sub-clause (4) of Article 31 relates to the contravention of the provisions of Clause (2). The provision of Clause (2) is only as regards compensation as can be gathered from its latter part :

"Unless the law provides for compensation for the property taken possession of or acquired 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."

It is assumed, rightly, that the existence of a public purpose is part and parcel of the law and is inherent in it. The existence of a public purpose is not a provision or condition imposed by Article 31 (2) as a limitation on the exercise of the power of acquisition. The condition prescribed is only as regards compensation. Article 31 (4) debars the challenge of the constitutionality of an Act on this ground but no other. Whether there is any public purpose at all, or whether the purpose stated is such a purpose is open, in my opinion, to judicial scrutiny or review.

129. When the legislature declares that there is a public purpose behind the legislation, we have of course to respect its words. The object of the Act in question is to extinguish the interests of intermediaries like zamindars proprietors, and estate and tenure-holders etc., and to bring the actual cultivators into direct relations with the State Government. To achieve this end, several provisions have been enacted for the transfer and the vesting of such interests in the State as regards various items of properties. It is impossible to deny that the Act is inspired and dominated by a public purpose, but the question still remains whether the taking over of particular items can be said to be for a public purpose. It is in this connection that the two items of "arrears of rent" and "cost of works of benefit to the rajyats" dealt with in Section 4, Clause (b) and Section 23, Clause (f) respectively of the Act, have to be considered.

130. The taking over of "arrears of rent" does not seem to have even a remote connection with any question of land reform. It stands on no better footing than if the Act sought to take over the cash on hand or in the banks of the zamindars proprietors or tenure-holders. It is only an accident that the rents in question were not realised before the passing of the Act. Whether realised or not, they are his moneys due and payable to him by the ryots. The consequences of vesting of estates must have some relation to the tenures themselves and have some connection remote though it may be, with the agrarian reforms undertaken or contemplated. Supposing that we have a legislation stating that as it is necessary to eliminate rent collectors and farmers of revenue and to apportion and distribute land on an equitable basis amongst the tillers of the land and confer on them rights of permanent occupancy and also to bring them directly into contact with the State, all moneys which the proprietors had collected as and by way of rent from their estates for three years prior to the commencement of the Act, shall vest in and be payable to the State, could it be said by any stretch of reason that any public purpose had been established for the taking of the moneys?

Arrears of rent stand on no better footing. Any public purpose in taking them over is conspicuous by its absence. It is fairly obvious that resort was had to the arrears either for augmenting the financial resources of the State or for paying compensation to the smaller proprietors out of this particular item of acquisition. Property of individuals cannot be appropriated by the State under the power of eminent domain for the mere purpose of adding to its revenues; taxation is the recognised mode to secure this end. If the latter was the real object, it must be observed that to take one man's property compulsorily for giving it away to another in discharge of Government's obligations is not a legitimate and permissible exercise of the power of acquisition.

131. Sub-clause (1) of Section 24 no doubt provides that 50 per cent. of the arrears of rents shall be added to the amount of compensation. This means one of two things (a) either the other 50 per cent is taken without payment of any compensation, which is confiscation virtually or (b) 50 per cent. is taken as the consolidated value of the arrears of rent - a lump sum payment for the acquisition of choses in action or actionable claims. Taken either way, it is difficult to see wherein the public purpose consists. Whether moneys could be compulsorily acquired at all by a State is a moot

question. Willis says in his Constitutional Law, at page 816 :

"While, as stated above, any and all property is in general subject to the exercise of the power of eminent domain, there are certain rather unusual forms of private property which cannot thus be taken. These are choses in action, property used by the government in its governmental capacity, property to be used for a mere substituted ownership unless such substituted ownership is a more necessary use, and perhaps trust property dedicated to a State, mortgage liens, and suits to quiet title."

Under the heading "what property is subject to the right", Cooley observes in Vol. II of his book on Constitutional Limitations, at page 1117 :

"From this statement, however must be excepted money, or that which in ordinary use passes as such, and which the Government may reach by taxation, and also rights in action, which can only be available when made to produce money; neither of which can it be needful to take under this power."

In the foot-note he points out :

"Taking money under the right of eminent domain, when it must be compensated in money afterwards, could be nothing more or less than a forced loan, only to be justified as a last resort in a time of extreme peril, where neither the credit of the government nor the power of taxation could be made available."

Nicols in his work on "Eminent Domain" does not disagree with this view : on the other hand, he says at page 100 of Vol. I, paragraph 2, 1 (3) :

"The question has arisen whether money can be taken by eminent domain and it has been held or intimated, at least in so far as a state or a private corporation is concerned, that it is not subject to such taking. The objection is not based on an implied inherent limitation upon the power of government, but upon the difficulty of effecting a taking of money that would be of any service to the public without violating the constitution. The use for which it was needed might well be public, but as compensation must be paid in money, and, if not in advance, at least with such expedition as conveniently may be had, the seizure of money without compensation, or with an offer of payment in notes, bonds or merchandise, - in other words, a forced sale or loan - however it might be justified by dire necessity would not be a constitutional exercise of the power of eminent domain."

132. The learned Attorney-General sought to justify this acquisition on the ground that it was a compulsory taking of choses in action. Even so they stand on the same footing as money, of less value no doubt than if they were coin or currency notes. It seems that choses in action too cannot be so acquired; reference has been made already to Cooley's observations.

133. The two cases "LONG ISLAND WATER SUPPLY COMPANY v. CITY OF BROOKLYN", (1897) 166 US 685: 41 Law Ed 1165 and 'CITY OF CINCINNATI v. LOUISVILLE and NASHVILLE RAILROAD COMPANY', (1912) 223 US 390 : 56 Law Ed 481, do not support the contrary view. In the former case a Water Supply Company was under a contract to supply water to the town of New Lots (which subsequently became merged in the city of Brooklyn) in consideration of the town paying for hydrants to be furnished and supplied as provided in the contract. The contract was for a term of 25 years. When the merger took place, the city of Brooklyn was given power to purchase or to condemn the property of the company within 2 years but it, did neither. In

1892 the legislature passed another Act authorising the City of Brooklyn to condemn the property of the Company, provided the necessary proceedings were commenced within one year after the passing of the Act. The procedure for the acquisition was prescribed in the Act itself. The power was exercised by the city and the compensation payable was determined by the Commissioners at a particular figure. The company objected to the acquisition on the strength of Article 1, Paragraph 10 of the U. S. Constitution which forbids any State to pass a law impairing the obligation of contracts and was not due process of law as required by the 14th Amendment. On error, the Supreme Court confirmed the condemnation and rejected the argument that there was any impairment of the contract. Mr. Justice Brewer points out that the contract is a mere incident to the tangible property and that it is the latter which being fitted for public uses, is condemned. The contract is not the thing which is sought to be condemned and its impairment if impairment there be is a mere consequence of the appropriation of the tangible property. In the present cases, it is untenable to state that the taking over of arrears of rent is a natural consequence of the acquisition of the estates.

134. In the latter case, a railroad company filed a suit to condemn a right of way for an elevated railroad track across the public landing at Cincinnati. The city objected on the ground that the public landing had become property dedicated to the public under an earlier contract and to allow the condemnation under a statute of Ohio was an impairment of the contract, forbidden by the 10th section of the first article of the Constitution of the United States. The Court through Mr. Justice Lurton held "The constitutional inhibition upon any state law impairing the obligation of contracts is not a limitation upon the power of eminent domain. The obligation of a contract is not impaired when it is appropriated to a public use and compensation made therefore. Such an exertion of power neither challenges its validity nor impairs its obligation. Both are recognised, for it is appropriated as an existing enforceable contract. It is a taking, not an impairment of its obligation. If compensation be made, no constitutional right is violated."

135. It would thus be evident that they were not cases of the compulsory acquisition of choses in action. Choses in action unrelated to any tangible property can be useful for a public purpose only when converted into money. Arrears of money are particularly so. When it is said that money and choses in action are exempt from compulsory acquisition, it is not on the ground that they are movable property but on the ground generally speaking there could be no public purpose in their acquisition.

136. The provisions in Section 23, Sub-clause (f) that 4 to 12 1/2 per cent. of the gross assets can be deducted from the amount as representing "cost of works of benefit to the raiyats." This is an obvious device to reduce the gross assets and bring it down to as low a level as possible. The Act does not say that this charge represents the expenditure on works of benefit or improvement's which the zamindars and proprietors were under any legal obligation to carry out and which they failed to discharge. Nor are we told anything about the future destination of this deducted sum. It is an arbitrary figure which the Legislature has said must be deducted from the gross assets. The deduction is a mere contrivance to reduce the compensation and it is a colorable or fraudulent exercise of legislative power to subtract a fanciful sum from the calculation of gross assets.

137. Stripped of their veils or vestments the provisions in the Act about "arrears of rent" and the "cost of works of benefit" amount to naked confiscation. Where the legislative action is arbitrary in the sense that it has no reasonable relation to the purpose in view, there is a transgression by the legislature of the limits of its power. Under the guise of legislating for acquisition, the legislature cannot enable the State to perpetrate confiscation, and if it does so the Act to that extent has to be declared unconstitutional and void. If the part that is void is so inextricably interwoven into the

texture of the rest, the whole Act has to be struck down. Such, however, is not the case here.

138. It is gratifying to note that the Madhya Pradesh Abolition of Proprietary Rights Act 1950 and the Uttar Pradesh Zamindari Abolition and Land Reforms Act of 1950 which are also in question are free from this blemish of reaching at arrears of rent due for any period anterior to the date of vesting.

PETITION NO. 166 OF 1951.

**PATANJALI SASTRI C. J.** : (As the Chief Justice delivered one common judgment in Case No. 299 of 1951, Petition No. 166 of 1951 and Case No. 283 of 1951, it has only been printed in Case No. 299 of 1951 and omitted in the rest. Hence, for the judgment of the Chief Justice in Petition No. 166 of 1951, see Paras 1 to 26.)

139. **MAHAJAN, J.** : This is a petition under Article 32 of the Constitution of India by Shri Visheswar Rao, zamindar and proprietor of Ahiri zamindari, an estate as defined in Section 2 (3) of the Central Provinces Land Revenue Act, II (2) of 1917, and situated in tehsil Sironcha, district Chanda (Madhya Pradesh), for the enforcement of his fundamental right to property under Article 31 (1) of the Constitution by the issue of an appropriate writ or a direction to the respondent State restraining it from disturbing his possession of the estate, and eighty malguzari villages situate in the Garchiroli tehsil of the same district.

140. The petitioner and his ancestors have been owning and enjoying these properties in full proprietary right for several generations past. On the 5th April 1950, the Madhya Pradesh Legislative Assembly enacted an Act called the Madhya Pradesh Abolition of Proprietary Rights Act. The Act received the assent of the President of India on the 22nd January 1951, and was published in the Madhya Pradesh Gazette on the 26th January 1951 as Act I (1) of 1951. By a notification in a gazette extraordinary issued on the 27th January 1951 as Act I (1) of 1951. By a notification in a gazette extraordinary issued on the 27th January 1951 the Madhya Pradesh Government fixed 31st March 1951 as the date of vesting of the estates under Section 3 of the Act. The petitioner thus was to lose his estate and lands on the 31st March 1951. On the 9th March 1951, i.e., before the vesting date he presented the present application to this Court for the issue of appropriate writs against the government prohibiting it from taking possession of his properties. It was alleged that the Madhya Pradesh Act I (1) of 1951 was unconstitutional and void and infringed the fundamental rights of the petitioner in a variety of ways.

141. For a proper appreciation of the grounds on which the validity of the Act is being challenged, it is necessary to set out the relevant provisions of the Act and to state the facts which led to this enactment.

142. Madhya Pradesh is a composite State, comprising the Central Provinces, Berar and the merged territories. By an agreement of merger made between the rulers of States and the Dominion of India dated the 15th December 1947, certain territories which at one time were under the Indian States Agency and were held by these rulers were integrated with the Dominion. The integration actually took place on the 1st January 1948. On the 1st August 1949 the States were merged in the Madhya Pradesh. There were in all 106 estates in Madhya Pradesh as defined in Section 2 (3) of Act I (1) of 1951 and held by zamindars. Best of the lands are owned by malguzars of mahals in the status of "Malkan cabza."

143. The land system prevailing in Madhya Pradesh is malguzari (except in certain area where the ryotwari system is in vogue), the malguzar being an intermediary between the State and the tiller. Land is also held on a variety of subordinate tenures by absolute occupancy tenants, occupancy tenants, ryots, thikedars, mafidars, ilaqadars, etc.

144. Land revenue in Madhya Pradesh was last assessed under the Central Provinces Land revenue Act II (2) of 1917. The estate-holders pay land revenue on the lands comprised in the estates at a concession rate. The payment is technically called "tekoli". In 1939 there was an 'ad hoc' increase in the amount of 'tekoli' by the Central Provinces Revision of Land Revenue Estates Act, I (1) of 1939.

145. On the 3rd September 1946, the Central Provinces and Berar Legislative Assembly passed a resolution for the elimination of intermediaries between the State and the peasant. Soon after the passing of this resolution several laws were enacted, it is said, with a view to achieve this result the impugned Act being the last of that series. In 1947, the Central Provinces Land Revenue Estates Act, XXV (25) of 1947, was enacted. The revenue assessment, viz., 'tekoli', on the estates was we are told, enhanced in some places from thirty to fifty per cent of the full 'jama' and in others from 'forty to sixty per cent. In the same year was enacted the Central Provinces Land Revenue Revision Mahals Act, XXVI (26) of 1947. The land assessment on malguzari villages was, it is alleged, raised to 75 per cent from 45 to 50 per cent of malguzari assets. This was done without recourse to a settlement. In 1948 came the central Provinces and Berar Revocation of Exemptions Act XXXVII (37) of 1948, making persons exempted from payment of land revenue liable for it. This legislation, it is urged, resulted in the reduction of the net income of the proprietors to the large extent.

On the 11th October 1949 the impugned Act was introduced in the Madhya Pradesh Assembly. It was referred to a Select Committee on the 15th October 1949; the Select Committee reported on the 9th March 1950, the report was published on the 17th March 1950, and was taken into consideration on the 29th March 1950 by the Assembly. On the 30th March 1950 the opposition moved for the circulation of the Bill. The circulation motion was negatived on the 3rd April 1950, and the Bill was discussed clause by clause by clause and the clauses were passed between the 3rd of April and the 5th of April. On the 5th April 1950 the member in charge of the Bill moved as follows :

"Speaker Sir, I now move that the Central Provinces and Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill, 1949 (No. 64 of 1949) as considered by the House be passed into law."

The Hon'ble the Speaker said :

"Motion moved, that the Central Provinces and Berar Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Bill, 1949 (No. 64 of 1949) as considered by the House be passed into law."

A number of speeches were made at the third reading stage. The opposition was in a hopeless minority. The trend of the speeches was of a laudatory character, each member hailing the Bill as a piece of great reform in the Madhya Pradesh land system. No. motion of a dilatory nature was tabled and as a matter of fact there was no opposition whatsoever to the passing of the Bill. Some members expressed the opinion that the provisions of the Act did not go far enough, others thought that the provisions as to compensation should have been more liberal, but there was none who was for rejecting the bill as it stood. The report of the proceedings of the 5th April 1950 does not contain the note that the motion that the Bill be passed into law was carried.

146. The omission of this note in the proceedings of the legislature has furnished a basis for the argument that the Bill was never passed into law. The proceedings were printed on the 21st June 1950 and were signed by the speaker on the 1st October 1950. The original Bill that was submitted to the President for his assent was printed on the 29th April 1950 and it bears on it the certificate of the Speaker dated the 10th May 1950 stating that the Bill was duly passed by the legislature on the 5th April 1950. This certificate was signed by the Speaker a considerable time ahead of his signing the proceedings. The Act, as already stated, received the assent of the President on the 22nd January 1951 and was published in the Madhya Pradesh Gazette on the 26th January 1951 as Madhya Pradesh Act I (1) of 1951.

147. Against the constitutionality of this Act, a number of petitions were made in the High Court of Nagpur but they were all dismissed by that Court on the 9th April 1951, while this petition along with some others was pending in this Court.

148. The preamble of the act is in these terms : "An Act to provide for the acquisition of the rights of proprietors in estates, mahals, alienated villages and alienated lands in Madhya Pradesh and to make provision for other matters connected therewith."

The legislation clearly falls within Entry 36 of List II of the Seventh Schedule of the Constitution. The Madhya Pradesh Legislature had therefore undoubted competence to enact it. The Act is divided into eleven chapters and three schedules. Chapter II deals with the vesting of proprietary rights in the State and states the consequences of the vesting. Section 3 is in these terms :

"Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification vesting in a proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the 'State for the purposes of the State' free of all encumbrances.....".

Section 4 provides that after the publication of the notification under S. 3, all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land, scrub, jungle, forest, trees, fisheries, wells, tanks, ponds, water-channels, ferries, pathways, village sites, hats, bazaars and melas; and in all subsoil including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the state for purposes of the State free of all encumbrances; but that the proprietor shall continue to retain the possession of his homestead, home-farm land, and in the Central Provinces, also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting. The proprietor is entitled to recover any sums which became due to him before the date of vesting by virtue of his proprietary rights. All open enclosures used for agricultural or domestic purposes, all buildings, places of worship, wells situated in and trees standing on lands included in such enclosures or house sites etc. continue to remain in possession of the proprietor and are to be settled with him by the State Government on such terms and conditions as it may determine.

Similarly, certain private wells, trees, tanks and groves continue to remain in possession of the proprietor or other person who may be interested in them. Chapter III deals with the assessment of

compensation. It is provided in S. 8 that the State Government shall pay compensation to the proprietor in accordance with the rules contained in schedule I. Besides the amount so determined. Government has to pay compensation for any amount spent on the construction of a tank or well used for agricultural purposes, where such tank or well vests in the State Government. In addition to all these amounts, the State Government has to pay compensation for lands within the area of a municipality or cantonment in accordance with the rules contained in Schedule II. The compensation for divestment of proprietary rights becomes due from the date of vesting and it is enacted that it shall carry interest at the rate of two and a half per cent per annum from the date of vesting to the date of payment. Section 9 provides as follows:

"The compensation payable under S. 8 may, in accordance with the rules made in this behalf, be paid in one or more of the following modes, namely :

- (i) in cash in full or in annual instalments not exceeding thirty;
- (ii) in bonds either negotiable or not negotiable carrying interest at the rate specified in sub-section (4) of Section 8 and of guaranteed face value maturing within a specified period not exceeding thirty years."

The other sections in this chapter deal with interim payment and appointment of compensation officers and lay down the procedure for the determination of compensation. Schedule I provides that the amount of compensation in the Central Provinces and in Bearer shall be ten times the net income determined in accordance with the rules mentioned in the Schedule. In merged territories the compensation is payable on a sliding scale varying from two times to ten times the net income. Schedule II lays down the measure of compensation on a scale varying from five to fifteen times the assessment on the land as specified in the schedule. Section 2 of Schedule I provides for the calculation of the gross income by adding the amount of income received by a proprietor from the aggregate of the rents from the tenants as recorded in the jamabandi for the previous agricultural year; the siwai income, that is, income from various sources such as 'jalkar', 'bonkar', 'phalkar', hats, bazaars, melas, grazing and village forest calculated at two times the income recorded in the current settlement of 1923; and the consent money on transfer of tenancy lands - the average of transactions recorded in the village papers for ten years preceding the agricultural year in which the date of vesting falls.

The schedule also provides the method of determination of the gross income of a mahal as well as of an alienated village or alienated land separately. It also provides for the determination of this income in the case of mines and forests. The method suggested for assessing the net income is that out of the gross income the following items have to be deducted, i.e., the assessed land revenue, sums payable during the previous agricultural year on account of cesses and local rates, the average of income-tax paid in respect of income received from big forests during the period of thirty agricultural years preceding the agricultural years in which the relevant date falls and cost of management varying from 8 to 15 per cent of the gross annual income on incomes varying from Rs. 2,000 to Rs. 15,000.

It is further provided that notwithstanding any thing contained in sub-rule (2) the net income shall in no case be reduced to less than five per cent of the gross income Chapter IV deals with certain incidental matters in respect of the determination of the debts of proprietors. Its provisions are analogous to the provisions of Debt Conciliation or Relief of Indebtedness Act. It is provided in Chapter V how the actual amount of compensation is to be determined and paid. Chapter VI deals

with that part of Madhya Pradesh which is defined as Central Provinces in the Act. It is provided herein that a proprietor who has been divested of his estate will have 'malik makbuza' rights in his home-frames lands. Absolute occupancy tenants and occupancy tenants can also acquire 'malik-makbuza' rights. Provision is made for reservation of grazing lands and for the collection of land revenue.

Similar provisions are made in Chapter VII in respect of management and tenures of land in the merged territories. Chapter VIII deals with management and tenures of lands in Berar. Separate provision has been made for the determination of compensation payable to lessees of mines and mineral. Under the provisions of S. 218 of the Central Provinces Land Revenue Act and Section 44 of the Berar Land Revenue Code there is a presumption that all mines and minerals belong to the State and the proprietary rights in them could be granted by the State to any person. Wherever a right of minerals has been so assigned, provision has been made regarding its acquisition and the consequences resulting from such acquisition. The Act provides for the giving of rehabilitation grant to expropriated proprietors within a certain range provided for in Schedule III. The last chapter in the Act deals with miscellaneous matters including the power of making rules.

149. The main purpose of the Act is to bring the actual tillers of the soil in direct contact with the State by the elimination of intermediary holders. In short the Act aims at converting malguzari into ryotwari land system. It also aims at giving to the gram panchayats the management of common lands freed from the grip of proprietors and contemplates the establishment of self-government for the villages. The provisions of the Act in respect of payment of compensation, though they do not in any way provide for an equivalent in money of the property taken and in that sense may not be adequate, cannot be called illusory. This Act is a definite improvement on the Bihar Act; it leaves the arrears of rents due in the hands of the proprietors and does not operate artificially to reduce the net income by any device. It also provides that in no case the net income should be reduced below five per cent of the gross income. The result is that in every case some amount of money becomes payable by the State by way of compensation to the proprietor and in no case does the compensation work into a negative sum' or to a mere zero or a minus figure. In other respects the provisions of the Act in regard to compensation follow the pattern which is common to all zamindari legislation, which is to inflate the amount of expenditure and deflate the actual income.

The 'siwai' income from 'jalkar', 'bankar', etc. and from village forests is calculated at two times the 'siwai' income recorded in the settlement made in 1923. This Act was passed in 1951. The 'siwai' income recorded in the year 1923 is appreciable less than the actual income of the proprietors from these sources in 1951. Similarly, the income from consent money has to be calculated by taking the average income for ten years preceding the date of vesting and not the actual income as in the case of rent realized during the previous agricultural year. The expenditure has been inflated by taking in respect of the big forests the average income-tax paid during the period of thirty agricultural years. No agricultural income-tax existed during most of this period. It only came into existence recently. The cost of management has been calculated at a flat rate of eight to fifteen per cent. There can therefore be no doubt that the principles laid down for determination of compensation cannot be called equitable and they do not provide for payment of just compensation to the expropriated proprietor.

150. The petitioner's case is that under the formula stated in the Act, a compensation of 25 lakhs which would be due to him on the basis of the value of the property taken, has been reduced to a sum of Rs. 65,000 and is payable in thirty unspecified instalments and therefore it is purely nominal and illusory. This figure of Rs. 65,000 is arrived at by the following process :

(a) Gross income

from rents .... Rs 55,000

(b) Siwai income ....Rs.80,050 (Actually according to the affidavit the petitioner was realizing 5,65,000 from this source.)

Total ... 1,35,000

Deductions permissible under the Act are the following :-

(a) Revenue ... .. 45,000

(b) Income-tax on 30 ... .. 66,600

years average

(c) Cost of management ...

21,000

Total ... 1,32,600

Net income ... .. 2,400

Ten times net income would be Rs. 24,000; but as the net income cannot be reduced below five per cent. of the gross income which comes to Rs. 6,500, compensation payable Rs. 65,000, while the yearly income of the petitioner was in the neighbourhood of Rupees 5,65,000 and the market value of his property is 25 lakhs.

151. The first and the main objection to the validity of the Act taken by the learned counsel is that the Bill was never passed into law. As already indicated, this objection is founded on the omission from the proceedings of the Madhya Pradesh Legislative Assembly dated the 5th April 1950 of a statement to the effect that the Bill was put to the House by the Speaker and was passed by it. Reference was made to Rules 20, 22, 34 and 115 of the rules regulating the procedure of the legislature framed under the Government of India, Act, 1935 in the year 1936, which provide as follows :

"20. (1) A matter requiring the decision of the Assembly shall be decided by means of a question put by the Speaker on a motion made by a member.

22. After a motion has been made, the Speaker shall read the motion for the consideration of the Assembly.

34. (1) Votes may be taken by voices or division and shall be taken by division if any

member so desires. The Speaker shall determine the method of taking votes by division.

(2) The result of a division shall be announced by the Speaker and shall not be challenged.

115. (1) The Secretary shall cause to be prepared a full report of the proceedings of the Assembly at each of its meetings and publish it as soon as practicable.

(2) One impression of this printed report shall be submitted to the Speaker for his confirmation and signature and when signed shall constitute the authentic record of the proceedings of the Assembly."

It was urged that the authentic report of the proceedings of the Assembly was conclusive on the point, that the Bill was not put to the Assembly by means of a question and was not voted upon, and hence it could not be said to have been passed by the legislature. It was said that even if there was no open opposition to the passing of the Bill it was possible that if it was put to the Assembly, it might have rejected it. As already pointed out, the proceedings were signed by the speaker on the 1st October 1950, while the certificate that the Bill was passed was recorded by him on the original Bill when it was submitted to the President for his assent on the 10th May 1950. The certificate of the speaker is conclusive on the point that the Bill was passed by the Legislature (Vide Craies' Statute Law, 4th Edn., p. 36).

It seems to me that by an oversight it was not recorded in the proceedings that the motion was put to and passed by the House and the Speaker while signing the proceedings six months after the event failed to notice the error. There can be no doubt that the sense of the House on the 5th April 1950 was for passing the bill and there was no one present who was for rejecting it. The motion before the House was that the Bill be passed. The Speaker could not possibly have appended a certificate on a Bill that it was passed by the House if it had not been so passed. There are no grounds whatever for doubting the correctness of his certificate. In my opinion, the contention raised that the Bill was not passed into law fails and must be rejected.

152. Next it is contended that Arts. 31-A and 31-B have no application to this Bill as it never became law by following the procedure prescribed in the constitution and that those Articles have only application to a Bill that had become an Act. The Legislature of Madhya Pradesh consists of the Governor and Legislative Assembly. It was said that even if the Bill was passed by the Legislative Assembly, it was not assented to by the Governor but was straightway sent to the President and that without the assent of the governor the Bill could not become law despite the fact that it was assented to by the President and it was pointed out that sub-cl. (3) of Art, 31 of the Constitution speaks of "law" being reserved for the consideration of the President and not merely a "Bill".

This argument, in my opinion, has not much force having regard to the terms and scope of Art. 200. The Governor under that Article could assent to a Bill or could reserve it for the consideration of the President at his option. The Governor being empowered to reserve the Bill for the consideration of the President at his option. The Governor being empowered to reserve the Bill for the consideration of the President and this having been done, it was for the President either to assent to the Bill or to withhold his assent. The President having given his assent, the Bill must be held to have been passed

into law. It does not seem to have been intended that the Governor should give his assent to the Bill and make it a full-fledged law and then reserve it for the President's consideration so that it may have effect.

153. Mr. Somayya pressed the point that the President could not perform both his functions under Art. 200 and Art. 31(4) concerning this Bill at one and the same time, that first the procedure laid down in Art. 200 for the passing of the Bill into law should have been followed, i.e., the Governor should have either assented to the Bill or should have reserved it for the consideration of the President and if it was so reserved, the President should then have given his assent and the Bill would then become law, that after the Bill had become law, the Governor should again have reserved this Bill for the consideration of the President as required by the provisions of Art. 31(3) in order to make it effective law against the provisions of Art. 31(2) and that if the President then gave his assent the law so assented to could not be called in question in a court of law.

It was said that only in case where this double procedure is followed that it could be said that the President had satisfied himself that the law did not contravene the provisions of Art. 31(2). In my opinion, the argument is fallacious. It would be a meaningless formality for the President to give his assent to the same Bill twice over. I cannot see why the President cannot perform both the duties entrusted to him by Arts. 200 and 31(3) and (4) at one and the same time. He is not disabled under the Constitution from applying his mind to such a Bill once and for all and to see whether it has to be passed into law and whether it fulfils the requirements of art. 31(2). The President's assent therefore to the Bill attracts the application of Arts. 31-A and 31-B to it and deprives persons affected by it of the rights guaranteed in Part III of the Constitution.

154. The provisions of Art. 31(4) support the view of the learned Attorney-General that what has to be sent to the President is the bill as passed by the legislature and not the Bill after it has been assented to by the Governor. The Article reads thus :

"If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after, it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of Cl. (2)."

In this context the word "Legislature" means the House of Houses of Legislature and does not include the Governor within its ambit. This word has not the same meaning in all the articles. In some articles it means the Governor as well as the Houses of Legislature, while in a number of other articles it only means the House or Houses of Legislature. Article 31(4) means that if any Bill contravening the provisions of Cl. (2) of Art. 31 is passed by the House or Houses of Legislature but is reserved for the consideration of the President and receives his assent then it shall become law, not open to any objection on the ground of such contravention.

155. Next it was contended that the obligation to pay compensation was implicit in the legislative power contained in Entry 36 of List II and that the Act was unconstitutional as it had provided for acquisition of zamindaris without payment of compensation, the provisions relating to it being illusory. This contention fails for the reasons given in my judgment in the Bihar case. Moreover, the compensation provided for in the impugned Act cannot be dubbed as illusory. All that can be said is that it is grossly inadequate and it is not the equivalent of the value of the property acquired, but this issue is not justiciable in view of the provisions of Art. 31(4). This Bill was pending at the

commencement of the Constitution, it was reserved for the consideration of the President and the President gave his assent to it. The conditions for the application of Art. 31(4) thus stand fulfilled. Besides the obstacle of Art. 31 (4), two further hurdles, viz., of Arts. 31-A and 31-B introduced by the amendments to the Constitution stand in the way of the petitioner and bar an enquiry into the question of the quantum of compensation.

156. The contention that there is no public purpose behind the impugned Act has also to be repelled on the same reasoning as given by me in the Bihar case. The purpose behind the Act is to establish direct contact between tillers of the soil and the Government and to eliminate the intermediaries, as in the view of the Government this is for the welfare of the society as a whole. It is also the purpose of the Act to confer 'malik maqbuza' status on occupancy tenants and improve their present position and to vest management of village affairs and cultivation in a democratic village body. It is too late in the day to contend that reform in this direction is not or general public benefit.

157. The next argument of Mr. Somayya that the Act is a fraud on the Constitution in that in legislating under Entry 42 of List III, it has legislated for non-payment of compensation has also to be repelled, for the reasons given in the Bihar case. Under the provisions of this Act, compensation can in no case work out into a mere nothing. On the other hand, in every case some amount of compensation is payable and in the majority of cases it is also not inadequate. Mr. Somayya contended that payment of Rs. 65,000 as compensation to his client for property worth twenty five lakhs of rupees was purely illusory. The assessment of value by the petitioner cannot be taken at its full value. It cannot at any rate beheld that legislation which provides for the payment of a sum of Rs. 65,000 provides for no compensation. The amount of instalments, if payment is to be in instalments, is bound to be fixed by the rules made under the statute and in case the rules are so made that they amount to an abuse of the exercise of that power, they can always be challenged on that ground.

158. The argument that the Act is bad inasmuch as it delegates essential legislative power to the executive is negated for the reasons given in the Bihar case.

159. A point was raised that the constitutional amendments in Arts. 31-A and B could not affect the petitioner's guaranteed rights contained in Part III of the Constitution in so far as the eighty malguzari villages were concerned, because those mahals did not fall within the ambit of the word "estate" as defined in Art. 31-A. In sub-cl. (2) (a) the definition is in these terms :

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

Section 2 (3) of Act II(2) of 1917, C.P. Land Revenue Act, defines the expression "estate" thus:

"an estate as declared by the State Government." The learned Advocate General conceded that these villages are not within the ambit of this definition but he contended that they are within the scope of the definition of the expression given in Art. 31-A as mahals in Central Provinces are local equivalents of the expression "estate", though not so declared by the Act. There is nothing on the record to support this contention. The contention that those eighty mahals are not "an estate" and are thus excluded from the reach of Art. 31-A does not, however, very much advance the petitioner's case, because the hurdles created in his way by Arts. 31-B and 31 (4) stand in spite of the circumstance that Art. 31-A has no application. It was contended that Art. 31-B was merely

illustrative of the rule stated in Art. 31-B was merely illustrative of the rule stated in Art. 31-A and if Art. 31-A had no application, that article also should be left out of consideration. Reference was made to the decision of the Privy Council in "EMPEROR v. SIBNATE BANERJEE", 72 Ind App 241 (PC) on the construction of sub-ss. 1 and 2 of S. 2 of the Defence of India Act. The material portion of S. 2 considered in that case runs thus :

"(1) The Central Government may, by notification in the official gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-s. 1, the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely....."

Their Lordships made the following observations about the meaning to be given to the language of sub-s. (2) :

"the function of sub-s. 2 is merely an illustrative one; the rule-making power is conferred by sub-s. 1, and 'the rules' which are referred to in the opening sentence of sub-s. 2 are the rules which are authorized by, and made under, sub-s. 1; the provisions of sub-s. 2 are not restrictive of sub-s. 1, as, indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-section 10'."

Article 31-B is in these terms:

"Without prejudice to the generality of the provisions contained in Art. 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void ....on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of the Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the proper of any competent Legislature to repeal or amend it, continue in force."

On the basis of the similarity of the language in the opening part of Art. 31-B with that of sub-s. 2 of S. 2 of the Defence of India Act, "without prejudice to the generality of the provisions contained in Art. 31-A", it was urged that Art. 31-B was merely illustrative of Art. 31-A and as the latter was limited in its application to estates as defined therein, Art. 31-B was also so limited. In my opinion, the observations in 'SIBNATH BANERJEES CASE', (72 Ind App 241 PC) far from supporting the contention raised, negative it. Article 31-B specifically validates certain Acts mentioned in the schedule despite the provisions of Art. 31-A and is not illustrative of Art. 31-A but stands independent of it. The impugned Act in this situation qua the acquisition of the eighty malguzari villages cannot be questioned on the ground that it contravenes the provisions of Art. 31(2) of the Constitution or any of the other provisions of Part III. The applicability of Art. 31(4) is not limited to estates and its provisions save the law in its entirety.

160. This petition is accordingly dismissed but in the circumstances I make no order as to costs.

161. Mr. Bindra, who appeared for the petitioner, placed reliance on the observations of Holmes, C.J., in 'AMERICAN COMMUNICATIONS ASSNS V. CHARLES T. DOUDS', (1950) 339 US 382 at p. 384, viz.,

"that the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words and a dictionary but by considering their origin and the line of their growth,"

and contended that if the Constitution of India was construed in the light of these observations, then despite the express provisions of Article 31 (2) it would be found that there is something pervading it which makes the obligation to pay real compensation a necessary incident of the compulsory acquisition of property. It was said that the right to compensation is implied in Entry 36 of List II of the Seventh Schedule and that Article 31 (2) does not confer the right but merely protects it. Mr. Bindra merely tried to annotate the arguments of Mr. Das but with no better result. The dictum of Holmes, C. J., has no application to the construction of a constitution which has in express terms made the payment of compensation obligatory for compulsory acquisition of property, which again in express terms by an amendment of it, has deprived persons affected by the impugned Act of this right.

162. One further point taken by Mr. Bindra was that "nationalization" of land is a separate head of legislation and that "acquisition in general" does not fall within the scope of Entry 36 of List II of the Seventh Schedule. This proposition was sought to be supported by reference to a passage from Stephen's Commentaries on the Laws of England Vol. III, p. 541. The passage, however, read in its entirety, negatives the contention. It may be mentioned that under powers of compulsory acquisition a number of properties have been nationalized in England and other countries.

163. Lastly, it was urged that the legislation in question was not enacted 'bona fide' inasmuch as in 1946 the legislature having passed a resolution to end zamindaris, proceeded to enact laws with the purpose of defeating the constitutional guarantees regarding payment of compensation by various devices. As a first step in this direction, the revenue was enhanced in order to reduce the gross income of the zamindars; then other Acts mentioned in the earlier part of the main judgment were enacted with the same end in view. In my opinion, this argument is void of force. It was within the competence of the Government in exercise of its governmental power to enhance land revenue, to withdraw exemptions of land revenue, whatever those had been granted, and to enact other laws of a similar character. There is no evidence whatsoever that all these enactments were enacted with a fraudulent design of defeating the provisions of payment of compensation contained in the Constitution. The Constitution had not even come into force by the time that most of these statutes were enacted.

164. The petition is therefore dismissed. I however, make no order as to costs.

PETITION NO 268 OF 1951.

165. This petition is concluded by my decision in Petition No 166 of 1951 except as regards one matter. The properties belonging to the petitioner and acquired under the statute were originally situate in an Indian State which became subsequently merged with Madhya Pradesh. It was contended that by the terms of the covenant of merger those properties were declared as the petitioner's private properties and were protected from State legislation by the guarantee given in

Article 362 of the Constitution and hence the impugned Act was bad as it contravened the provisions of this Article. Article 362 is in these terms:

"In the exercise of the power of Parliament or of the legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in Clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

Article 363 takes away the jurisdiction of the Courts regrouping disputes arising out of treaties, agreements, covenants, engagements, sanads, etc.

166. It is true that by the covenant of merger the properties of the petitioner became his private properties as distinguished from properties of the State but in respect of them he is in no better position than any other owner possessing private property. Article 362 does not prohibit the acquisition of properties declared as private properties by the covenant of merger and does not guarantee their perpetual existence. The guarantee contained in the article is of a limited extent only. It assures that the rulers' properties declared as their private properties will not be claimed as State properties. The guarantee has no greater scope than this. That guarantee has been fully respected by the impugned statute, as it treats those properties as their private properties and seeks to acquire them on that assumption. Moreover, it seems to me that in view of the comprehensive language of Article 363 this issue is not justiciable.

167. This petition is accordingly dismissed but there will be no order of costs.

PETITIONS NOS. 228, 230, 237, 245, 246, 257, 280, 281, 282, 283, 284, 285, 287, 288 and 289 of 1951.

168. In all these fifteen petitions, Mr. Swamy appeared for the petitioners. Seven of these are by zamindars from Madhya Pradesh who are owners of estates. The petitioner in Petition No. 246 also owns certain malguzari villages. Petitioner in Petition No. 237 is a malguazar of eighteen villages but owns no estate. Petitions Nos. 280 to 285 and 257 relate to merged territories. The petitioner in Petition No. 282 was ruler of a State (Jashpur) and the petition concerns his private properties. Petitioners in Petitions Nos. 283, 284 and 257 are Ilakadars and in Petitions Nos. 280 and 285 they are mafidars. Petitioner in Petition No. 281 is a Thikedar, i.e., revenue farmer of three villages. Mr. Swamy reiterated the contention raised by Mr. Somayya that the Act was not duly passed by the legislature.

For the reasons given in Petition No. 166 of 1951, I see no force in this contention. Mr. Swamy also reiterated Mr. Bindra's contention that the legislation was not 'bonafide'. For the reasons given in Petition No. 317, this contention is not accepted. Mr. Swamy vehemently argued that the Government has by this Act become a super zamindar, that there is no public purpose behind the Act, that there is no change in the existing order of things, that the Act has achieved nothing new, the tenants remain as they were, the 'malikan cabza' were also already in existence, that acquisition of that status by occupancy tenants was possible under existing statutes and that they had also the power of transfer of their holdings. In my opinion, the argument is based on a fallacy. As already stated, the purpose of the Act is to bring about reforms in the land tenure system of the State by establishing direct contact between the tillers of the soil and the Government.

169. These petitions are accordingly dismissed. I made no order of costs in them.

PETITION No. 313 OF 1951.

170. Mr. Mukherji who appeared in this petition merely adopted the arguments taken in other petitions. For the reasons given therein this petition is also dismissed, but I make no order as to costs in it.

PETITION NO. 487 OF 1951.

171. Mr. Jog appeared in this petition and raised the same points as in other petitions. This petition also falls and is dismissed. There will be no order as to costs.

172. **B. K. MUKHERJEA, J.** : I agree with my Lord the Chief Justice that these Petitions should be dismissed.

173. **DAS, J.:** The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act, I of 1951) having on January 22, 1951 received the assent of the President of India a Notification was published in the Madhya Pradesh Gazette of January 27, 1951 fixing March 31, 1951 as the date of vesting of all proprietary rights in the State under Section 3 of the Act. A number of applications were made under Article 226 of the Constitution to the Madhya Pradesh High Court by or on behalf of different persons variously described as Zamindars of Malguzars or Proprietors of "alienated villages" praying for the issue of appropriate writs against the State of Madhya Pradesh prohibiting them from proceeding under the act the validity of which was challenged on a variety of grounds.

Eleven of these applications came up for hearing before a Full Bench of the High Court (B. P. Sinha, C. J. and Mangalmurti and Mudholkar (JJ.) and were, on April 9, 1951, dismissed. The High Court certified under Article 132 (1) that the cases involved a substantial question of law as to the interpretation of the Constitution. No appeal, however, appears to have been actually filed presumably because the present applications under Art. 32 had already been filed in this Court.

174. It may be mentioned here that the States of Bihar and Uttar Pradesh also passed legislation for the abolition of Zamindari in their respective States and the validity of those legislations was also contested by the proprietors affected thereby. While the High Court of Allahabad upheld the validity of the Uttar Pradesh Act, the High Court of Patna held the Bihar Land Reforms Act, 1950 to be unconstitutional only on the ground that it offended the fundamental right of equal protection of the laws guaranteed by Art. 14 of the Constitution.

In the circumstances, the Constituent Assembly passed the Constitution. The legal validity of the Constitution. (First Amendment) Act, 1951 by Secs. 4 and 5 of which two new Articles, namely, Article 31-A and Article 31-B were inserted into the Constitution. A new Schedule called the Ninth Schedule specifying 13 several Acts and Regulations including the Madhya Pradesh Act, I (1) of 1951 was also added to the Constitution. (First Amendment) Act, 1951 which was challenged, has, however, been upheld by this Court and all Courts must give effect to the two new Articles which are now substantive parts of our Constitution. Article 31-A relates back to the date of the Constitution and Art. 31-B to the respective dates of the Acts and Regulations specified in the Ninth Schedule.

175. The present bunch of petitions has been filed in this Court under Article 32 of the Constitution challenging the validity of the Madhya Pradesh Act and praying for appropriate writs, directions and orders restraining the State of Madhya Pradesh from acting under that Act and disturbing the

petitioners' title to and possession of, their respective estates, villages or properties. Learned counsel appearing for the different petitioners accept the position that as a result of the Constitutional amendments the impugned Act has been removed from the operation of the provisions of Part III of the Constitution and that consequently the attack on the Act will have to be founded on some other provisions of the Constitution. Mr. B. Somayya appearing for the petitioner in Petition No. 166 of 1951 ('VISHESHWAR RAO v. THE STATE OF MADHYA PRADESH) challenged the validity of the Act on the following grounds:

- (a) that the Bill itself was not passed by the Madhya Pradesh Legislature;
- (b) that the procedure laid down in Art. 31 (3) had not been complied with;
- (c) that the Madhya Pradesh Legislature was not competent to enact the said Act inasmuch as-
  - (i) the acquisition sought to be made under the Art is not for a public purpose and
  - (ii) there is no provision for payment of compensation in the legal sense;
- (d) that the Act constitutes a fraud on the Constitution;
- (e) that the Act is unenforceable in that it provides for payment of compensation by instalments but does not specify the amount of the installments;
- (f) that the Act has delegated essential legislative functions to the executive Government;
- (g) that the Act in so far as it purports to acquire the Malguzari villages or Mahals is not protected by Art. 31-A.

Learned counsel for other petitioners adopted and in some measure reinforced the arguments of Mr. B Somayya.

176. Re. (a): In dealing with this ground of objection it will be helpful to note the course which the Bill took before it was put on the Statute Book. There is no dispute as to the correctness of the dates given to us by counsel for the petitioners. The Bill was introduced in the Madhya Pradesh Assembly on October 11, 1949. It was referred to a Select Committee on October 15, 1949. The Select Committee made its Report on March 9, 1950 which was presented to the Assembly on March 29, 1950. The Assembly considered the Bill in the light of the Report between that date and April 5, 1950 during which period the amendments proposed by the Select Committee were moved and disposed of.

It appears from the Official Proceedings of the Madhya Pradesh Legislative Assembly of April 5, 1950 that after the last amendment had been put to the House and accepted, the Hon'ble Minister for Education (Sri P. S. Deshmukh) moved that the Bill be passed into law and delivered a short speech inviting the members to finally pass the Bill. The Speaker then read out the motion. Then followed speeches by 11 speakers congratulating the Government and some of the members who took an active part in carrying through this important measure of land reform and relief to the tillers of the soil. Nobody put forward any reasoned amendment and the trend of the speeches shows that the House accepted the Bill. From the Official Report of proceedings it does not, however, appear that after the speeches the Speaker formally put the motion to the vote or declared it carried. It only shows that the House passed on to discuss another Bill, namely, the Madhya Pradesh State Aid to

Industries (Amendment) Bill, 1950.

The text of the Bill as it emerged through the House was printed on April 29, 1950 and the Speaker signed a copy of the printed Bill on May 5, 1950 and certified that it had been passed by the House and forwarded it to the Governor. By an endorsement on that copy of the printed Bill the Governor reserved the Bill for the assent of the President and the President, on January 22, 1951, signified his assent by endorsing his signature at the foot of that copy of the printed Bill. The learned Advocate General has produced the original printed Act signed by the Speaker, the Governor and the President. It appears that the Official Report of Proceedings of the Legislative Assembly of April 5, 1950 was printed in June 1950 and were on October 1, 1950 signed by the Speaker along with the proceedings of many other meetings of the Assembly. It is to be noted that the Speaker simply signed the printed proceedings without stating one way or the other whether the Bill in question was passed or not.

177. The objection formulated by learned counsel for the petitioners is founded on the Rules of Procedure framed by the Assembly under S. 84 of the Government of India Act, 1935 which were continued in force until new rules were framed under Art. 208 of the Constitution. That old R. 22 which required that after a motion was made the Speaker should read the motion for the consideration of the Assembly has been complied with is not disputed. What is contended is that the provisions of old R. 20 (1) have not been followed. That rule was in these terms:

"A matter requiring the decision of the Assembly shall be decided by means of a question put by the Speaker on a motion made by a member."

It is urged that the question that the Bill be passed into law was not put to the Assembly under R. 20 and if it was at all put the result of the voting, whether by voices or division, was never announced by the Speaker as required by old Rule 34. There being a presumption of regularity attached to all official business the onus is undoubtedly on the petitioners to allege and prove that the procedure prescribed by the Rules was not followed. There is no evidence on affidavit by anybody who was present at the meeting of the Assembly held on April 5 1950 as to what had actually happened on that date. The petitioners rely only on the absence in the Official Report of proceedings of any mention of the question being put to or carried by the Assembly. The Official Proceedings were prepared and confirmed in terms of old R. 115. which was as follows :

"(1) The Secretary shall cause to be prepared a full report of the proceedings of the Assembly at each of its meetings and publish it as soon as practicable.

(2) One impression of this printed report shall be submitted to the Speaker for his confirmation and signature and when signed shall constitute the authentic record of the proceedings of the Assembly."

The argument is that the initial onus that was on the petitioners has been quite adequately and effectively discharged by the authentic record of the proceedings of the Assembly and consequently it must be held that the Bill did not actually become law at all. I am not prepared to accept this contention as sound. I have already pointed out that the original printed Act produced before us clearly shows that on May 5, 1950 the Speaker certified that the Bill had been passed by the Assembly. It is pointed out that old R. 87 under which the Speaker certified that the Bill had been passed did not give any finality or conclusiveness to the Speaker's certificate that the Bill had been passed. Such as is provided for in old R. 34 (2) or 39 (3) and therefore the certification under old R. 87 cannot affect the authenticity of the recorded confirmed and signed by the Speaker under old R.

This does not appear to me to be a correct approach to the problem. The question before us is whether as a matter of fact the Bill had been duly passed according to the Rules. The certification of the Speaker was within a month from April 5, 1950 while the confirmation of the proceedings took place on October 1, 1950. There can be no doubt that the memory of the Speaker was fresher on May 1950 than it was on October 1, 1950 when he signed a bunch of reports of proceedings. Therefore, as a statement of a fact more reliance must be placed on the certification of the Bill than on the confirmation of the proceedings and it will not be unreasonable to hold that the omission of any mention of the question having been put to and carried by the Assembly was an accidental slip or omission. Further, the speeches delivered by the eleven speakers clearly indicate that at that stage there was no opposition to the Bill. Therefore, putting the question at the end of the third reading of the Bill would have been at best a mere formality. (See May's Parliamentary Practice, 14th Edn., p. 544). It is, after all, a matter for the Speaker to declare the result. The authentication by the Speaker on the printed Act that the Bill was passed involves such a declaration having been duly made. In British Parliamentary Practice the Speaker's authentication is taken as conclusive (See Craies on Statute Law, 4th Edn., p. 36). The petitioners as, I have said, strongly rely on the Official Report of the proceedings.

It should in this connection, be borne in mind that Art. 208 of the Constitution continued the old Rules until new rules were framed. It appears that new rules were framed and actually came into force on September 8, 1950. New R. 148 does not reproduce sub-r. (2) of old R 115. After the new rules came into force it was no longer the duty of the Speaker to confirm the proceedings at all. Therefore, the purported confirmation of the proceedings by the Speaker on October 1, 1950 cannot be given any legal validity and the argument founded on authentication under defunct R. 115 (2) must lose all its force. Finally, the irregularity of procedure, if any, is expressly cured by Art. 212. I am not impressed by the argument founded on the fine distinction sought to be made between an irregularity of procedure and an omission to take a particular step in the procedure. Such an omission, in my opinion, is nothing more than an irregularity or procedure. In my judgment this ground of attack on the validity of the Act is not well-funded and must be rejected.

178. Re: (b): Article 31 (3) on which this ground of attack is based runs as follows:

"(3) No such law as is referred to in Cl. (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."

Great stress is laid on the words "law" and "legislature of a State". It is said that this clause postulates a "law" made by the "Legislature of a State". Reference is then made to Art. 168 which provides that for every State there shall be a Legislature which shall consist of the Governor and, so far as Madhya Pradesh is concerned, of one House, i.e., the Legislative Assembly. The argument is that Art. 31 (3) requires that a "law" must be reserved for the consideration of the President. If a Bill passed by the Assembly is reserved by the Governor for the consideration of the President without giving his own assent thereto, it cannot be said that a 'law' is reserved for the consideration of the President, for up to that stage the Bill remains a Bill and has not been passed into law. Therefore, it is urged, that after a Bill is passed by the State Assembly, the Governor must assent to it so that the Bill becomes a law and then that law, to have effect, must be reserved for the consideration of the President. This, admittedly not having been done, the provisions of Art. 31 (3) cannot be said to have been complied with and, therefore, the Act cannot have any effect at all. I am unable to accept

this line of reasoning. For one thing, it assumes that a Bill passed by the State Assembly can become a law only by the assent of the Governor. That is not so. The procedure to be followed after a Bill is passed by the State Assembly is laid down in Art. 200. Under that Article the Governor can do one of three things, namely, he may declare that he assents to it, in which case the Bill becomes a law, or he may declare that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed or he may declare that he reserves the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Art. 201. Under that Article the President shall declare either that he assents to the Bill in which case the Bill will become law or that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed.

Thus, it is clear that a Bill passed by a State Assembly may become a law if the Governor gives his assent to it or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. In the latter event happening, the argument of learned counsel for the petitioners will require that what has become a law by the assent of the President will, in order to be effective, have to be again reserved for the consideration of the President a curious conclusion I should be loath to reach unless I am compelled to do so. Article 200 does not contemplate a second reservation by the Governor. The plain meaning of the language of Article 31 (3) does not lead me to the conclusion. The whole argument is built on the word 'law'. I do not think that what is referred to as law in Art. 31 (3) is necessarily what had already become a law before receiving the assent of the President. If that were the meaning, the clause would have said "unless such law, having been reserved for the consideration of the President, receives his assent". The words "has received his assent" clearly imply and point to an accomplished fact and the clause read as a whole does not grammatically exclude a law that eventually became a law by having had received the assent of the President.

The question whether the requirements of Art. 31 (3) have been complied with will arise only when the State purports to acquire the property of any person under a law and that person denies that the asserted law has any effect. It is at that point of time that the Court has to ask itself - "is it a law which, having been reserved for the consideration of the President, has received his assent". I think it is in this sense that the word "law" has been used. In other words, the word "law" has been used to mean what at the time of dispute purports to be or is asserted to be a law. The language of Art. 31 (4) also supports this interpretation. In my judgment Art. 31 (3), on its true interpretation, does not require that the Governor must first assent to the Bill passed by the Assembly so as to convert it into a law and then reserve that law for the consideration of the President. I have already pointed out that Art. 200 does not contemplate a second reservation which will be necessary if initially the Governor instead of himself assenting to the Bill had reserved it for the consideration of the President. In my opinion there is no substance in the second objection which must, therefore, be overruled.

179. Re.(c), (d), (e) and (f) : Similar heads of objections were formulated and argued at considerable length by Mr. P. R. Das in the Bihar appeals and learned counsel appearing for the petitioners in the present proceedings have adopted the same. Shortly put, the argument is that although the impugned Act cannot, in view of Arts. 31 (4), 31-A and 31-B be called in question on the ground that it takes away or abridges or is inconsistent with the fundamental rights, it can, nevertheless, be challenged on other grounds. Thus it is open to the petitioners to show that the Legislature had no power to enact the law or that it offends against any other provision of the Constitution, Mr. N. S. Bindra and Mr. Swami have sought to reinforce those arguments by citing certain further passages from certain text books and reported decisions. The provisions of the impugned Act, have been analysed and summarised by Mahajan J. in the judgment just delivered by him and it is not necessary for me to

recapitulate the same

Nor is it necessary for me to formulate in detail the various heads of arguments founded principally on what is said to be the legislative incompetence of the Madhya Pradesh Legislature to enact the impugned Act in view of the language of legislative topics set forth in Entry 36 in List II and Entry 42 in List III or on the ground that the Act is a fraud on the Constitution or that it delegates essential legislative power to the executive Government which is not permissible. Suffice it to say that for reasons stated in my judgment in the Bihar appeals I repel these heads of objections. If anything, the existence of a public purpose is more apparent in the Madhya Pradesh Act than in the Bihar Land Reforms Act.

Further, the compensation provided in the Madhya Pradesh Act is more liberal than that provided in the Bihar Act, for under Cl. 4 (2) of Sch. I the net income can in no case be reduced to less than 5 per cent of the gross income. In any event the Act cannot, for reasons stated by me in my judgment in the Bihar appeals, be questioned on the ground of absence of public purpose or of compensation. The fact that the Madhya Pradesh Legislature passed several Acts one after another, e.g. C. P. Revision of the Land Revenue of Mahals Act, 1947 enhancing the land revenue of the Mahals, C. P. Revision of Land Revenue of Estates Act, 1939 and C. P. Revision of Land Revenue of Estates Act, 1947 increasing the land revenue of the estates, Revocations of Exemptions Act, 1948 revoking the exemptions from land revenue enjoyed by certain proprietors and finally the impugned Act, has been relied on as evidence of a systematic scheme for expropriating the Zamindars and it is contended that such a conduct clearly amounts to a fraud on the Constitution.

I am unable to accept this line of reasoning, for the series of legislation referred to above may well have been conceived and undertaken from time to time in utmost good faith. It is true that S. 9 of the Act does not specifically indicate when the installments will begin or what the amount of each installment will be but the section clearly contemplates that these details should be worked out by rules to be framed under S. 91 of the Act. Further, under S. 10 the State Government is bound to direct payment of an interim compensation amounting to one-tenth of the estimated amount of compensation if the whole amount is not paid within a period of six months from the date of vesting of the property in the State. I see no improper delegation of legislative power at all. In my opinion all these heads of objections must be rejected.

180. Re. (g): The last ground of attack is that the 80 Malguzari Mahals belonging to the petitioner in Petition No. 166 of 1951 are not estates and, therefore, the impugned Act in so far as it purports to acquire the Malguzari Mahals is not a law which is protected by Art. 31-A. Learned Advocate-General of Madhya Pradesh concedes that these Malguzari Mahals are not estates within the meaning of the C. P. Land Revenue Act but contends that the word "estate" has been used in a larger sense in Art. 31-A. In any case the impugned Act is protected by Art. 31-B. I do not think it necessary to discuss the meaning of the word "estate" as used in Art. 31-A for, in my opinion, the argument of the learned Advocate-General founded on Art. 31-B is well founded and ought to prevail.

Mr. B. Somayya has drawn our attention to the words "without prejudice to the generality of the provisions of Art. 31-A occurring in the beginning of Art. 31-B and contended that the interpretation put upon these words by the Judicial Committee in 'EMPEROR v. SHIBNATH BANERJEE', 72 Ind App 241 (PC) should be applied to them. I do not see how the principles enunciated by the Judicial Committee can have any possible application in the interpretation of Art. 31-B. Article 31-B is neither illustrative of nor dependant on Art. 31-A The words referred to were

used obviously to prevent any possible argument that Art. 31-B cut down the scope or ambit of the general words used in Art. 31-A.

181. A question was raised by Mr. Asthana appearing for the Ruler of Khairagarh who is the petitioner in Petition No. 268 of 1951. Khairagarh is one of the States which formerly fell within the Eastern States Agency. On December 15, 1947 the Ruler entered into a covenant of merger. In that covenant the properties in question were recognised as the personal properties of the Ruler as distinct from the State properties. Reference is made to Art. 362 which provides that in the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in Cl. (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. It is said that the impugned Act is bad as it contravenes the above provisions.

There occur to me several answers to this contention. The guarantee or assurance to which due regard is to be had is limited to personal rights, privileges and dignities of the Ruler 'qua' a Ruler. It does not extend to personal property which is different from personal rights. Further, this Article does not import any legal obligation but is an assurance only. All that the covenant does is to recognise the title of the Ruler as owner of certain properties. To say that the Ruler is the owner of certain properties is not to say that those properties shall in no circumstances be acquired by the State. The fact that his personal properties' are sought to be acquired on payment of compensation clearly recognises his title just as the titles of other proprietors are recognised. Finally the jurisdiction of the Court to decide any dispute arising out of the covenant is barred by Art. 363.

182. In my judgment, for reasons stated above and those stated in my judgment in the Bihar appeals, these petitions must be dismissed.

183. **CHANDRASEKHARA AIYAR J.:** I have nothing useful to add and I agree with the orders made by my Lord the Chief Justice and my learned Brothers.

(Case No. 283 of 1951).

(As the Chief Justice delivered one common judgment in Case No. 299 of 1951, Petition No. 166 of 1951 and Case No. 283 of 1951, it has only been printed in Case No. 299 of 1951 and omitted in the rest. Hence, for the judgment of the Chief Justice in Case No. 283 of 1951, see Paras 1 to 26).

184. **MAHAJAN J. :** These appeals under Art. 132 (1) of the Constitution concern the constitutionality of an Act, known as the Uttar Pradesh Zamindari Abolition and Land Reforms Act (U. P. Act I of 1951), and can be conveniently disposed by one judgment.

185. The appellants in most of them are owners and proprietors of extensive landed properties in the State of Uttar Pradesh. Some of them are holders of estates in Oudh under taluqdari sanads granted to their ancestors by the British Government. H. H. Maharaja Paramjit Singh of Kapurthala, appellant in Appeal No. 235 of 1951, is the holder of an estate in Oudh, the full ownership, use and enjoyment of which was guaranteed to him by the Government of India under Art. XII of the Pepsu Covenant of Merger. Appeals Nos. 291 to 295 of 1951 have been preferred by religious institutions holding endowed properties.

186. On August 8, 1946, the United Provinces Legislative Assembly passed the following resolution.

This Assembly accepts the principle of the abolition of the zamindari system in this Province which involves intermediaries between the cultivator and the State and resolves that the rights of such intermediaries should be acquired on payment of equitable compensation and that Government should appoint a committee to prepare a scheme for this purpose."

A committee was appointed to give effect to the resolution and to - prepare the necessary scheme. It made its report in July 1948. A Bill was introduced in the United Provinces Legislative Assembly on the 7th July 1949, was referred to a Select Committee which made its report on January 9, 1950 and was read before the Assembly for the first time on January 17, 1950. On the 21st January 1950, the Assembly was prorogued. It reassembled on the 2nd February, the Bill was reintroduced on the 7th February 1950, and was read for the second time on July 28, 1950 and for the third time on August 4, 1950. On September 6, 1950 it came before the Legislative Council and the Council passed it with certain amendments on the 30th November 1950. The Legislative Assembly was prorogued on the 13th October 1950 and in view of the amendments made in the Legislative Council, the Bill was reintroduced in the Legislative Assembly on December 26, 1950, and was passed in its amended form on January 10, 1951. It was subsequently passed by the Legislative Council and after having received the assent of the President came into force on or about the 25th January 1951.

187. The Preamble of the Act declares that: "whereas it is expedient to provide for the abolition of the zamindari system which involves intermediaries between the tiller of the soil and the State in the Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent on such abolition and acquisition and to make provision for other matters connected therewith."

Sub-section (1) of Section 4 provides that as from such date as the State Government may by notification declare, all estates situated in the Uttar Pradesh shall vest in the State free from all encumbrances. "Estate" is defined in Section 3 (8) as meaning "the area included under one entry in any of the registers prepared and maintained under clauses (a), (b), (c) or (d) of S. 32 of the United Provinces Land Revenue Act, 1901, or in the registers maintained under clause (e) of the said section in so far as it relates to a permanent tenure-holder and includes share in or of an estate." Section 6 enacts that subject to certain very minor exceptions, upon the publication of a notification under S. 4, the rights, title and interest of all intermediaries in every estate in the area referred to in the notification, and in all sub-soil in such estates including rights, if any, in mines and minerals, shall cease and shall be vested in the State of Uttar Pradesh free from all encumbrances. The expression "intermediary" is defined in Section 3 (2) as meaning with reference to any estate, "a proprietor, under-proprietor, sub-proprietor, thekadar, permanent lessee in Avadh, and permanent tenure-holder of such estate or part thereof."

188. The intermediaries whose rights, title and interest are thus acquired become entitled to receive compensation at eight times the net assets mentioned in the Compensation Assessment Roll prepared in accordance with the provisions of the Act. The Act further provides that the State Government shall pay to every intermediary other than a thekadar, whose estate or estates have been acquired under the Act, a rehabilitation grant on a graduated scale provided that the land revenue payable by such an intermediary does not exceed Rs. 10, 000. The scale of the grant is given in Schedule I. Save in the case of wakfs, trusts and endowments which are wholly for religious or charitable purposes, the highest multiple is for class paying land revenue up to Rs. 25, the multiple being tenancy, while the lowest is for the class paying land revenue exceeding Rs. 5,000, but not exceeding Rs. 10,000 when the multiple is one.

189. Part I of the Act includes provisions for the vesting of all estates in the State, for assessment of compensation, for payment of compensation to all intermediaries and of rehabilitation grant to those of them who pay Rs. 10,000 or less as land revenue and similar matters. Part II deals with consequential changes that become necessary by reason of the vesting of all estates in the State and provides for the incorporation in each village of a 'gaon samaj' and the vesting of certain lands in the 'gaon samaj', it divides the cultivators into four classes, viz., bhumidars, sirdars, asamis and adhivasis, determines their rights and provides for the payment of land revenue; it further contains provisions designed to prevent the fragmentation of holdings or their division into holdings of uneconomic size, and to facilitate the establishment of co-operative farms, and other similar matters.

190. The following provisions of the Act which came in for severe criticism during the course of the arguments addressed to us may be set out 'in extenso.'

191. Section 6 (a) provides for the vesting in the State of all rights, title and interest of all the intermediaries in every estate in such area including land (cultivable or barren), grove land, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, wells (other than private wells in village abadi, holding or grove), tanks, ponds, water channels, ferries, pathways, abadi sites, hats, bazars and melas. Clauses (e) and (g) of this section are in these terms.

"(e) All amounts ordered to be paid by an intermediary to the State Government under Section 27 and 28 of the U. P. Encumbered Estates Act, 1934 and all amounts due from him under the Land Improvement Loans Act, 1883, or the Agricultural Loans Act, 1884, shall notwithstanding anything contained in the said enactments, 'become due forthwith' and may, without prejudice to any other mode of recovery provided therefor, be realised by deducting the amount from the compensation money payable to such intermediary under Chapter III.

"(g) (i) Every mortgage with possession existing on any estate or part of an estate on the date immediately preceding the date of vesting shall, to the extent of the amount secured on such estate or part, be deemed, without prejudice to the rights of the State Government under S. 4 to have been substituted by a simple mortgage;

(ii) notwithstanding anything contained in the mortgage deed or any other agreement, the amount declared due on a simple mortgage substituted under sub-clause (i) shall carry such rate of interest and from such date as may be prescribed'."

192. Section 7 saves certain rights at present held by the proprietors from the purview of the Act. The rights included are in respect of mines which are being worked by the zamindars. Section 9 provides that private wells, trees in abadi and buildings situate within the limits of an estate shall continue to belong to or be held by such intermediary. Section 10 makes every tenant of land belonging to an intermediary and paying land revenue up to Rs. 250 - a hereditary tenant thereof at the rate or rent payable on the date of vesting. Section 12 gives the same privilege to thekaders. Similarly Section 15 confers the status of hereditary tenants on occupants of lands in which such rights did not exist. Section 18 provides that all land in the possession of intermediaries as sir, kasht or an intermediary's grove shall be deemed to be settled by the State Government with such intermediary etc., subject to the provisions of the Act and he will be entitled to possession of it as bhumidar thereof. Land held by any person as a tenant is deemed to be settled by the State Government on such person as sirdar. Sections 27 and 28 are in these terms:

"27. Every intermediary, whose rights, title or interest in any estate are acquired under the provisions of this Act shall be entitled to receive and be paid compensation as hereinafter provided.

"28. (1) Compensation for acquisition of estates under this Act shall be due as from the date of vesting subject to determination of the amount thereof.

(2) There shall be paid by the State Government on the amount so determined interest at the rate of two and half per centum per annum from the date of vesting to the date of-

(i) in the case of the amount to be paid in cash, determination,

(ii) in the case of the amount to be given in bonds, the redemption of the bonds."

Section 39 lays down the method of determination of the gross income of the land comprised in a mahal, while Section 42 provides for the determination of the gross assets of an intermediary. Section 44 lays down the manner of assessing the net income of an intermediary. It provides as follows:

"The net assets of an intermediary in respect of a mahal shall be computed by deducting from his gross assets the following, namely:

(a) any sum which was payable by him in the previous agricultural year to the State Government on account of land revenue.....

(b) an amount on account of agricultural income-tax, if any, paid for the previous agricultural year.....

(c) cost of management equal to 15 per centum of the gross assets."

Provision has been made for the appointment of assessment officers and for the preparation of draft compensation assessment roll by them after hearing objections. Right of appeal has also been provided against their decision.

193. Chapter IV concerns itself with the payment of compensation. Section 65 of this chapter provides that there shall be paid to every intermediary as compensation in respect of the acquisition of his rights, title and interest in every estate the amount declared in that behalf under Section 60. Section 68 is in these terms:

"The compensation payable under this Act shall be given in cash or in bonds or partly in cash and partly in bonds as may be prescribed."

Section 72 empowers the State Government to make rules on all matters which are to be and may be prescribed. Section 113 and 117 provide for the establishment and incorporation of a 'gaon samaj' and for the vesting of all lands not comprised in any holding or grove and forests with the village boundaries, trees public wells, fisheries, hats, bazars etc., tanks and ponds in the 'gaon samaj', which is to supervise and manage and control the lands subject to supervision by the Government. Other provisions of the Act relate to acquisition of bhumidari rights and of sirdari rights by tenants, thekadars etc. on payment of a certain amount mentioned in the Act. A bhumidar has the status of a peasant proprietor in direct relation to Government and these agrarian reforms contemplated by the Act aim at converting the zamindari tenure system into a ryotwari system.

194. The main questions for consideration in these appeals are the following:

1. Whether the impugned Act was validly enacted.
2. Whether the acquisition of properties contemplated by the Act is for a public purpose.
3. Whether the delegation of power in the various sections of the Act is within the permissible limits.
4. Whether the taluqdari properties held under "sanads" from the British Government can be the subject-matter of acquisition.
5. Whether the properties of the Maharajah of Kapurthala in-Oudh could in view of Article 12 of the Pepsu Union Covenant be acquired under the Act.
6. Whether the said Act constitutes a fraud on the Constitution.

195. The validity of the Act was attacked on a variety of grounds by the learned counsel appearing in the different cases and the grounds urged were by no means uniform or consistent and some of these were destructive of one another.

196. Mr. P. R. Das, who opened the attack, reiterated the arguments he had addressed to us in the Bihar appeals and urged that the obligation to provide for compensation is implicit in the power conferred on the State Legislature by Entry 36 of List II with respect to acquisitions, that the words "subject to the provisions of Entry 42 of List III" in Entry 36 compel the Court to construe Entry 36 of List II along with Entry 42 of List III and, when so construed, it is clear that compensation has to be provided for whenever power is exercised under Entry 36, that there is no provision for payment of compensation in the impugned Act, the word "compensation" meaning the equivalent in money of the property compulsorily acquired, that the U. P. Legislature had no power to enact this Act without making provision for payment of compensation and in legal contemplation the Act is not law, that Art. 31 (2) confers a fundamental right but has nothing to do with legislative powers which have been conferred by Arts. 245 and 246 read with the three lists, that Art. 31 (4) does not in any way affect the rights conferred by Art. 31 (2), which exist notwithstanding Art. 31 (4), and it only bars the remedy to challenge the Act on the ground that it contravenes the provision of Cl. (2), that the Act constitutes a fraud on the Constitution, and lastly that the Act is void by reason of delegation of essential legislative power.

197. On the question of the invalidity of the Act for want of a provision for payment of compensation, Mr. P. R. Das reinforced his arguments by reference to legislative practice in India and England and contended that even without any express provision for compensation in the different enactments to which our attention was drawn, the mere use of the word "purchase" implied that compensation was a concomitant obligation of the exercise of the power to compulsorily acquire property. For the reasons given by me in the Bihar appeals I cannot accept this contention. If the Constitution was silent on the point and provided for compulsory acquisition, the position might have been different.

198. Mr. Das who appeared in some of the appeals, supplemented the arguments of Mr. Das on this point. He contended that regarding half of the properties acquired, the Act was a piece of confiscatory legislation as these properties were non-income bearing, and that as regards the other half, though compensation at eight times the net income is provided, it is a mere sham inasmuch as

the Act makes payment of compensation discretionary at the will and pleasure of the Government; the provision being that Government will pay when it chooses to do so and it may never make the choice. He further contended that the provisions of the Act regarding compensation are colourable because they completely ignore the potential incomes of the zamindars, take notice only of the income recorded in the khatuni entries which do not include the sir income, and acquire rentfree holdings and undeveloped mines without any compensation, that the deduction of agricultural income-tax from the gross income was unjust and the object of deduction was to artificially reduce the net income, and the same procedure had been adopted in the case of forests.

199. Dr. Ambedkar, who appeared in some of the appeals, suggested a new approach for declaring the Act to be bad. He contended that qua "estates" defined in Art. 31-A, Part I of the Constitution should be deemed as repealed and struck off from the Constitution. In deciding these appeals therefore, we are to look at the Constitution without the chapter on Fundamental Rights; but as the Constitution aims at securing liberty and equality for the people and gives only a restricted power to the State, the obligation to pay compensation when private property is taken is implicit in the very spirit of the Constitution. Mr. Das found the obligation to pay compensation implicit in Entry 36, but Dr. Ambedkar could not see eye to eye with him though he supported his contention by urging that the prohibition to acquire property by legislation without payment of compensation was implicit in the spirit of the Constitution.

200. Mr. Varma, who appeared in some other appeals, supported Mr. Das's argument that Entry 36 should be read subject to the provisions of Entry 42 and further contended that the impugned Act was the culminating point of a series of enactments passed as a device to confiscate the properties of the zamindars after the passing of the resolution in 1946 by the U. P. Legislature.

201. Having negatived the contentions of Mr. Das, I cannot for the same reasons accept the contentions of Mr. Das as sound. It is convenient now to examine the point made by Dr. Ambedkar that the obligation to pay compensation is implicit in the spirit of the Constitution. It is well settled that recourse cannot be had to the spirit of the Constitution when its provisions are explicit in respect of a certain right or matter. When the fundamental law has not limited either in terms or by necessary implication the general powers conferred on the legislature, it is not possible to deduce a limitation from something supposed to be inherent in the spirit of the Constitution. This elusive spirit is no guide in this matter. The spirit of the Constitution cannot prevail as against its letter. Dr. Ambedkar relied on the observation of Nelson J. in 'PEOPLE v. MORRIS', 13 Wend 325, quoted in the foot-note at p. 357 of Cooley's Constitutional Limitations. The foot-note states:

"It is now considered an universal and fundamental proposition in every well regulated and properly administered government, whether embodied in a constitutional form or not, that private property cannot be taken for strictly private purposes at all, nor for public uses without a just compensation; and that the obligation of contracts cannot be abrogated or essentially impaired. These and other vested rights of the citizen are held sacred and inviolable, even against the plenitude of power of the legislative department."

Those observations of the learned Judge, however, do not lend support to the contention urged; on the other hand, it seems to me that the proposition stated by Dr. Cooley at page 351 (Vol. I) that the Courts are not at liberty to declare an Act void, because in their opinion it is opposed to the spirit supposed to pervade the Constitution but not expressed in words, has an apposite application here. It is difficult upon any general principle to limit the omnipotence of the sovereign legislative power by judicial interposition except so far as the express words of a written constitution give that authority.

202. The argument of Dr. Ambedkar cannot be accepted for the further reason that it is based on an unwarranted assumption that qua the estates of the zamindars, Part III of the Constitution stands repealed and is 'non est.' The truth is that Part III of the Constitution is an important and integral part of it and has not been repealed or abrogated by anything contained in Art. 31-A of the Constitution; on the other hand Art. 31-A, while providing that no law providing for the acquisition by the State of any estate, 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 of the provisions of Part III, clearly provides that where such law is made by the legislature of a State, the provisions of this article 'shall not apply thereto' unless such law having been reserved for the consideration of the President has received his assent. This proviso in express terms keeps alive the alternative provisions of Part III of the Constitution in Art. 31(3) for judging whether the State law has or has not complied with the provisions of Art. 31 (2). The provisions of Art. 31(2). therefore, do not stand repealed by Art. 31-A. On the other hand they are kept alive. The difference is that persons whose properties fall within the definition of the expression "estate" in Art. 31-A are deprived of their remedy under Art. 32 of the Constitution and the President has been constituted the sole judge of deciding whether a State law acquiring estates under compulsory power has or has not complied with the provisions of Art. 31 (2). The validity of the law in those cases depends on the subjective opinion of the President and is not justiciable. Once the assent is given, the law is taken to have complied with the provisions of Art. 31 (2).

203. It is true that the principles of payment of compensation stated in the Act 'do not give anything like an equivalent or 'quid pro quo' for the property acquired and provide only for payment of what is euphemistically described in the resolution of the U. P. Legislature as "equitable compensation". Properties fetching no income pass to the State without payment of any separate compensation and as comprising part of an estate which yields some net income to the proprietor. According to the affidavit filed in the Balrampur Raj case, actual income of Rs. 1,42,000 that the owner receives at present, works out to a sum of Rs. 10,000 under the provisions of the Act and property worth several crores is being acquired for a mere fraction of its true value. Culturable waste which forms twenty per cent of the entire area of the estate, trees, several lakhs in number, water channels and irrigation works etc. are being acquired along with the cultivated lands and income-fetching properties without any separate provision for payment of compensation. But from those facts the conclusion cannot be drawn that the provisions as to compensation in the Act are illusory.

204. In none of the cases could it be said that the provisions of the impugned Act would result in non-payment of the compensation. Great emphasis was laid on the circumstance that nothing was being paid for non-income fetching properties. It has, however, to be observed that these non-income fetching properties are integral parts of an estate as defined in Art. 31-A and it cannot be said when payment of compensation is provided for on the basis of the net income of the whole of the estate, that the legislation is of a confiscator character. Different considerations might have prevailed if the estates as a whole were not being acquired but different pieces of property were made the subject-matter of acquisition. Properties comprised in an estate may be income-fetching and non-income fetching, the value of these to the owner in the market may well be on the basis of income and if the Act has laid down the principle of payment of compensation on the foot of net income, it cannot be said that the legislation is outside the ambit of Entry 42 of List III.

205. Dr. Ambedkar frankly conceded that he was not prepared to go to the length of contending that the compensation provided for in the Act was illusory. He, however, said tht it was inadequate whether tested subjectively or objectively. During the period that the Balrampur Raj was under the supervision of the Court of Wards, part of the property acquired was purchased on payment of Rs.

24,09,705 fetching a net income of Rs. 25,915. This property, however, under the Act would be acquired on payment of Rs. 2,08,000. Under the U. P. Encumbered estates Act the Government itself had valued properties in various places in Uttar Pradesh for the purpose of the Act on standard multiples, viz., from 37 to 20 times the net income. Price of part of the property acquired on this basis comes to Rs. 47,14,696 while compensation according to the Act payable would be about one-fourth of this amount. Be that as it may, Art. 31 (4) is a complete answer to all these contentions, as held by me in the Bihar appeals. This Bill was pending in the legislature of the State on the 26th January 1950 when the Constitution came into force and this circumstance makes Art. 31(4) applicable to all these cases. It was contended by Mr. Varma that the U.P. Assembly was prorogued on the 21st January 1950 and the Bill was reintroduced on the 7th February 1950 and on the 26th January 1950 when the Constitution came into force it could not be said to be pending as it had lapsed. This contention seems to be based on a misapprehension as to the provisions of the Constitution Act of 1935 and the provisions of the present Constitution. Section 73 of the Government of India Act, 1935, and Article 196 of the present Constitution provide in unambiguous terms that a Bill pending in the legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof. In view of these clear provisions the contention of the learned counsel that the Bill was not pending on the 26th January 1950 has to be rejected. Further the provisions of Art. 31-A and 31-B completely shelter this law from any attack based on any of the provisions of Part III of the Constitution. This proposition was not disputed. As the validity of the act could not be impugned on any of the provisions of Part III of the Constitution, that was the reason why the attack on its constitutionality was made on other grounds - ingenious but substantial - lying outside the ambit of Part III.

206. As regards the contention that the provisions with regard to payment of compensation would result in non-payment of it as it is payable at the pleasure of Government and the debts of the zamindars are to be deducted out of it, my view is that both these contentions are unsound. Under the provisions of the Act above cited compensation becomes due on the date of the vesting of the estate. Interest at two and a half per cent, runs from that date and becomes payable forthwith. Section 27 of the Act makes it obligatory on the Government to pay compensation. Section 65 in clear terms provides that there shall be paid to every intermediary as compensation the amount declared in that behalf under S. 60. Section 68 gives option to the Government to pay compensation either in cash or in bonds, or partly in cash and partly in bonds as may be prescribed. If the Government does not prescribe anything, it is obvious that compensation will be payable forthwith. If, on the other hand, Government makes any rules and prescribes that compensation will be payable at some remote time and not within a reasonable period it will be open to the parties affected to challenge the validity of the rules on the ground of abuse of power. These provisions, however, do not vitiate the Act and affect its validity. So far as the debts are concerned they were payable in certain instalments out of the income of the lands, they have been made payable at once and provision has been made that the amount be deducted from the amount of compensation. Installments had been fixed because of the fact that they were recoverable from the income of the land. When the lands are converted into money, it follows as a matter of course that the right to recover the debts from the income of the lands is transferred to the compensation money and the provision regarding instalments becomes infructuous by the fact of acquisition.

Dr. Ambedkar further contended that in fixing the amount of compensation the State was a judge in its own cause and this was against the spirit of the Constitution. There is no substance in this contention as the actual amount of compensation is to be determined by the compensation officer and his adjudication on the point is subject to an appeal. Government is not the judge of the actual amount of compensation. So far as the law is concerned, it is the act of the legislature and being

within its competence, no challenge can be made against the validity of the Act on this ground.

207. The question that the Act does not postulate any public purpose and is thus unconstitutional was argued by Mr. Dar and Dr. Ambedkar with some vehemence and it was contended that there was no public purpose behind this legislation. Mr. Dar urged that the sole purpose of the acquisition of zamindars' estates was for increasing the revenues of the State and or selling the intermediaries' interests to private individuals, the intention being to make money by trading activities and at the same time root out the zamindars who constitute one fourth of the population of Uttar Pradesh. It was contended that no community in Uttar Pradesh derived any benefit from the provisions of the Act because the tenants whose status was intended to be raised, had been given sufficient relief under statutes already passed and what was humanly possible to do for them had been done, that they were at present more prosperous than the middle class people and that the creation of a classless society by destroying a class was not a public purpose.

Dr. Ambedkar on the other hand argued that he would have been content had the State nationalised the zamindari because then the acquisition would be for a public purpose, but as under the impugned Act the State had merely constituted itself a trustee for distribution of the intermediaries' interests amongst the "haves" and not amongst the "have-nots", i.e., amongst the bhumidars, sirdars, asamis and adhivasis and not amongst the landless the Act was not for a public purpose at all but was an unfortunate piece of legislation as property was being acquired for private benefit of persons and not for public use and that giving of property to 'gaon samaj' also could not be held to be for public benefit or public use.

208. In my opinion as already stated by me in the Bihar appeals these arguments are unsound. The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual. Prof. Willis has summarized the present position in the United States on this subject, at pages 817 and 818 of his book, in these words:

"What is public use? On this question there have been two viewpoints. One may be called the older viewpoint and the other newer viewpoint. According to the older viewpoint, in order to have a public use there must be the use by the public.....According to the newer viewpoint there is a public use if the thing taken is useful to the public. This makes public use for eminent domain practically synonymous with public purpose for taxation and somewhat like social interest for police power. Under this rule it is not necessary for the benefit to be for the whole community, but it must be for a considerable number."

The High Court took the view that acquisition of property under compulsory powers for securing an aim declared in the Constitution to be a matter of State policy is an acquisition for a public purpose. The following observations from the judgment of Bhargava J. may be quoted with advantage:

"The effect of the impugned Act is to vest the ownership and control of a considerable part of the material resources of the community in the State Government;.....the vesting in the State of the estate of the intermediaries is an indispensable preliminary to the pursuit of measures for the eradication or mitigation of the principal causes of agricultural poverty. Two of such measures are embodied in the Act., which makes provision for three new classes of tenure-holders, bhumidar.

Sirdar and asami and for the formation of co-operative farms. The provisions of Chap. VII of the Act. which depend in some measure for their efficacy on the transfer of property to the State effected by Part I of the Act are clearly directed to the development of village self-government. It can, we think, be inferred from the Act that the scope is given for more effective development of the State's agricultural resources than is at present possible.....Reading the Act as a whole there can we think, be no doubt that the primary object of the legislature is to effect a radical change in the system of the land tenure now prevailing in this State."

In my opinion, legislation which aims at elevating the status of tenants by conferring upon them the bhumidari rights to which status the big zamindars have also been levelled down cannot be said as wanting in public purposes in a democratic State. It aims at destroying the inferiority complex in a large number of citizens of the State and giving them a status of equality with their former lords and prevents the accumulation of big tracts of land in the hands of a few individuals which is contrary to the expressed intentions of the Constitution.

209. Dr. Ambedkar combated this view and urged that expression "public purpose" was not a new concept when the Constitution of India was framed; on the other hand it has a settled meaning in the past legislative history of this country and it must be presumed that the Constitution used the expression in the same sense in which it had been used in the earlier Acts and in the Government of India Act, 1935, and that it should not be construed in the light of the directive principles laid down in Part IV of the Constitution. He contended that had the constitution-makers intended to give this concept a different meaning than it had acquired in the past, they would have clearly given expression to that intention by saying that the expression "public purpose" includes purposes which aim at implementing the directive principles of State policy and that Part IV of the Constitution merely contained glittering generalities which had no justification behind them and should not be taken into consideration in construing the phrase "public purpose".

210. In my opinion, the contentions raised by Dr. Ambedkar, though interesting, are not sound because they are based on the assumption that the concept of public purpose is a rigid concept and has a settled meaning. Dr. Ambedkar is right in saying that in the concept of public purpose there is a negative element in that no private interest can be created in the property acquired compulsorily; in other words, property of A cannot be acquired to be given to B of his own private purpose and that there is a positive element in the concept that the property taken must be for public benefit. Both these concepts are present in the acquisition of the zamindari estates. Zamindaries are not being taken for the private benefit to any particular individual or individuals, but are being acquired by the State in the general interests of the community. Property acquired will be vested either in the State or in the body corporate, the 'gaon samaj' which has to function under the supervision of the State. Tenants, sirdars, asamis etc. are already in possession of the lands in which their status is to be raised to that of bhumidar. Zamindars who are being reduced to the status of bhumidars are also in possession of the lands. There is no question in these circumstances of taking property of A and giving it to B. All that the Act achieves is the equality of the status of the different persons holding lands in the State. It is not correct to say that Government is acquiring the properties for the purpose of carrying on a business or a trade. The moneys received from persons seeking bhumidari status or from the income of zamindari estates will be used for State purposes and for the benefit of the community at large. For the reasons given above, I hold that the impugned Act is not void by reason of the circumstance that it does not postulate a public purpose.

211. As regards the question of delegation, our attention was drawn particularly to the provisions of Sections 6 (e) and (g) and 68. These sections provide for the prescription of the rate of interest by

the executive government on mortgages and they also authorize the Local Government to determine the period of redemption of the bonds and the fixation of the ratio between payment of compensation in bonds and payment in cash. In my opinion, the delegation is within the permissible limits and does not amount to delegation of essential legislative power. The main principles on these matters have been laid down in the Act and matters of detail have been left to the rule-making power.

212. As regards the appeal of the Maharaja of Kapurthala (Appeal No. 285 of 1951), the facts are these: By Art. 12 of the Covenant of Merger dated the 5th May 1948, entered into between the rulers of the States now comprised in the Pepsu Union, the properties which are the subject-matter of the appeal were declared and guaranteed as the private properties of the Maharaja. The Maharaja was also guaranteed a privy purse of Rs. 2,40,000/- It was suggested that the Maharaja accepted this sum which was smaller in amount than what was allowed to other rulers as privy purse because he was assured of the income of the Oudh estate. On these facts it was contended that the impugned Act contravened the provisions of Article 362 of the Constitution inasmuch as it has not paid due regard to the guarantees contained in Art. 12 of the Covenant. As already held by me in the Madhya Pradesh petitions, this contention is devoid of force. The impugned Act has fully respected the Covenant of the 5th May 1948 inasmuch as it has treated the Oudh estate as the private property of the Maharaja as distinguished from the State properties and it is on that basis that it has proceeded to acquire it on payment of compensation. The allegation that the income of this estate was to supplement the privy purse and that the appellant accepted a lower sum by way of privy purse than given to the other Maharajas has been denied by the Government and we see no reason to hold in the absence of any material to the contrary, that this denial is not true. This Act, therefore, constitutes no breach of the guarantees given in Art. 362 of the Constitution. It was urged by the learned Attorney-General that Article 363 of the Constitution bars the jurisdiction of this Court from going into this question. Dr. Ambedkar, on the other hand contended that this article has no application because of the fact that the Government of India was not a party to this covenant. As at present advised, I see good deal of force in the point raised by the learned Attorney-General. Not only did the Government of India sign the covenant as a guarantor but it also signed it as a concurring party and that being so, the provisions of Art. 363 seem to be attracted to the case. The appeal of the Maharaja therefore fails on this point.

213. Mr. Bishan Singh, who appeared in Appeals Nos. 284, 285, 288, 289 and 290, argued the special cases of the taluqdars of Oudh. It was contended that the taluqdars were absolute owners of these holdings at the time of the annexation of Oudh in February 1856, that subsequently the British Government under the directions of Lord Dalhousie tried to take away the taluqdars' rights, but that after the mutiny they were reinstated in their earlier status and that status was reaffirmed by the enactment of the Oudh Estates Act I of 1856, that the permanent and hereditary rights of the appellants under that Act in the lands granted to them under the sanads could not be affected by any legislation made by the successors in interest of the British Government and that Government could not derogate from its grant. It seems to me that the lands held by the taluqdars stand on no higher footing than the properties of other owners in Oudh. Be that as it may, the matter seems to have been set at rest by the decision of their Lordships of the Privy Council in 'JAGANNATH BAKSHI SINGH v. UNITED PROVINCES', 1946 FCR 111 (PC). At page 119 of the report it was observed as follows:

"It is however, desirable to examine the particular grounds on which it is sought to induce the Court to arrive at this Paradoxical conclusion. Some of these are said to be based on the general principle of law that the Crown cannot derogate from its own grant, others are said to depend on particular

provisions of the Government of India Act. It has not been possible for the appellant to adduce any authority for the principle involved, which their Lordships apprehend to be that Parliament, whether Imperial, Federal or Provincial, in the absence of express prohibition, is debarred from legislating so as to vary the effect of a Crown grant."

The Crown cannot deprive a legislature of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists and no Court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence. If therefore it be found that the subject-matter of a Crown grant is within the competence of a provincial legislature, nothing can prevent that legislature from legislating about it, unless the Constitution Act itself expressly prohibits legislation on the subject either absolutely or conditionally.

214. Dr. Asthana, who appeared in Appeals Nos. 291 to 294 of 1951, argued the case of the religious institutions. He contended that the properties held by these institutions had already been dedicated for public purposes, that the income of these properties was being used for holding melas, feeding sadhus and other charitable purposes and that any reduction in that income would adversely affect those institutions and the properties that were already dedicated for public purposes could not be acquired under compulsory powers of acquisition. The argument is fallacious. A charity created by a private individual is not immune from the sovereign's power to compulsorily acquire that property for public purposes. It is incorrect to say that the vesting of these properties in the State under the provisions of the Act in any way affects the charity adversely because the net income that the institutions are deriving from the properties has been made the basis of compensation awarded to them.

215. Mr. Varma, who appeared in Appeal No. 295 of 1951, raised several new and ingenious points, none of which, however, he was able to substantiate. He contended that the impugned Act may not be void but the notification which the Government was authorized to issue under powers conferred on it by the statute would be void because the executive government could not infringe fundamental rights by a notification which remained unaffected by Articles 31 (4) and 31-A and B. The argument does not seem to be valid because it suffers from the defect that if the statute is good, the notification which is of a consequential nature cannot be held to be bad. It was next contended by the learned counsel that the zamindars had vested rights in existing law, namely, the Land Acquisition Act and the impugned statute could not deprive them of the benefits of the provisions of that Act. Similar argument was raised in the Bihar appeals and for the reasons given therein it is repelled. It was then contended that in view of the provisions of the Religious Endowments Act, lands of religious endowments could not be acquired under the provisions of the impugned statute. This contention seems to have been raised on some misapprehension as to the scope and extent of the Religious Endowments Act XX, 1863. It is not proved that that Act has any application to the properties sought to be acquired under the impugned Act. Moreover, that Act only deals with management of certain properties and does not stand in the way of their acquisition.

216. Great effort was made by Mr. Varma to establish that the impugned Act was a piece of fraud on the Constitution. It was contended that the U. P. Government had been since a long time enacting laws with the fraudulent intention of depriving the zamindars of compensation by reducing their incomes,-he made mention of half a dozen Acts that were enacted in U. P. prior to the impugned Act. The argument, to my mind, is based on a confusion of thought. The enactments referred to

were enacted by the legislature of U. P. between 1939 and 1949, before the Constitution came into force, and have no connection whatever with acquisition of properties.

217. Mr. Varma attacked the validity of S. 340 of the Act which enacts that:

"where any orders had been made.....or jurisdiction exercised under the provisions of the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, the provisions of the said Act shall be so read and construed as if the amendments mentioned in Schedule IV had been made therein and were in force from the commencement of the said Act."

It was contended that the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, was an existing law in U. P. and had not been repealed by the impugned Act and that being so, this Act could not validate notifications made under that existing law. I have not been able to see the force of this suggestion. Be that as it may, the constitutionality of this section does not affect the legislation as a whole. The point was never raised before the High Court and has no substance.

218. It was also contended that mere rights in land apart from the lands themselves could not be acquired under compulsory power and that the U. P. Legislature could not acquire proprietary rights in lands and leave the bhumidari rights with the landlords. This proposition sounds strange. It is open to Government to acquire the whole of the rights of an owner or a part of that right. Leasehold and other similar rights can always be acquired and if a person owns the totality of rights, it is not necessary to acquire the whole interest of that person if it is not needed for public purposes.

219. Lastly, it was urged that in truth the legislation in question fell under legislative power conferred by Entry 18 of List II and this power could only be exercised subject to the freedom guaranteed by Article 19 (f) of the Constitution, that the total abolition of the zamindaris could not be protected by the provisions of clause 6 of Art. 19 in that it could not be regarded a reasonable restriction on the exercise of the right to hold property. This argument loses sight of the fact that no help can be sought in these cases from any of the provisions of Part III; moreover, the legislation in question has been enacted under legislative powers given by Entry 36 of List II and not under Entry 18 of that list. Mr. Varma raised some other contentions also but during the discussion he eventually abandoned them.

220. The result therefore is that there is no substance in any one of the appeals and I would accordingly dismiss all of them. I would however, make no order as to costs in any of them in view of the peculiar circumstances of these cases. The Constitution was amended during the pendency of the litigation and any costs allowed to the Government would further reduce the inadequate compensation that the Government is paying for the acquisition of these estates.

221. **MUKHERJEA J.:** I agree that these appeals should be dismissed.

221a. **DAS J.:** This group of appeals arises out of various proceedings instituted in the High Court of Allahabad under Art. 226 of the Constitution questioning the validity of the Uttar Pradesh Zamindari Abolition and Land Reforms Act. 1950 (U. P. Act No. I of 1951) hereinafter referred to as the Act.

222. On August 8, 1946 the United Provinces Legislative Assembly passed a resolution accepting the principle of the abolition of the Zamindari system in the Province involving intermediaries between the cultivators and the State and resolving that the rights of such intermediaries should be acquired on payment of equitable compensation. To prepare the necessary scheme a Committee

called the Zamindari Abolition Committee, was appointed. That Committee submitted its report in August 1948 making various recommendations which have been summarised by Mr. S. K. Dar appearing for some of the appellants as follows:

1. Abolition of Zamindari on payment of Rs. 137 crores at 2 1/2 per cent interest;
2. Establishment of 'Gaon Samaj';
3. Supply of rural credit by Government;
4. Introduction of a modified form of peasant proprietorship combined with voluntary co-operative farming;
5. Introduction of a restricted form of Landlordism;
6. Prohibiting sub-letting and permitting alienation only to the extent that the alienee will not get more than 35 acres including his previous possessions.

To give effect to the recommendations of the Committee a Bill which eventually became the Act was introduced in the U. P. Legislative Assembly on July 17, 1949. After having been passed by the U. P. Legislature the Bill received the assent of the President on January 24, 1951. There is no dispute in this case that the provisions of Art. 31 (3) have been complied with. It is also clear, notwithstanding that at one stage it was disputed by one of the learned counsel evidently out of some misapprehension, that the Bill was pending before the Legislature at the commencement of the Constitution and comes within Art. 31 (4) of the Constitution.

223. The title and preamble of the Act follow the wording of the resolution of the Legislature. The preamble recites that it is expedient to provide for the abolition of the Zamindari system which involves intermediaries between the tillers of the soil and the State in the Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make a provision for other matters connected therewith. The body of the Act is divided into two parts, each part containing six chapters. Chapter II of Part I deals with acquisition; Chapter III with assessment of compensation and Ch. IV with payment of compensation Ch. V is concerned with rehabilitation grant while Ch. VI deals with mines and minerals. Ch. VII, which is in Part II. deals with constitution of 'Gaon Samaj' and 'Gaon Sabha'. Chapter VIII relates to tenure, Chapter IX to Adhivasis. Chapter X is concerned with land revenue and Chapter XI with co-operative farms. Chapter XII deals with miscellaneous matters. Broadly speaking the Act provides for acquisition of the interest of intermediaries for a compensation calculated at eight times the net income arrived at by deducting from the gross assets (Which are the same as the gross income) the Government revenues, cesses and local rates, agricultural income-tax and costs of management.

224. Before notification was issued by the State Government under S. 4 of the Act. The intermediaries filed petitions under Art. 226 of the Constitution praying 'inter alia', for the issue of a writ in the nature of 'mandamus' or other appropriate directions, orders or writs calling upon the State to forbear from giving effect to or acting in any manner by virtue of or under the Act. By a judgment of a Full Bench of the Allahabad High Court delivered on May 10, 1951, the petitions were dismissed. The High Court however, certified, under Art. 132(1) that the cases involved substantial questions of law as to the interpretation of the Constitution. The intermediaries accordingly have come up on appeal before us.

225. Mr. P. R. Das who appears in support of several of these appeals raises the same questions as were raised by him in the Bihar appeals. Other learned counsel appearing for the other appellants mainly supported Mr. P. R. Das and also sought to reinforce the appellants' cases on some additional grounds.

226. Mr. S. K. Dar has taken us through the provisions of the Act and drawn our attention to the facts and figures appearing in the affidavit of Sri J. Nigam filed in Appeal No. 285 of 1951 and the Report of the Zamindari Abolition Committee. He has contended that of the 20,16,783 Zamindars in U. P. about 20,00,000 are tillers of the soil also; that one fourth of the cultivable lands is with peasant proprietors and the remaining three-fourths is with tillers who pay rent to the Zamindars. Most of the tillers have occupancy rights and cannot be ejected. Since 1947, the Congress Government has carried out extensive agrarian reforms; the zamindars' profits have gone down from 1108 crores in 1939-40 to 1069 crores in 1945-46, that is to say, there has been a drop of about 39 crores cess has been raised by 27 lacs and income-tax has been imposed to the extent of about one crore of rupees. The price of agricultural produce has gone up by 400 per cent so that the price of produce aggregates to about rupees 851 crores while the rent payable by the tenants is only 17 crores. Therefore, it is contended that there does not appear any essential or urgent public purpose for which the impugned Act was necessary at all.

227. Dr. Ambedkar appearing for the appellants in Appls. Nos 285 and 288 of 1951 has addressed us at length as to the meaning of the expression "public purpose" as explained in various judicial decisions and text books. He has contended that it is wrong to say that the Act proposes to acquire the Zamindaries for the State. What he asks, is the destination of the property acquired. Under the Act the State assumes the function of a trustee for distributing the property. The main purpose of the Act is to convert the tenants into Bhoomidars. Sirdars and so on. The net result of the Act, according to him, is that the property of the Zamindars is taken away and vested in the tenants. He points out that the Act makes no provision for the landless labourers. Dr. Ambedkar maintains that this cannot be called 'acquisition for a public purpose'. He submits that public purpose must be distinguished from a mere public interest or public benefit or public utility. He further contends that the establishment of 'Gaon Samaj' cannot be said to be a public purpose.

228. As regards compensation Mr. Dar points out that in fixing compensation under Table A, regard is to be had only to income. Non-income yielding property goes without any compensation e.g., culturable waste. In point of fact Government acquired a large area of culturable waste at Rs. 300 per acre and yet no compensation will be paid under the Act for culturable waste. Abadi sites also will bring no compensation. Even income yielding property e.g., irrigation works like 600 miles of canal in Balrampur and 143 1/2 miles in Bird estate will yield no compensation although the Government will get additional revenue out of them. Scattered trees in Balrampur alone will come up to 85,000 in number. The income of Seyer property will only be taken at the figure recorded in Khataunis, although it is well known that actual incomes are not recorded therein. Seyer and 'khud khist' were never assessed to revenue but under the Act they will be so assessed. No compensation is, however, provided for the loss of status from Zamindari to Bhoomidari. Rent-free holding granted by the Zamindar which at present yield no income are not taken into account although there is always a possibility of their resumption. Agricultural income-tax is deducted and forest is valued on an average of 20 to 40 years' income, although forest industry is of a very recent growth. Finally the income of mines is to be computed on an average of 12 years' income. The undeveloped mines or mines which have not started yielding any income will not fetch any compensation. These are, in shot, the main objection of the landlords as summarises by Mr. S. K. Dar as to the method of assessment of compensation.

As regards the manner of payment of compensation Mr. S. K. Dar points out that the Act does not really provide for payment of compensation at all in the eye of the law. Under Section 68 no time is fixed for payment. It is left to be prescribed by rules, but no rules have been made. Compensation payable, say in 40 years or 50 years or 200 years, may be a charity or a dole but is certainly not compensation, prompt and certain such as is contemplated by the decision of the United States Supreme Court in 'WILLIAM A. SWEET V. CHRISTIAN RECHEL', (1895) 40 Law Ed 183 at pages 196-197 and several other cases cited by him. He maintains that the compensation is illusory because-

- (i) it is based not on the actual income but on arbitrarily determined income;
- (ii) the determination of time and manner of payment is left entirely at the discretion of the appropriator, and
- (iii) the source of payment is not the community as a whole but the expropriated proprietors' own property.

229. In my judgment in the Bihar appeals I have dealt at length with the meaning of 'public purpose' and I have also dealt with the question of compensation. It is, therefore, unnecessary for me to reiterate the principles as I apprehend them. For reasons stated by me in that judgment the impugned Act cannot be questioned on the ground of absence of a public purpose or absence of just compensation. If anything the public purpose in the impugned Act is much more evident and pronounced than it is in the Bihar Land Reforms Act. It is impossible to say that the impugned Act is not a law with respect to principles on which compensation is to be determined and the manner of its payment. If the Government does not prescribe how much of the compensation will be paid in cash and how much will be paid by bonds as mentioned in S. 18 the intermediaries will not suffer because under Section 65 their right will remain enforceable.

230. I have also dealt with the questions of fraud on the Constitution and the improper delegation of essential legislative power in my judgment in the Bihar appeals and I need not repeat the answers given by me. Suffice it to say that for reasons stated in my judgment in the Bihar appeals the main grounds on which the Act is impugned must be rejected.

231. Dr. Ambedkar has urged that the spirit of the Constitution is a valid test for judging the constitutionality of the impugned Act. He maintains that our Constitution being one for establishing liberty and equality and a government of a free people it must be held to contain an implied prohibition against the taking of private property except for a public purpose and on payment of just compensation. The necessity for the existence of a public purpose and for providing or compensation are as I have said in my judgment in the Bihar appeals, provisions of Article 31 (2) and, therefore, it is not necessary to have recourse to any spirit of the Constitution, for the letter of the Constitution itself requires the two requisites. Dr. Ambedkar, however, argues that, so far as the appellants are concerned, Part III of the Constitution does not exist and therefore the maxim 'expressum facit cessare taci-tum' does not apply. I am not prepared to accept this argument as sound. It is true that the appellants cannot question the impugned Act on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provisions of Part III, but this circumstance does not imply that Part III is wholly erased out of the Constitution. It exists for all other purposes. For instance, Article 31-A protects a law providing for acquisition by the State of any estate, but it does not protect a law providing for acquisition by the State of any property which does not come within the expression 'estate' as defined in that Article. For all laws

for acquisition of all other properties Part III certainly exists and if it is conceded that the provisions of Part III exist in so far as such other laws are concerned, the provision of Art. 31(2) requiring the existence of a public purpose and the provision for compensation must exclude any theory of the implied existence of those two requirements. In the next place, the spirit of the constitution has to be inferred from some provision, express or implied, of the Constitution.

Mr. P. R. Das based his argument of the implications to be deduced from the language of Entry 36 in List II and Entry 42 in List III. Dr. Ambedkar, however, says that it is not necessary for him to go to any entry at all. He points out that the American Courts have held that where in a Constitution there is a representative form of government in which there is liberty and equality and when the Government is a limited one such a constitution carries with it the implication that the State cannot take private property except for a public purpose and on payment of compensation. I find it very difficult to accept this argument. The existence of a public purpose and the necessity for payment of compensation have been insisted upon from very old times when the constitutions of Governments in different countries were entirely different from the Constitution of the United States. It follows, therefore, that these two elements cannot be said to be an inherent part of the spirit of any particular form of government. Our Constitution has in Art. 31(2) recognised the existence of the two elements as a prerequisite to the exercise of the power of eminent domain. The impugned Act having been expressly taken out of the operation of those provisions, the question of invoking any imaginary spirit of the Constitution cannot be entertained. Indeed, invocation of such an imaginary spirit will run counter to the express letters of arts. 31(4), 31-A and 31-B.

232. Dr. Ambedkar appearing for the Maharaja of Kapurthala, who is the appellant in Case No. 289 of 1951, has also raised the point that the private property of the appellant is protected by Art. 362 of the Constitution and as the impugned Act does not pay any regard to those rights it is void. On May 5, 1948 certain covenants of merger were entered into between the rulers of seven Punjab States. Under Article 12 of the covenant each ruler is to be entitled to the ownership, use and enjoyment of all private properties. A list was furnished to the Rajpramukh in which certain Oudh properties belonging to the appellant were shown as his private property. The appellant states that the amount of his privy purse was fixed at a low figure in consideration of the income of the Oudh estate. These allegations are not admitted by the respondents. I have already dealt with the correctness of a similar argument raised by Dr. Asthana on behalf of the ruler of Khairagarh in petition No. 268 of 1951 which was concerned with the Madhya Pradesh Act. Shortly put, my view is that this claim to the private property is not within Article 362, that by offering him compensation the act has recognised his ownership, that, in any event that Article imposes no legal obligation on the Parliament or the State Legislature and, finally, that Article 363 bars the jurisdiction of this Court with respect to any dispute arising out of the covenant of merger. Those covenants were entered into by the seven rulers and the Government of the Dominion of India was a party thereto in that it concurred in the covenants and guaranteed the same. In my opinion, for reasons stated in my judgment in the Madhya Pradesh petitions there is no substance in this point.

233. Dr. Asthana appearing for certain religious institutions which are appellants in appeals Nos. 291 to 294 of 1951 contended that their property already dedicated to a public purpose cannot be acquired for another public purpose. I see no substance in this contention. The property belonging to the religious institutions will only change its form, namely, from immovable property into money.

234. Certain subsidiary points raised by Mr. Bishun Singh and Mr. Prem Manohar Verma have been dealt with by my learned brother Mahajan J. and it is unnecessary for me to add anything thereto.

235. In my judgment, for reasons stated in my judgments in the Bihar appeals and the Madhya Pradesh petitions and those mentioned above, these appeals should be dismissed.

236. **CHANDRASEKHARA AIYAR J.:** I agree that the appeals should be dismissed without any order as to costs.

237. **BY THE COURT:** The result is that the Bihar Land Reforms Act. 1950, is declared to be valid except as regards S. 4 (b) and S. 23 (f) which are declared to be unconstitutional and void. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, and the Uttar Pradesh Zamindari Abolition and Land Reforms Act. 1950, are declared to be valid in their entirety. Orders will issue accordingly in individual cases. We make no order as to costs in any of them. Interim stay orders are discharged.

Orders accordingly.

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