Atma Ram

Vs

The State of Punjab and Others

Petitions Nos. 176, 177 and 253 of 1956; 34, 35, 51-53, 69, 70, 75, 94 & 137 of 1957; 34, 58, 72, 90, 92, 106, 109 & 115 of 1958

(CJI S. R. Dass, N. H. Bhagwati, B. P. Sinha, K.Subha Rao, K. N. Wanchoo JJ)

08.12.1958

JUDGMENT

SINHA, J. -

These petitions under Article 32 of the Constitution impugn the constitutionality of the Punjab Security of Land Tenure Act (Punj. X of 1953) (which will be referred to hereinafter as the Act), as amended by Act XI of 1955. The petitioners are land-owners of the lands affected by the provisions of the impugned Act. The State of Punjab and its officers, besides persons claiming benefits under the Act, are the respondents in these several petitions.

The impugned Act has a history which may shortly be set out. With a view to providing for the security of tenure to tenants, the Punjab Tenants (Security of Tenure) Ordinance IV of 1950, was promulgated with effect from May 13, 1950. That Ordinance was replaced by the Punjab Tenants (Security of Tenure) Act XII of 1950, which came into force on November 6, 1950, on the date on which it was first published in the Punjab Government Gazette. The Act prescribed a limit of one hundred standard acres of land (equivalent to two hundred ordinary acres) which could be held by a land-owner for his "self-cultivation"; and it was termed "permissible limit" - (section 2(3)). Any land-owner having land in excess of the "permissible limit", was authorized by section 3 to select for "self-cultivation", land out of the entire area held by him in the State of Punjab, as land-owner, and reserve it for his own use to the extent of the "permissible limit". This "right of reservation" had to be exercised, first, in respect of land in his self-cultivation; and if the extent of such land fell short of the "permissible limit", he could, under section 4, make up the deficiency by ejecting tenants under him in respect of such lands as fell within his reserved area. Section 5 fixed the minimum period of tenancy as four years, subject to certain exceptions set out in section 6. These were some of the salient features of the Act of 1950, which itself was amended by the Punjab Tenants (Security of Tenure) Act (Punj. V of 1951), which came into force on December 24, 1951. By the amending Act, the "permissible limit" was reduced to 50 standard acres equivalent to 100 ordinary acres, and the minimum period of tenancy was raised to five years. It also made provisions for preferential right of pre-emption - (section 12A), and conferred a right of purchase on the tenant in respect of land in his possession - (section 12B), subject to certain exceptions - (section 12C). Another legislation in this series was the Prevention of Ejectment (Temporary Powers) Ordinance No. 1 of 1952, which came into force on June 11, 1952. Then, came the Punjab Security of Land Tenure Act (Punj. X of 1953), now impugned, which repealed the aforesaid Acts XII of 1950 and V of 1951. It came into force on April 15, 1953. This Act itself was amended by Act LVII of 1953 and Act XI of 1955. Though this Act has undergone subsequent amendments in 1957 and 1958, we are not concerned with those amendments, because they came into existence after this Court was moved

under Article 32 of the Constitution. We are concerned with the state of the law as it stood after the amendment of 1955, aforesaid.

Before dealing with the grounds of attack urged against the impugned Act, it is convenient to set out, in a nut-shell, the salient provisions of the Act, which have given rise to the present controversy, and which give an idea of the scope and nature of the legislation now under examination. The Act has a short Preamble, namely, "to provide for the security of land tenure and other incidental matters". The Act further reduces the "permissible area" (section 2(3)) in relation to a landlord or a tenant, to 30 standard acres equivalent to 60 ordinary acres, thus, releasing a larger area for re-settlement of tenants ejected or to be ejected under the provisions of the Act. So to say, it creates a pool of "surplus area" (section 2(5-a)), meaning thereby the area other than the "reserved area" in excess of the "permissible area", as aforesaid. "Reserved area" means the area lawfully reserved by the landlord under the provisions of the two Acts aforesaid, which were repealed by the Act - (section 2(4)). The definition of a tenant under the Act, includes a sub-tenant and a self-cultivating lessee - (section 2(6)). As already indicated, a tenant also may be liable to be ejected from any area which he holds in any capacity whatever in excess of the "permissible area". Section 10-A authorizes the State Government or any officer empowered by it in this behalf, to utilize any "surplus area" for re-settlement of tenants ejected or to be ejected under the provisions of section 9(i). But a tenant inducted on to such "surplus area", holds the land under the land-owner, who, thus, becomes entitled to receipt of rent from the tenant. Section 12 lays down the maximum rent payable by a tenant. Section 17 recognizes the rights of certain tenants to pre-empt sales or fore-closure of land. Section 18, which formed the subject-matter of the most vehement attack on behalf of the petitioners, confers upon the tenants of the description given in the several clauses of the Act, the right to purchase from the land-owner the land held by them, subject to certain exceptions, and subject to the payment in a lump sum or in six monthly instalments not exceeding ten, of the purchase-price to be determined in accordance with clauses (2) and (3) of section 18. Section 23 invalidates any decree or order of any court or authority, or a notice of ejectment, which is not consistent with the provisions of the Act. Thus, the Act seeks to limit the area which may be held by a land-owner for the purpose of self-cultivation, thereby, releasing "surplus area" which may be utilized for the purpose of resettling ejected tenants, and affording an opportunity to the tenant to become the land-owner himself on payment of the purchase-price which, if anything, would be less than the market value. It, thus, aims at creating what it calls a class of "small land-owners", meaning thereby, holders of land not exceeding the "permissible area" - (section 2(2)). The utmost emphasis has been laid on self-cultivation which means "cultivation by a land-owner either personally or through his wife or children, or through such of his relations as may be prescribed, or under his supervision" - (section 2(9)).

The arguments at the Bar, on behalf of the petitioners may be put under three main heads, namely, (1) that the Legislature had no legislative competence to enact the Act, (2) that the provisions of the Act contravene the petitioners' fundamental rights enshrined in Articles 14, 19(1)(f) and 31 of the Constitution, and (3) that certain specified provisions of the Act amount to unreasonable restrictions on the petitioners' rights to hold and dispose of property.

At the outset, it is necessary to deal with the question of legislative competence, which was raised on behalf of some of the petitioners, though not on behalf of all of them. This argument of want of legislative competence goes to the root of the impugned Act, and if it is well-founded, no other question need be gone into. It has been argued that Entry 18 in List II of the Seventh Schedule to the Constitution, should not be read as authorizing the State Legislature to enact a law limiting the extent of the land to be held by a proprietor or a landowner. Entry 18 is in these words :-

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

It will be noticed that the Entry read along with Article 246(3) of the Constitution, has vested exclusive power in the State to make laws with respect to "rights in or over land, land tenures including the relation of landlord and tenant...." The provisions of the Act set out above, deal with the landlord's rights in land in relation to his tenant, so as to modify the landlord's rights in land, and correspondingly, to expand the tenant's rights therein. Each of the expressions "rights in or over land" and "land tenures", is comprehensive enough to take in measures of reforms of land tenures, limiting the extent of land in cultivating possession of the land-owner, and thus, releasing larger areas of land to be made available for cultivation by tenants.

Counsel for some of the petitioners who challenged the legislative competence of the State Legislature, were hard put to it to enunciate any easily appreciable grounds of attack against Entry 18 in List II of the Seventh Schedule. It was baldly argued that Entry 18 aforesaid, was not intended to authorize legislation which had the effect of limiting the area of land which could be directly held by a proprietor or a land-owner. It is difficult to see why the amplitude of the words "rights in or over land" should be cut down in the way suggested in this argument. A similar argument was advanced in the case of The United Provinces v. Mst. Atiqa Begum ([1940] F.C.R. 110). In that case, the United Provinces Regularization of Remissions Act, 1938 (U.P. XIV of 1938), was challenged. One of the main provisions of that Act had validated remission of rent. It had been argued that the United Provinces Legislature was not competent to legislated about the remission of rent, when the relevant words in Entry 21, relating to land in the Provincial List of the Seventh Schedule to the Constitution Act of 1935, were "collection of rents". Entry 21 relating to "land" had added certain words by way of explanation and illustration of the intention of the Constitution-makers, so as to indicate that the word "land" was meant to be used in its widest connotation. A member of the Full Bench of the Allahabad High Court, in his judgment which was the subject-matter of the appeal to the Federal Court, had come to the conclusion that Item No. 21 aforesaid, including the words "collection of rents", had not authorized the Provincial Legislature to validate remission of rent. That conclusion was not upheld by the Federal Court which held that remission of rent was a matter covered by Item No. 21, and it was, therefore, within the competence of the Provincial Legislature to enact the impugned Act; and Gwyer, C.J., in the course of his judgment observed that the Items in the several lists of the Seventh Schedule, should not be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary and subsidiary matters which could fairly and reasonably be said to be comprehended in it.

The same Item 21 in List II (Provincial List) of the Seventh Schedule to the Constitution Act of 1935, came up for consideration before the Judicial Committee of the Privy Council on appeal from he Federal Court of India in Megh Raj v. Allah Rakhi ((1946) L.R. 74 I.A. 12) affirming the judgment of the Lahore High Court. In that case, the Punjab Restitution of Mortgaged Lands Act (Punj. IV of 1938) had been challenged as ultra vires. By that Act, the Legislature had provided for redemption of mortgages on terms much less onerous than the terms of the mortgages-deeds. Their Lord-ships of the Judicial Committee of the Privy Council repelled the contention raised on behalf of the appellants that the words of Item No. 21, were not wide enough to comprehend the relationship of mortgagor and mortgagee in respect of agricultural land. Their Lordships observed that Item 21 aforesaid, forming a part, as it did, of the Constitution, should, on ordinary principles, receive the widest construction, unless, for some reasons, it is cut down either by the terms of that item itself, or by other parts of the Constitution, which have, naturally, to be read as a whole; and

then proceeded to make the following very significant observations :-

> "As to item 21, "land", the governing word, is followed by the rest of the item, which goes on to say, 'that is to say'. These words introduce the most general concept - 'rights in or over land'. 'Rights in land' must include general rights like full ownership, or leasehold or all such rights. 'Rights over land' would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters : thus there are the words 'relation of landlord and tenant, and collection' of rents".

Thus, their Lordships concluded that the Item 21 relating to land, would include mortgages as an incidental and ancillary subject.

Another branch of the same argument was that Entry 18 could not cover the determination of the relation of landlord and tenant, which is envisaged by some of the provisions of the Act, particularly section 18, which has the effect of converting the tenant into a land-owner himself, by virtue of the purchase. This argument is also disposed of by the judgment of the Federal Court in United Provinces v. Atiqa Begum ((1940) F.C.R. 110).

It was next contended that Entry 18 has got to be read with Article 19(5), in order to determine the legislative competence in enacting the impugned statute. In other words, it was contended that clause (5) of Article 19 of the Constitution, is in the nature of a proviso to the Entry; and that the Entry so read along with Article 19(5), lays down the test of the legislative competence. This argument is easily disposed of with reference to the provisions of Article 31-A of the Constitution. If it is held that the provisions of the impugned statute lay down the law for the modification of rights in estates, as defined in sub-Article. (2) of Article 31A, none of the grounds of attack founded on any of the provisions of Articles 14, 19 or 31, can avail the petitioners. As will presently appear, the Act lays down provisions which are in the nature of modifications of rights in estates within the meaning of Article 3A(1). That being so, Article 19(5) is wholly out of the way in this case. In view of all these considerations, it must be held that there is no legal foundation for the contention that the impugned Act is beyond the legislative competence of the State Legislature.

Having dealt with the question of legislative competence, we have to deal with the several contentions raised on behalf of the petitioner, with reference to the provisions of Articles 14, 19 and 31 of the Constitution. On this part of the case, it has rightly been conceded on behalf of the petitioners that if the impugned Act comes within the purview of any of the clauses of Article 31A, the law will be immune from attack on any of the grounds based on the provisions of Articles 14, 19 and 31. But it has been argued that the provisions of Article 31A(1)(a), which are admittedly the only portions of the Article, which are relevant to the present inquiry, are not attracted to the impugned Act. It has been conceded on behalf of the respondents that the Act does not provide for the acquisition by the State of any estate or of any rights in any estate. Hence, the crucial words which must govern this part of the controversy, are the words "the extinguishment or modification of any such rights"; that is to say, we have to determine whether or not the impugned Act provides for the extinguishment or modification of any rights in "estates". Article 31A(2) defines what the expression "estate" used in Article 31A means. According to that definition, "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 and in the States of Madras and Kerala, any janmam right". It

is common ground that we have to turn to the definition of an estate, as contained in the Punjab Land-Revenue Act XVII of 1887. Section 3(1) of that Act has the following definition :-

"(1) "estate" means any area -

(a) for which a separate record-of-rights has been made; or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land revenue had not been released, compounded for or redeemed; or

(c) which the (State) Government may, by general rule or special order, declare to be an estate".

Clause (c) of the definition is out of the way, because it has not been claimed that the State Government has made any declaration within the meaning of that clause. Estate, therefore, for the purposes of the present controversy, means any area for which a separate record-of- rights has been made, or which has been separately assessed to land revenue (omitting the unnecessary words). In this connection, it is also necessary to refer to the definition of a holding in section 3(3) in the following terms :-

"(3) "holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners".

It was not controverted at the Bar that in Punjab, there are very few estates as defined in section 3(1), quoted above, in the sense that one single land-owner is seized and possessed of an entire estate which is equated with a whole village. In other words, in Punjab, an estate and a village are inter-changeable terms and almost all villages are owned in parcels, as holdings by co-sharers, most likely, descendants of the holder of a whole village which came to be divided amongst the co-sharers, as a result of devolution of interest. The parties were also agreed that the impugned Act deals with holdings, as defined in the Land-Revenue Act, or shares or portions thereof. The argument on behalf of the petitioners to get over the provisions of Article 31A, is that the Act does not deal with any estate or any rights therein, but only with holdings or shares or portions thereof. This argument proceeds on the assumption that holdings are not any rights in an estate. If the petitioners are right in their contention that the immunity granted by Article 31A of the Constitution, is available only in respect of entire estates and not portions of estates, then the argument on behalf of the respondents that the Act is saved by the provisions of that Article fails in limine. If, on the other hand, it is held that Article 31A applies not only to entire estates or any rights therein, but also to shares or portions of an estate or rights therein, then all the arguments advanced on behalf of the petitioners, founded on the provisions of Articles 14, 19 and 31, are thrown overboard. Therefore, it becomes necessary to consider the amplitude of the expression "any estate or of any rights therein" in Article 31A(1)(a). Rights in an estate may be either quantitative or qualitative. That is to say, rights in an estate may be held by persons having different qualities of rights in lands constituting an estate, as a result of sub-infeudation. Generally speaking and omitting all references to different kinds of land tenures prevailing in different parts of India, it may be said that at the apex of the pyramid, stands the State. Under the State, a large number of persons variously called proprietors, zamindars, malguzars, inamdars and jagirdars, etc., hold parcels of land, subject to the payment of land revenue designated as peshkash, quit-rent or malguzari, etc., representing the Government demands by way of land-tax out of the usufruct of the land constituting an estate, except where Government demands had been excused in whole or in part by

way of reward for service rendered to the State in the past, or to be rendered in the future. An estate, thus, is an area of land which is a unit of revenue assessment, and which is separately entered in the Land Revenue Collector's register of revenue-paying or revenue-free estates. A single estate, unless governed by the Rule of Primogeniture, would, in course of time, be held by a number of persons in the same rights as co-sharers in the estate. Those several co-sharers are all jointly and severally liable for the payment of the Government demands, if any, though, by an arrangement with the Revenue Department, they may have had a distribution made of the total Government demands as payable in respect of aliquot portions of the estate. Generally speaking, in the first instance, each sharer in an estate is liable to pay his portion of the land-revenue, but if, for any reasons, the Government demands cannot be realized from any defaulting share primarily liable for them, the entire estate, including the shares of those who may not be the defaulting proprietors, is liable to be sold or otherwise dealt with for the realization of those demands. Thus, the unity of assessment of land revenue in respect of the entire estate remains intact. In actual practice, the holder of each specified portion or share of an estate, holds his portion for his own exclusive use and occupation. Such a sharer in an estate in Punjab is known as the land-owner of a "holding". But such holding still continues to be a portion or a share of the estate out of which it has been carved. Such a division of an estate is quantitative or a vertical division of an estate. But there may also be a horizontal or qualitative division of the lands in an estate, effected by the process of sub-infeudation. Continuing the illustration of the pyramid, generally speaking, the lands in an estate may in their entirety or in portions, be let out to what, in Eastern India, are known as tenure-holders, for example, patnidars, in areas covered by the Permanent Settlement. Tenure-holders were persons who took lands of an estate not necessarily for the purpose of self-cultivation, but also for settling tenants on the land, and realizing rents from them. These patnidars may have darpatnidars under them, and darpatnidars, sepatnidars, and in this way, the sub-infeudation went on. All these classes are included within the terms "tenure-holders", "sub-proprietors" or "under-proprietors". The persons who are inducted on to the land for bringing it under their direct cultivation, are generally known in Eastern India as raiyats with rights of occupancy in the land held by them. But raiyats, in their turn, may have inducted tenants under them in respect of the whole or a portion of their holding. The tenant holding under a raiyat is known as an under-raiyat, and an under-raiyat may induct a tenant under himself, and he will be an under-raiyat of the second degree. Thus, in each grade of holders of land, in the process of sub-infeudation described above, the holder is a tenant under his superior holder, the landlord and also the landlord of the holder directly holding under him. Thus, in Eastern India, the interest of intermediaries between the proprietor of an "estate" at the top and the actual tiller of the soil at the bottom, is known as that of a "tenure-holder", and the interest of tenants other than tenure-holders, is given the generic name of a "holding". A holding in Eastern India, thus, indicates the interest of the actual tiller of the soil - raiyat or under-raiyat - unlike the "holding" in Punjab where, as indicated above, its signifies the interest of the holder of a share in an estate. Thus, holdings in Punjab are vertical divisions of an estate; whereas in Eastern India, they represent a horizontal division, connoting a lesser quality of an estate in land than the interest of a tenure-holder in his tenure, or of a land-owner in his estate or portion of an estate. It is not necessarily true that there should be intermediaries in every estate or a portion of an estate, Very often, the holder of an estate may be holding his entire estate directly in his possession by way of khud-kasht, zeerat, kamath or neezjote, or it may be that the proprietor has only raiyats under him without the intermediation of tenure-holders, and the raiyats may not have any under-raiyats under them. The process of sub-infeudation described above, naturally, varies with the size of the estate. It appears to be common ground in this case that in Punjab, an estate means the whole village, whereas in Eastern India, an estate may comprise a whole district or only a cluster of villages, or a single village, or event a part of a village. The larger the size of an estate, the greater the process of

sub-infeudation and vice versa. In Punjab, as there was no permanent settlement of Revenue as in Bengal, Bihar, Orissa and other parts of Eastern India, the unit of revenue assessment has been the village. Thus a holding in Punjab means a portion of a village either big or small. That portion may be in the direct possession of the land-owner himself, or he may have inducted tenants on a portion or the whole of his holding. The interest of the tenant in Punjab, appears to have been a precarious tenure, even more precarious than that of an under raiyat in Eastern India. The Punjab Legislature, realising that the interest of a tenant was much too precarious for him to invest his available labour and capital to the fullest extent so as to raise the maximum quality and quantity of money crops or other crops, naturally, in the interest of the community as a whole, and in implementation of the Directive Principles of State Policy, thought of granting longer tenures, and as we have seen above, the period have been progressively increased until we arrive at the stage of the legislation now impugned, which proposes to create a large body of small land-owners who have a comparatively larger stake in the land, and consequently, have greater impetus to invest their labour and capital with a view to raising the maximum usufruct out of the land in their possession.

Keeping in view the background of the summary of land tenures in Punjab and elsewhere, we have to construe the amplitude of the crucial words "any estate or of any rights therein" in Article 31A(1)(a). Soon after the coming into effect of the Constitution, the different States in India embarked upon a scheme of legislation for reforming the system of land-holding, so as (1) to eliminate the intermediaries, that is to say, those who hold interest in land in between the State at the apex and the actual tillers of the soil - in other words, to abolish the class of rent-receivers, and (2) to create a large body of small land-holders who have a permanent stake in the land, and who are, therefore, interested in making the best use of it. As the connotation of the term "estate" was different in different parts of the country, the expression "estate" described in clause (2) of Article 31A, has been so broadly defined as to cover all estates in the country, and to cover all possible kinds of rights in estates, as shown by sub-clause (b) of clause (2) of Article 31A, which is in these terms :-

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

The expression "rights" in relation to an estate has been given an all inclusive meaning, comprising both what we have called, for the sake of brevity, the "horizontal" and "vertical" divisions of an estate. A proprietor in an estate may be the proprietor holding the entire interest in a single estate, or only a co-sharer proprietor. The provisions aforesaid of Article 31A, bearing on the construction of the expression "estate" or "rights" in an estate, have been deliberately made as wide as they could be, in order to take in all kinds of rights - quantitative and qualitative - in an area co-extensive with an estate or only a portion thereof. But it has been suggested that the several interests indicated in sub-clause (b), quoted above, have been used with reference to the area of an entire estate, but knowing as we do, that a raiyat's or an under-raiyat's holding generally is not co-extensive with the area of an entire estate but only small portions thereof, it would, in our opinion, be unreasonable to hold that the makers of the Constitution were using the expression "estate" or "rights" in an estate, in such a restricted sense. Keeping in view the fact that Article 31A was enacted by two successive amendments - one in 1951 (First Amendment), and the second in 1955 (Fourth Amendment) - with retrospective effect, in order to save legislation effecting agrarian reforms, we have every reason to hold that those expressions have been used in their widest amplitude, consistent with the purpose behind those amendments. A piece of validating enactment purposely introduced into the Constitution with a view to saving that kind of legislation from attacks on the ground of

constitutional invalidity, based on Articles 14, 19 and 31, should not be construed in a narrow sense. On the other hand, such a constitutional enactment should be given its fullest and widest effect, consistently with the purpose behind the enactment, provided, however, that such a construction does not involve any violence to the language actually used.

Another branch of the same argument was that if the makers of the Constitution intended to include within the purview of Article 31A, not only entire estates but also portions thereof, nothing would have been easier than to say so in terms, and that in the absence of any specific mention of "portions of an estate", we should not read that article as covering "portions of an estate" also. In our opinion, there is no substance in this contention, because they must be attributed full knowledge of the legal maxim that "the greater contains the less" - Omne Majus continet in se minus. In this connection, our attention was invited to the decision of a Full Bench of the Punjab High Court in the case of State of Punjab v. S. Kehar Singh ((1958) 60 P.L.R. 461), to the effect that a holding being a part of an estate, was not within the purview of Article 31A of the constitution. In this connection, it is necessary to state the conflict of views in that High Court itself. In the case of Bhagirath Ram Chand v. State of Punjab (A.I.R. 1954 Pun. 167), the validity of the very Act impugned before us, was challenged on grounds based upon Articles 14, 19 and 31 of the Constitution. The learned Judges constituting the Full Bench, unanimously held that the impugned Act did not infringe those provisions of the Constitution, and the restrictions on the right of land-holding, imposed by the Act, were reasonable, and that the classification did not exceed the permissible limit. But they also held that the Act was saved by Article 31A of the Constitution, which applied equally to an entire estate or to a portion thereof. Besides giving other reasons, which may not bear close scrutiny, they made specific reference to the doctrine that the whole includes the part. Thus, the Full Bench specifically held that Article 31A of the Constitution applied equally to portions of estates also. This decision of the Full Bench was followed by a Division Bench of the same High Court, consisting of Bhandari, C.J., and Dulat, J., in the case of Hukam Singh v. The State of Punjab ((1955) 57 P.L.R. 359). That Bench was concerned with the provisions of another Act - Punjab Village Common Lands (Regulation) Act, 1954. In that case, the Division Bench, naturally, followed the decision of the Full Bench in so far as it had ruled that the 'whole' includes the part, and that where an Act provides for rights in an estate, it provides for rights in a part of an estate also. The later Full Bench case referred to above, was decided by three Judges, including Bhandari, C.J., who agreed with the judgment of the Court delivered by Grover, J. Perhaps, the better course would have been to constitute a larger Bench, when it was found that a Full Bench of three Judges, was inclined to take a view contrary to that of another Full Bench of equal strength. Such a course becomes necessary in view of the fact that otherwise the subordinate courts are placed under the embarrassment of preferring one view to another, both equally binding upon them. In our opinion, the view taken by the earlier Full Bench is the correct one. The learned Chief Justice who was a party to both the conflicting views on the same question, has not indicated his own reasons for changing his view. The Full Bench has accepted the force of the legal maxim that the greater contains the less, referred to above, but has not, it must be said with all respect, given any good reasons for departing from that well-established maxim. The judgment of the Full Bench on this part of the case is based entirely upon the definition of an estate, as contained in the Punjab Land Revenue Act, set about above. It has not stopped to consider the further question why a holding, which is a share or a portion of an estate, as defined in the Punjab Act, should not partake of the characteristics of an estate. Keeping in view the background of the legislative history and the objective of the legislation, is there any rational reason for holding that the makers of the Constitution thought of abolishing only intermediaries in respect of an area constitution one entire estate but not of a portion thereof ? On the other hand, as indicated above, they have used the expression "estate" in an all-inclusive sense. They have not stopped at that; they

have also added the words "or any rights therein". The expression "rights" in relation to an estate again has been used in a very comprehensive sense of including not only the interests of proprietors or sub-proprietors but also of lower grade tenants, like raiyats or under-raiyats, and then they added, by way of further emphasizing their intention, the expression "other intermediary", thus, clearly showing that the enumeration of intermediaries was only illustrative and not exhaustive. If the makers of the Constitution have, thus, shown their intention of saving all laws of agrarian reform, dealing with the rights of intermediaries, whatever their denomination may be, in our opinion, no good reasons have been adduced in support of the view that portions or shares in an estate are not within the sweep of the expression "or any rights therein". A recent decision of this Court in the case of Ram Narain Medhi v. The State of Bombay ([1959] Supp. (1) S.C.R. 489) dealt with the constitutionality of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956, which contains similar provisions with a view to doing away with intermediaries, and establishing direct relationship between the State and tillers of the soil. In that case also, the contention had been raised that the expression "estate" had reference to only alienated lands and not to unalienated lands, and this Court was invited to limit the meaning of the expression in the narrower sense. This Court repelled that contention in these words :-

> "If the definition of the expression "estate" in the context of the Code is thus clear and unambiguous as comprising both the types of lands, there is no reason why a narrower construction as suggested by the petitioners should be put upon the expression "estate" ..... Even if there was any ambiguity in the expression, the wider significance should be adopted in the context of the objectives of the Act as stated above."

These observations apply with full force to the contention raised on behalf of the petitioners in the present cases also.

Another branch of the same argument as to why the provisions of Article 31A do not apply to the Act, is that the Act did not have the effect of either extinguishing or modifying any rights in any estate, assuming that the expression "estate" includes reference also to parts of an estate. In this connection, it is contended that the provisions of the Act impugned in these cases, did not amount to the extinguishment of the interest of the land-owners in estates or portions thereof, and that what the Act did was to transfer some of the rights of the land-owners to their tenants. In this connection, reliance was placed on the observations of this Court in the case of Thakur Raghubir Singh v. Court of Wards, Ajmer ([1953] S.C.R. 1049, 1055, 1056), where Mahajan, J. (as he then was), speaking for the Court, observed that the expressions "extinguishment" and "modification" used in Article 31A of the Constitution, meant extinguishment or modification respectively of a proprietary right in an estate, and should not include, within their ambit, a mere suspension of the right of management of an estate for a time definite or indefinite. Those observations must be strictly limited to the facts of that case, and cannot possibly be extended to the provisions of Acts wholly dissimilar to those of the Ajmer Tenancy and Land Records Act, XLII of 1950, which was the subject-matter of the challenge in the case then before this Court. This Court held, on a construction of the provisions of that Act, that they only suspended the right of management but did not amount to any extinguishment or modification of any proprietary rights in an estate. The provisions of the Act then under consideration of this Court, have absolutely no resemblance to those of the Act now before us, and it is impossible to put a similar interpretation on these provisions. In the recent decision of this Court (not yet reported (Since reported as Sri. Ram Narain Medhi v. The State of Bombay, [1959] Supp. (1) S.C.R. 489)), this Court had been invited to apply the observations of this Court referred to above, to the provisions of the Bombay Act. It was pointed out in that case that those

observations of Mahajan, J. (as he then was), must be read as limited to an Act which only brings about a suspension of the right of management of an estate, and could not be extended to the provisions of an Act which either extinguishes or modifies certain rights of a proprietor in an estate or a portion thereof.

In this connection, it was further argued that extinguishment of a right, does not mean substitution of another person in that right, but total annihilation of that right. In our opinion, it is not necessary to discuss this rather metaphysical argument, because, in our opinion, it is enough for the purpose of this case to hold that the provisions of the Act, amount to modification of the landowner's rights in the lands comprised in his "estate" or "holding". The Act modifies the land-owner's substantive rights, particularly, in three respects, as indicated above, namely, (1) it modifies his right of setting his lands on any terms and to any one he chooses; (2) it modifies, if it does not altogether extinguish, his right to cultivate the "surplus area" as understood under the Act; and (3) it modifies his right of transfer in so far as it obliges him to sell lands not at his own price but at a price fixed under the statute, and not to any one but to specified persons, in accordance with the provisions of the Act, set out above. Thus, there cannot be the least doubt that the provisions of the Act, very substantially modify the land-owner's rights to hold and dispose of his property in any estate or a portion thereof. It is, therefore, clear that the provisions of Article 31A save the impugned Act from any attack based on the provisions of Articles 14, 19 and 31 of the Constitution. That being so, it is not necessary to consider the specific provisions of the Act, which, it was contended, were unreasonable restrictions on the land-owner's rights to enjoy his property, or whether he had been unduly discriminated against, or whether the compensation, if any, provided for under the Act, was illusory or, at any rate, inadequate. Those grounds of attack are not available to the petitioners. In the result, all these petitions are dismissed with costs, the State of Punjab and its officers being entitled to only one set of hearing fees in all the petitions.

Petitions dismissed.

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