Kavalappara Kottarathil Kochuni and Others

Vs

The State of Madras and Others

Petitions Nos. 443 of 1955 and 40-41 of 1956

(Syed Jafar Imam, A. K. Sarkar, K. Subha Rao JJ)

04.05.1960

JUDGMENT

SUBBA RAO, J. –

These three connected petitions filed under Art. 32 of the Constitution raise the question of the constitutional validity of the Madras Marumakkathayam (Removal of Doubts) Act, 1955, (Madras Act 32 of 1955) (hereinafter referred to as the impugned Act). These petitions were heard by this Court on a preliminary question raised by the respondents and the judgment thereon was delivered on March 4, 1959. This Court rejected the preliminary objection and directed the petitions to be heard on merits, and pursuant to that order, these petitions were posted for disposal on merits.

The facts have been fully stated by Das, C.J., in the preliminary judgment and it would, therefore, be sufficient if the relevant facts pertaining to the questions raised were stated here.

The petitioner in Petition No. 443 of 1955 is Kavalappara Kottarathil Kochunni @ Moopil Nair. He is the holder of the Kavalappara sthanam to which is attached Kavalappara estate situate in Walluvanad Taluk in the district of South Malabar. In pre-British times the Kavalappara Moopil Nair, who was the seniormost male member of Kavalappara Swaroopam (dynasty), was the ruler of Kavalappara territory. He had sovereign rights over his territory. Besides the Rajasthanam, the Kavalappara Moopil Nair held five other sthanams granted by the Raja of Palghat for rendering military services and two other sthanams granted to his ancestors by the Raja of Cochin for rendering similar services. Properties are attached to each of these sthanams. The petitioner's immediate predecessor died in 1925 and the petitioner became the Moopil Nair of Kavalappara estate and as such the sthanee of the properties attached to the various sthanams held by him. The petitioner in Petition No. 443 of 1955 will hereafter be referred to as "the sthanee". Respondents 2 to 17 are the junior members of the Kavalappara tarwad, and, according to the sthanee, they have no interest in the said properties.

In 1932, the Madras Marumakkathayam Act (Mad. Act XXII of 1932) came into force whereunder the members of a Malabar tarwad were given a right to enforce partition of tarwad properties or to have them registered as impartible. After some infructuous proceedings under the provisions of the said Act, respondents 10 to 17, who then constituted the entire Kavalappara tarwad, filed O.S. No. 46 of 1934 in the court of the Subordinate Judge of Ottapalam for a declaration that all the properties under the management of the sthanee were tarwad properties belonging equally and jointly to the sthanee and the members of the tarwad. The Subordinate Judge dismissed the suit. On appeal, the High Court of Madras on April 9, 1943, allowed the appeal and reversed the decision of the Subordinate Judge and decreed the suit. On further appeal to the Privy Council, the Board by its

judgment dated July 29, 1947, restored the judgment of the Subordinate Judge. The Privy Council found that the Kavalappara estate in Walluvanad Taluk was an impartible estate and that nothing had happened to alter the original character of the property in its relation to the members of the family. On that finding, the Privy Council held that respondents 10 to 17 were not entitled to the declaration they sought in that case. The result of that litigation was that all the properties in the possession of the sthanee were declared to be sthanam properties and that the members of the tarwad had no interest therein.

After the title of the sthanee was thus established, the Madras Legislature passed the impugned Act in 1955. Under the impugned Act, every sthanam possessing one or other of the three characteristics mentioned therein - it is common case that the impugned Act applies to the petitioner's sthanam - shall be deemed and shall be deemed always to have been properties belonging to the tarwad. The sthanee states that the impugned Act is ultra vires the Madras Legislature, void and inoperative and that the said Act cannot affect the rights of the sthanee or his estate to any extent.

The first petitioner in Petition No. 40 of 1956 is the wife of the sthanee, who has also been added as respondent 18 to this petition; and petitioners 2 and 3 therein are their daughters. The first respondent to the said petition is the State of Madras and respondents 2 to 17 are the members of the tarwad. On August 3, 1955, the sthanee executed a gift deed in favour of the petitioners in the said petition in respect of properties granted to his predecessor by the Raja of Palghat. This petition raised the same questions as Petition No. 443 of 1955 and seeks for the same reliefs.

Petition No. 41 of 1956 is filed by Ravunniarath Rajan Menon, who is the son of the sthanee. The first respondent therein is the State of Madras and respondents 2 to 17 are the members of the tarwad and respondent 18 is the sthanee. This petitioner alleges that on August 3, 1955, the sthanee executed a gift deed in his favour in respect of the properties granted to the sthanee's predecessor by the Raja of Cochin. This petition contains similar allegations as the other two petitions and asks for similar reliefs.

The learned Attorney-General, appearing for the petitioners in all the three petitions, raised before us the following points : (1) The impugned Act is constitutionally void, because it offends against Art. 14 of the Constitution. (2) It is also void because it deprives the sthanee of his fundamental right to hold and dispose of property and thereby offends against Art. 19(1)(f) of the Constitution and is not saved by cl. (5) of Art. 19. (3) The impugned Act is further bad because it has been made by the Legislature not in exercise of its legislative power but in exercise of judicial power.

Learned counsel for the respondents while countering the arguments advanced by the learned Attorney-General raised two further points, viz., (1) the petitioner's sthanam is an "estate" within the meaning of Art. 31A of the Constitution and therefore the Act extinguishing or modifying the rights pertaining to the said sthanam cannot be questioned on the ground that it infringes Arts. 14, 19 and 31 of the Constitution; and (2) the impugned Act purports to deprive the petitioner of his sthanam properties by authority of law within the meaning of Art. 31(1) of the Constitution and, as he is legally deprived of his properties, Art. 19(1)(f) of the Constitution has no application, for, it is said, Art. 19(1)(f) pre-supposes the existence of the petitioner's title to the sthanam and its properties, and, as he is deprived of his title therein by the impugned Act, he can no longer rely upon his fundamental right under Art. 19(1)(f).

Learned counsel for the respondents further contended that the gifts of the sthanam properties by the sthanee in favour of the petitioners in the other two petitions were void and that, therefore, they

have no fundamental right to enable them to come to this Court under Art. 32 of the Constitution.

Before we pass on to the merits of the case, it would be convenient at the outset to clear the ground. It cannot be disputed that the impugned Act passed by the Madras Legislature could not have had any extra-territorial operation so as to affect the properties in the quondam Cochin State. It is not disputed that, after the States Reorganization, the provisions of the Act were not extended by any legal process to the properties situate in that area of the Kerala State which originally formed part of Cochin State. In the premises, we are not called upon to decide the fundamental right of the sthanee in respect of the sthanam properties in the said area. We do not also propose to express any opinion on the validity or otherwise of the gift deeds executed by the sthanee in favour of his wife and daughters, and son; for, if the gifts were valid, the donees would have a right to maintain the petitions, and if they were not valid, the donor would continue to be the owner of the properties gifted. The title inter se is not really germane to the present enquiry, for the validity of the Act in respect of sthanam properties other than those in the Cochin State falls to be decided in the first petition itself. We, therefore, leave open the question of the validity of the gift deeds.

We shall take first the contention of the respondents based on Art. 31A of the Constitution, for, if that contention was accepted, no other questions except one would arise for consideration.

Learned Attorney-General contends that the question was not specifically raised in the pleadings, that it was a mixed question of fact and law, and that if it was allowed to be raised at this stage, his clients would be irreparably prejudiced. Further, he argues that there is no material on the record on the basis of which we can decide whether the properties of the petitioners are held in janmam right or not. In the counter-affidavit filed by respondents 2 to 17, no plea on the basis of Art. 31A is taken. Only in the counter filed by the State of Kerala, this contention is raised. Paragraph 6 of the counter-affidavit contains the said plea and it is :

> "I am advised that the impugned statute is not open to attack on any of the grounds set forth in the petition and further and in any view of the case that it is saved by virtue of the provisions of Art. 31A of the Constitution as amended by the Constitution (Fourth Amendment) Act, 1955."

Except this bald statement, no statement is made to the effect that all the properties of the sthanee, or any portion thereof, are held in janmam right. Learned Advocate-General, appearing for the State of Kerala, while conceding that the plea could have been more precise, and supported by definite particulars, contends that there is material on the record containing the admission of the petitioner in the first petition that the properties are janmam properties, and, even apart from such admission, whatever properties the petitioner held as appertaining to the sthanam, they could not be other than janmam properties or properties held as a subordinate tenure-holder under a janmi and that in either case they would form part of an "estate" within the meaning of Art. 31A of the Constitution.

It is true that in the previous proceedings which went up to the Privy Council, there is a statement that in regard to the properties under the management of the Court of Wards, "sthanam registration took place in Malabar and all the properties belonging to the sthanee were registered in the name of Kavalappara Moopil Nair". But that in itself does not conclude the matter. Ordinarily, when a question raised depends upon elucidation of further facts not disclosed in the statements already filed, we would be very reluctant to allow a party to raise such a plea at the time of arguments. But in this case we do not think we would be justified in not allowing the respondents to raise the contention, as the validity of the impugned Act depends upon the application of Art. 31A of the

Constitution. We would, therefore, for the purpose of this petition, assume against the petitioner that he is in possession of the properties in janmam right and proceed to consider on that basis the contention raised.

Learned counsel for the respondents contends that Art. 31A of the Constitution excludes the operation of Art. 13 in the matter of the extinguishment or modification of any rights in an estate, that the impugned legislation either extinguishes or modifies the sthanam right in the janmam property which is an "estate" as defined in the said Article and that, therefore, the impugned Act cannot be challenged on the ground that it infringes Arts. 14, 19 and 31 in Part III of the Constitution. To appreciate this contention it will be convenient to read the material portions of Art. 31A.

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

> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights,
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shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31.

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> (2) In this article, -
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> (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 grants and in the States of Madras and Kerala any janmam right.
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> (b) the expression "right", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

This Article was introduced in the Constitution by the Constitution (First Amendment) Act, 1951. As it originally stood, the said Article only provided that no law affecting rights of any proprietor or intermediate holder in any estate shall be void on the ground that it is inconsistent with any of the fundamental rights included in Part III of the Constitution. Article 31A has been amended by the Constitution (Fourth Amendment) Act, 1955. The object of the amendment was explained in the Statement of the Objects and Reasons and the relevant part thereof reads :

> "It will be recalled that the Zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to articles 14, 19 and 31, and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the courts, articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the

following :-

(i) While the abolition of zamindaries and the numerous inter mediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

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It is accordingly proposed in clause 3 of the Bill to extend the scope of article 31A so as to cover these categories of essential welfare legislation."

The object of the amendment relevant to the present enquiry was only to enable the State to implement its next objective in the land reform, namely, the fixing of limits to the extent of agricultural lands that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings. The object was, therefore, to bring about a change in the agricultural economy but not to recognize or confer any title in the whole or a part of an estate on junior members of a family. This Court has held in Aswini Kumar Ghose v. Arabinda Bose ((1953) S.C.R. 1) that the statement of objects and reasons is not admissible as an aid to the construction of a statute. But we are referring to it only for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced, and the purpose for which the amendment was made.

Unhampered by any judicial decision, let us now scrutinize the express terms of the Article to ascertain its scope and limitations. Sub-cl. (a) of Art. 31A(1) enables the State to acquire any estate or of any rights therein or to extinguish or modify any such rights. "Estate" is defined in cl. (2)(a) to 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 by inclusive definition it takes in any Jagir, inam, or muafi or other similar grants and in the States of Madras and Kerala any janmam right. Clause (2)(b) defines the expression "rights", in relation to an estate, to 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. If an estate so defined is acquired by the State, no law enabling the State to acquire any such estate can be questioned as inconsistent with the rights conferred by Arts. 14, 19 or 31 of the Constitution. So too, any law extinguishing or modifying any such rights mentioned in cl. (1)(a) and defined in cl. (2)(b) cannot be questioned on the said grounds. The broad contention that a law regulating inter se the rights of a proprietor in his estate and the junior members of his family is also covered by the wide phraseology used in cl. (2)(b), may appear to be plausible but that argument cannot be sustained if that clause is read along with the other provisions of Art. 31A. The definition of "estate" refers to an existing law relating to land tenures in a particular area indicating thereby that the Article is concerned only with the land tenure described as an "estate". The inclusive definition of the rights of such an estate also enumerates the rights vested in the proprietor and his subordinate tenure-holders. The last clause in that definition, viz., that those rights also include the rights or privileges in respect of land revenue, emphasizes the fact that the Article is concerned with land-tenure. It is, therefore, manifest that the said Article deals with a tenure called "estate" and provides for its acquisition or the extinguishment or modification of the rights of the land-holder or the various subordinate tenure-holders in respect of their rights in relation to the estate. The contrary view would enable the State to divest a proprietor

of his estate and vest it in another without reference to any agrarian reform. It would also enable the State to compel a proprietor to divide his properties, though self-acquired, between himself and other members of his family or create interest therein in favour of persons other than tenants who had none before. Such acts have no relation to land-tenures and they are purely acts of expropriation of a citizen's property without any reference to agrarian reform. Article 31A deprives citizens of their fundamental rights and such an Article cannot be extended by interpretation to overreach the object implicit in the Article. The unsoundness of the wider interpretation will be made clear if the Article is construed with reference to the janmam right. Under the definition, any janmam right in Kerla is an "estate". A janmam right is the freehold interest in a property situated in Kerala. Moor in his "Malabar Law and Custom" describes it as a hereditary proprietorship. A janmam interest may, therefore, be described as "proprietary interest of a landlord in lands", and such a janmam right is described as "estate" in the Constitution. Substituting "janmam right" in place of "estate" in cl. 2(b), the "rights" in Art. 31A(1)(a) will include the rights of a proprietor and subordinate tenure-holders in respect of a janmam right. It follows that the extinguishment or modification of a right refers to the rights of a proprietor or a subordinate tenure-holder in the janmam right. A proprietor called the janmi or his subordinate tenure-holder has certain defined rights in the "janmam right". Land-tenures in Malabar are established by precedents or immemorial usage. Janmam right is a freehold interest in property and the landlord is called "janmi". He can create many subordinate interests or tenures therein, such as verumpattom (simple lease), kushikanom (mortgage of waste land with a view to its being planted on), kushikanapattam (mortgage of waste land for improvements, the tenant paying rent), kanom kuzhikanom (mortgage of waste land for improvements, the landlord receiving some pecuniary consideration), kanom (mortgage with possession, a fee being generally paid), mel-kanom (higher mortgage), koyu panayam (mortgage of the right of cultivation), kanom poramkadam (loan advanced on the security of land already held on mortgage), otti usufructuary mortgage, the full value of the land being advanced), kaivituka otti (usufructuary mortgage, with relinquishment of the power of transfer), ottikkumpuram (where a sum is advanced beyond the otti amount), neermuthal (where a further sum is advanced on an otti mortgage in addition to the ottikkumpuram), peruvartham (usufructuary mortgage, the land being redeemable at its value in the market at the time of redemption), anubham or anubhavam (relinquishment of land for enjoyment by the tenant in perpetuity), karankari or jamma koyu (sale or transfer in perpetuity of the right of cultivation), kariama (right of perpetual enjoyment), cooderoopad or nelamuri (assignment of rent produce), kutti kanom (mortgage of forests, the mortgagee felling the timber for trade and paying a fee on each stump or tree to the landlord). These rights may be extinguished or modified. A law may regulate the rights between a janmi and his subordinate tenure-holders; but it may also affect his rights unconnected with the tenure. To illustrate : A janmi holds 10 acres of land in janmam right, out of which he may sell 2 acres each to five persons; the land is divided into 5 plots held by different holders, but each one continues to have full rights of a janmi; the janmam right is not extinguished or modified, though the land is divided between 5 persons. That is what the impugned Act purports to do. It does not modify any of the rights appertaining to "janmam right", but only confers shares in the property on other members of the tarwad. It is said that the inclusive definition of the expression "rights" in cl. (2)(b) takes in such a case as it extinguishes or modifies the proprietor's right in the land. This is a superficial reading of the Article. We have already explained how such a modification is not a modification of a right pertaining to a "janman right", but only a deprivation of a particular janmi of his right in his property or a curtailment of his right therein, leaving all the characteristics of a janmam right intact. It is said that a contrary construction has been accepted by this Court in two decisions. The first is that in Sri Ram Ram Narain v. State of Bombay ((1959) Supp. 1 S.C.R. 489). In that case, the constitutional validity of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 (Bom. XIII of 1956), was canvassed.

Under that Act the title to the land which vested originally in the landlord passes to the tenant on the tiller's day or within the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal constituted for that purpose. This Act was, therefore, enacted to implement the agrarian reform in that part of the country and it expressly confers certain rights on tenants in respect of their tenements which they did not have before. The Act creates absolute rights in a tenant which was either by the extinguishment or by modification of a landlord's rights and conferment of the same on the tenant. This law is, therefore, one pertaining to the land-tenure of the State.

The second decision is that in Atma Ram v. State of Punjab ((1959) Supp. 1 SCR 748). There, this Court was concerned with the provisions of the Punjab Security of Land Tenure Act (10 of 1953) (as amended by Act 11 of 1955). Under that Act, the substantive rights of a landowner were modified in three respects, namely, (1) it modified his rights of settling his lands on any terms and to any one he chooses; (2) it modified, if it did not altogether extinguish, his right to cultivate the surplus area as understood under the Act; and (3) it modified his right of transfer in so far as it obliged 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. It is clear from the said Act that the provisions thereof purport to regulate the rights in respect of lands which are estates within the meaning of the law relating to land-tenures in Punjab. It was contended therein that in the purview of Art. 31A, only the entire estates were included but not portions thereof, but that contention was negatived. Sinha, J. (as he then was), who delivered the judgment of the Court, observed at p. 526 thus :

> "Keeping in view the fact that Art. 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".

This Court has, therefore, recognised that the amendments inserting Art. 31A in the Constitution and subsequently amending it were to facilitate agrarian reforms and in that case it was held that the impugned Act affected the rights of the landlords and tenants.

Neither of the two decisions, therefore, supports the contention that Art. 31A comprehends modification of the rights of an owner of land without reference to the law of land-tenures.

The impugned Act does not purport to modify or extinguish any right in an estate. The avowed object of it is only to declare particular sthanams to be Marumakkathayam tarwads and the property pertaining to such sthanams as the property of the said tarwads. It declares particular sthanams to have always been tarwads and their property to have always been tarwad property. The result is that the sole title of the sthanee is not recognised and the members of the tarwad are given rights therein. The impugned Act does not effectuate any agrarian reform and regulate the rights inter se between landlords and tenants. We, therefore, hold that the respondents cannot rely upon Art. 31A to deprive the petitioner of his fundamental rights.

Now coming to the arguments advanced by the learned Attorney-General, as we propose to hold in his favour on point (2), we are relieved of the necessity to express our opinion on points (1) and (3) raised by him. On the basis of this elimination, the question that falls to be decided is whether the

impugned Act deprives the petitioner of his fundamental right to hold and dispose of property and is not protected by cl. (5) of Art. 19 of the Constitution. This question is inextricably connected with the contention raised by the respondents that Art. 31(1) excludes the operation of Art. 19(1)(f) of the Constitution. We shall, therefore, proceed to consider both these questions.

The argument of the learned counsel for the respondents is that Art. 19(1)(f) must give place to Art. 31(1) of the Constitution. In other words, a person's fundamental right to acquire, hold and dispose of property is conditioned by the existence of property and if he is deprived of that property by authority of law under Art. 31(1), his fundamental right under Art. 19(1)(f) disappears with it.

Fundamental rights have a transcendental position in the Constitution. Our Constitution describes certain rights as fundamental rights and places them in a separate Part. It provides a machinery for enforcing those rights. Article 32 prescribes a guaranteed remedy for the enforcement of those rights and makes the remedial right itself a fundamental right. Article 13(1) declares that "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void"; and Art. 13(2) prohibits the State from making any law which takes away or abridges the rights conferred by Part III of the Constitution and declares that any law made in contravention of that clause shall, to the extent of the contravention, be void. It is true that any other Article of the Constitution may exclude the operation of the fundamental rights in respect of a specific matter - for instance, Art. 31A and 31B. It may also be that an Article embodying a fundamental right may exclude another by necessary implication, but before such a construction excluding the operation of one or other of the fundamental rights is accepted, every attempt should be made to harmonise the two Articles so as to make them co-exist, and only if it is not possible to do so, one can be made to yield to the other. Barring such exceptional circumstances, any law made would be void if it infringes any one of the fundamental rights. The relevant Articles read :

Article 19. (1) All citizens shall have the right -

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(f) to acquire, hold and dispose of property.....

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

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

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

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by

> the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."
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> Clause (2) of Art. 31 has been amended and cl. (2A) has been inserted in Art. 31 by the Constitution (Fourth Amendment) Act, 1955. The said cl. (2) in its original form, i.e., before the Constitution (Fourth Amendment) Act, 1955, read as follows :
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> "(2) No property, moveable or immoveable, 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."

To have a correct appreciation of the scope of the amended clause of Art. 31, it is necessary to consider, in the words of Lord Coke, the following circumstances :

> (i) What was the law before the Act was passed;
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> (ii) What was the mischief or defect for which the law had not provided :
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> (iii) What remedy Parliament has appointed; and
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> (iv) the reason of the remedy.

The unamended clauses of the Article were the subject of judicial scrutiny by this Court in the State of West Bengal v. Subodh Gopal Bose ((1954) S.C.R. 587). There, the respondent purchased certain property at a revenue sale and as such purchaser he acquired under s. 37 of the Bengal Revenue Sales Act, 1859, the right "to avoid and annul all under-tenures and forthwith to eject all under-tenants" with certain exceptions. In exercise of that right he brought a suit for eviction of certain under-tenants and obtained a decree therein. When the appeal against the said decree was pending, the Act was amended. The amending Act substituted by s. 4 the new s. 37 in place of the original s. 37 and it provided by s. 7 that all pending suits, appeals and other proceedings which had not already resulted in delivery of possession, should abate. It was contended on behalf of one of the respondents therein that s. 7 was void as abridging his fundamental rights under Art. 19(1)(f) and Art. 31. The Court by a majority held that the Act was void as it infringed Art. 31 of the Constitution. The majority of the Judges, who constituted the bench, took the view that cls. (1) and (2) of Art. 31 related to the same subject of eminent domain and that the State had no power to seriously impair the rights of a citizen in property without paying compensation. Patanjali Sastri, C.J., expressed his view thus at p. 618 :

> "Under the Constitution of India, however, such questions must be determined with reference to the expression "taken possession of or acquired" as interpreted above, namely, that it must be read along with the word "deprived" in clause (1) and understood as having reference to such substantial abridgement of the rights of ownership as would amount to deprivation of the owner of his property. No cut and dried test can be formulated as to whether in a given case the owner is "deprived" of his property within the meaning of article 31; each case must be decided as it arises

> on its own facts. Broadly speaking it may be said that an abridgement would be so substantial as to amount to a deprivation within the meaning of article 31, if, in effect, it withheld the property from the possession and enjoyment of the owner, or seriously impaired its use and enjoyment by him, or materially reduced its value."

Das, J. (as he then was), observed that Art. 31(2) dealt with only acquisition and requisition of property whereunder title passed to the State and that Art. 31(1) conferred police power on the State. Ghulam Hasan, J., concurred with the view of the Chief Justice. Jagannadhadas, J., did not agree with the view of Das, J., that Art. 31(1) conferred police power on the State, but he was not also able to agree with the view of the Chief Justice that Art. 31(1) has reference only to the power of eminent domain. He also expressed his disagreement with the view of Das, J., that acquisition and taking possession in Art. 31(2) have to be taken as necessarily involving transfer of title or possession. The result of the decision is that this Court by majority held that Art. 31(1) and (2) provided for the doctrine of eminent domain and that under cl. (2) a person must be deemed to have been deprived of his property, if he is "substantially dispossessed" or if his right to use and enjoy his property has been "seriously impaired" or the value of the property is "materially reduced" by the impugned law. This view was followed in Dwarakadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd. ((1954) S.C.R. 674) and in Saghir Ahmad v. The State of U.P. ((1955) 1 S.C.R. 707). Presumably, Parliament accepted the minority view of Das, J., on the interpretation of cl. (2) of Art. 31 and amended the Constitution by the Constitution (Fourth Amendment) Act, 1955. The amendment made it clear that cl. (2) of Art. 31 applies only to acquisition and requisition. Clause (2A) of the said Article which was inserted by the said amendment, explains that unless a law provides for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. The result is that it did not accept the majority view of this Court that deprivation of property need not be by acquisition alone but also by any serious impairment of an individual's right to property, whether his ownership or right to possession of the property has been transferred to the State or its nominee or not. This amendment also in effect accepted the view of Das, J., that deprivation of property in cl. (1) of Art. 31 covers cases other than acquisition or requisition of property by the State. But the amendment in other respects does not give any indication as regards the interpretation of Art. 31(1) of the Constitution, for no change in the phraseology of that clause is made.

Therefore, we must look at the terms of that clause to ascertain its true meaning. The words are clear and unambiguous and they do not give rise to any difficulty of construction. The said clause says in a negative form that no person shall be deprived of his property save by authority of law. The law must obviously be a valid law. Article 13(2) says that "the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void". The law depriving a person of his property cannot, therefore, take away or a abridge the right conferred by Part III of the Constitution. In a recent decision in Deep Chand v. State of U.P. ((1959) Supp. (2) S.C.R. 8) this Court considered the limitations placed by the Constitution on the Parliament and the Legislatures of the States in making laws. After reading Arts. 245, 246, 13 and 31 of the Constitution, this Court proceeded to state, at p. 655, thus :

> "The combined effect of the said provisions may be stated thus : Parliament and the Legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant lists in the Seventh Schedule and that power to make laws

> is subject to the provisions of the Constitution including Art. 13 i.e., the power is made subject to the limitations imposed by Part III of the Constitution..... When cl. (2) of Art. 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other constitutions; nor can we appreciate the argument that the words "any law" in the second line of Art. 13(2) posit the survival of the law made in the teeth of such prohibition."

The same view was expressed by this Court in Basheshar Nath v. Commissioner of Income-tax, Delhi ((1959) Supp. 1 S.C.R. 528). Therein Das, C.J., says at p. 158 thus :

> "As regards the legislative organ of the State, the fundamental right is further consolidated by the provisions of Art. 13. Clause (1) of that Article provides that all laws in force in the territories of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III shall, to the extent of the inconsistency, be void. Likewise cl. (2) of this Article prohibits the State from making any law which takes away or abridges the rights conferred by the same Part and follows it up by saying that any law made in contravention of this clause shall, to the extent of the contravention, be void. It will be observed that, so far as this Article is concerned, there is no relaxation of the restriction imposed by it such as there are in some of the other Articles....."

Bhagwati, J., observed much to the same effect at p. 161 thus :

> "It is absolutely clear on a perusal of Art. 13(2) of the Constitution that it is a constitutional mandate to the State and no citizen can by any act or conduct relieve the State of the solemn obligation imposed on it by Art. 13(2)....."

One of us had also stated to the same effect, after citing Art. 13, at p. 181 :

> "This Article, in clear and unambiguous terms, not only declares that all laws in force before the commencement of the Constitution and made thereafter taking away or abridging the said rights would be void to the extent of the contravention but also prohibits the State from making any law taking away or abridging the said rights."

It is, therefore, manifest that the law must satisfy two tests before it can be a valid law, namely, (1) that the appropriate legislature has competency to make the law; and (2) that it does not take away or abridge any of the fundamental rights enumerated in Part III of the Constitution. It follows that the law depriving a person of his property will be an invalid law if it infringes either Art. 19(1)(f) or any other Article of Part III.

Learned counsel, appearing for the respondents, while conceding that the validity of a law must pass the test of the foregoing two conditions, contends that in the context of Art. 31, we should apply the construction analogous to that put upon by this Court on the word "law" in Art. 21 of the Constitution in the case of A. K. Gopalan v. The State of Madras ((1950) S.C.R. 88). In the said case, the question was whether the provisions of the Preventive Detention Act, 1950 (IV of 1950),

were ultra vires the Constitution. This Court by a majority held that the said Act, with the exception of s. 14 thereof, did not contravene any of the Articles of the Constitution and, therefore, the detention of the petitioner therein was not illegal. In that context, a question was raised whether the said Act must be struck down as infringing Art. 19(1)(d) of the Constitution. This Court held that the concept of the right "to move freely throughout the territory of India" referred to in Art. 19(1)(d) of the Constitution was entirely different from the concept of the right to "personal liberty" referred to in Art. 21 and that Art. 21 should not, therefore, be read as controlled by the provisions of Art. 19. Though the learned Judges excluded the operation of Art. 19 in considering the question of fundamental right under Art. 21, the judgment of the Court discloses three shades of opinion. As much of the argument is centred on the analogy drawn from this decision, the relevant Articles may be summarized :

Under Art. 21, no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. Clauses (1) and (2) of Art. 22 afford protection in the matter of arrest and detention in certain cases. Clauses 4, (5) and (6) thereof provide for preventive detention and constitutional safeguards relating thereto. It may not be inappropriate to describe these provisions as forming an exhaustive code, as they elaborately deal with a particular subject, namely, life and personal liberty. In construing the said provisions, Kania, C.J., said at p. 100-101 thus :

> "So read, it clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of article 19 will arise. If, however, the legislation, is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenue's life."

Mahajan, J. (as he then was), gave the reason for his conclusion at p. 226 :

> "I am satisfied on a review of the whole scheme of the Constitution that the intention was to make article 22 self-contained in respect of laws on the subject of preventive detention."

The learned Judge further elaborated the point thus at p. 228 :

> "If the intention of the Constitution was that a law made on the subject of preventive detention had to be tested on the touchstone of reasonableness, then it would not have troubled itself by expressly making provision in article 22 about the precise scope of the limitation subject to which such a law could be made and by mentioning the procedure that the law dealing with that subject had to provide. Some of the provisions of article 22 would then have been redundant....."

Mukherjea, J. (as he then was), said much to the same effect at p. 225 :

> "In my opinion, the group of articles 20 to 22 embody the entire protection

> guaranteed by the Constitution in relation to deprivation of life and personal liberty both with regard to substantive as well as to procedural law."

Patanjali Sastri, J. (as he then was), stated at p. 191 :

> "Read as a whole and viewed in its setting among the group of provisions (articles 19 to 22) relating to "Right to Freedom", article 19 seems to my mind to pre-suppose that the citizen to whom the possession of these fundamental rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests."

The learned Judge further dilated on the point at p. 191.

> "Deprivation of personal liberty in such a situation is not, in my opinion, within the purview of article 19 at all but is dealt with by the succeeding articles 20 and 21. In other words, article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free, while articles 20-22 secure to all persons - citizens and non-citizens - certain constitutional guarantees in regard to punishment and prevention of crime."

Das, J. (as he then was), stated at p. 302 thus :

> "The purpose of article 19(1)(d) is to guarantee that there shall be no State barrier. It gives protection against provincialism. It has nothing to do with the freedom of the person as such."

The learned Judge continued to state at p. 304 :

> "Therefore, the conclusion is irresistible that the rights protected by article 19(1), in so far as they relate to rights attached to the person, i.e., the rights referred to in sub-clauses (a) to (e) and (g), are rights which only a free citizen, who has the freedom of his person unimpaired, can exercise."

The views of the learned Judges may be broadly summarized under three heads, viz., (1) to invoke Art. 19(1), a law shall be made directly infringing that right; (2) Arts. 21 and 22 constitute a self-contained code; and (3) the freedoms in Art. 19 postulate a free man. On the basis of the said theories, this Court, with Fazl Ali, J., dissenting, rejected the plea that a law made under Art. 21 shall not infringe Art. 19(1). Had the question been res integra, some of us would have been inclined to agree with the dissenting view expressed by Fazl Ali, J.; but we are bound by this judgment. Even so, there is no analogy between Art. 21, as interpreted by this Court, and Art. 31(1). Article 21 deals with personal liberty. Personal liberty, Kania, C.J., observed, includes "the right to eat or sleep when one likes or to work or not to work as and when one pleases and several such rights" and "deprivation of such liberty", in the words of the learned Chief Justice, "is quite different from restriction (which is only a partial control) of the right to move freely (which is relatively a minor right of a citizen)". "Personal Liberty" is a more comprehensive concept and has a much wider connotation than the right conferred under Art. 19(1)(d). Arts. 19(1)(d) and 22 deal with different subjects, whereas both Arts. 19(1)(f) and 31(1) deal with the same subject, namely, property; while under Art. 19(1)(f), a citizen has the right to acquire, hold and dispose of property, Art. 31(1) enables the State to make a law to deprive him of that property. Such a law directly infringes the fundamental right given under Art. 19(1)(f). Further, Arts. 21 and 22 are linked up

together; while Art. 21 enables the State to deprive a person of his life or personal liberty according to the procedure established by law, Art. 22 prescribes certain procedure in respect of both punitive and preventive detention. They constitute an integrated code in the matter of personal liberty. On the other hand, Art. 31(1), by reason of the amendment, ceases to be a part of the guarantee against acquisition or requisition of property without the authority of law and must therefore be construed on its own terms.

The said Articles are not in pari materia and they differ in their scope and content. There is material difference not only in the phraseology but also in their setting. Article 31(1), therefore, cannot be construed on the basis of the construction placed upon Art. 21.

The decision in The State of Bombay v. Bhanji Munji ((1955) 1 S.C.R. 777), on which reliance is placed by learned counsel for the respondents in support of their contention that Art. 31(1) excludes the operation of Art. 19(1), is one based on the pre-existing law before the Constitution (Fourth Amendment) Act, 1955. In that case it was contended that ss. 5(1) and 6(4)(a) of the Bombay Land Requisition Act, 1948 (Bom. Act XXXIII of 1948), as amended by Bombay Act II of 1950 and Bombay Act XXXIX of 1950, were ultra vires Arts. 19(1)(f) and 31(2) of the Constitution. The premises in question there belonging to the respondents were requisitioned by the Governor of Bombay under the said Act. The Act also provided for compensation, and this Court found that there was a clear public purpose for the requisition, and upheld the law under Art. 31(2) of the Constitution. This Court also considered the alternative argument advanced, namely, that the Act was hit by Art. 19(1)(f) of the Constitution inasmuch as unreasonable restrictions were imposed on the rights of the respondents to acquire, hold and dispose of property. In rejecting that argument, Bose, J., speaking for the Court, observed at p. 780 thus :

> "We need not examine those differences here because it is enough to say that article 19(1)(f) read with clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold and dispose of it, and as clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the article postulates the existence of property over which these rights can be exercised."

For these observations the learned Judge has drawn upon the principle laid down in A. K. Gopalan's Case ((1950) S.C.R. 88). These observations prima facie appear to be against the contentions of the petitioner herein. But a further scrutiny reveals that they have no bearing on the construction of Art. 31(1) of the Constitution after cl. (2) of Art. 31 has been amended and cl. (2A) has been inserted in that Article by the Constitution (Fourth Amendment) Act, 1955. Before the amendment, this Court, as we have already noticed, held by a majority in The State of West Bengal v. Subodh Gopal Bose ((1954) S.C.R. 587) that cls. (1) and (2) of Art. 31 were not mutually exclusive in scope and content, but should be read together and understood as dealing with the same subject, namely, the acquisition or taking possession of property referred to in cl. (2) of Art. 31. In that view, Art. 31, before the amendment, was a self-contained Article providing for a subject different from that dealt with in Art. 19. On that basis it was possible to hold, as this Court held in The State of Bombay v. Bhanji Munji ((1955) 1 S.C.R. 777), on the analogy drawn from Art. 21, that when the property therein was requisitioned within the meaning of Art. 31, the operation of Art. 19 was excluded. But there is no scope for drawing such an analogy after the Constitution (Fourth Amendment) Act,

1955, as thereafter they dealt with two different subjects : Art. 31(2) and (2A) with acquisition and requisition and Art. 31(1) with deprivation of property by authority of law. The decision of this Court in Bhanji Munji's Case ((1955) 1 S.C.R. 777) no longer holds the field after the Constitution (Fourth Amendment) Act, 1955.

Strong reliance is placed upon the observations of Das, J. (as he then was), in Subodh Gopal Bose's Case ((1954) S.C.R. 587). Therein the learned Judge dissented from the view of the majority on the interpretation of Art. 31(1) and (2) of the Constitution. In the course of his dissenting judgment, the learned Judge made certain observations on the effect of his interpretation of Art. 31 on Art. 19. The learned Judge said at p. 632 thus :

> "Such being the correct correlation between article 19(1), sub-clause (a) to (e) and (g) on the one hand and article 21 on the other, the question necessarily arises as to the correlation between article 19(1)(f) and article 31. Article 19(1)(f) guarantees to a citizen, as one of his freedoms, the right to acquire, hold and dispose of property but reasonable restrictions may be imposed on the exercise of that right to the extent indicated in clause (5). Article 31, as its heading shows, guarantees to all persons, citizens and non-citizens, the 'right to property' as a fundamental right to the extent therein mentioned. What, I ask myself, is the correlation between article 19(1)(f) read with article 19(5) and article 31 ? If, as held by my Lord in A. K. Gopalan's Case ((1950) S.C.R. 88) at p. 191, sub-clause (a) to (e) and (g) of article 19(1) read with the relevant clauses (2) to (6) 'presuppose that the citizen to whom the possession of these fundamental rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests', it must follow logically that article 19(1)(f) read with articles 19(5) must likewise presuppose that the person to whom that fundamental right is guaranteed retains his property over or with respect to which alone that right may be exercised. I found myself unable to escape from this logical conclusion."

The learned Judge earlier expressed the same opinion in Chiranjit Lal Chowdhuri v. The Union of India ((1950) S.C.R. 869). When it was pointed out to the learned Judge that, if his view was correct, the legislature while it cannot restrict a person's right to property unless the restriction is reasonable and for a public purpose, it can deprive him of his property without any such limitations, the learned Judge negatived the objection in the following words at p. 654 :

> "What is abnormal if our Constitution has trusted the legislature, as the people of Great Britain have trusted their Parliament ? Right to life and personal liberty and the right to private property still exist in Great Britain in spite of the supremacy of Parliament. Why should we assume or apprehend that our Parliament or State legislatures should act like mad men and deprive us of our property without any rhyme or reason ?"

Further, the learned Judge was of the view that unless Art. 31(1) was construed in the manner he did, it would not be possible for the State to bring about a welfare State which our Constitution directs it to do. Elaborating this point, the learned Judge observed, at p. 655, thus :

> "We must reconcile ourselves to the plain truth that emphasis had now unmistakably shifted from the individual to the community. We cannot overlook that the avowed purpose of our Constitution is to set up a welfare State by subordinating the social

> interest in individual liberty or property to the larger social interest in rights of the community. As already observed, the police power of the State is 'the most essential of powers, at times most insistent, and always one of the least limitable powers of the government'. .....In the matter of deprivation of property otherwise than by the taking of possession or by the acquisition of it within the meaning of article 31(2) our Constitution has trusted our legislature and has not thought fit to impose any limitation on the legislature's exercise of the State's police power over private property".

Relying upon the said observations, learned counsel for the respondents pressed on us the following three points : (1) After the Constitution (Fourth Amendment) Act, 1955, cl. (1) of Art. 31 must be read independently of cl. (2) thereof and, of so read, cl. (1) must be held to deal with police power. (2) Without such power the State cannot usher in a welfare State which the Constitution enjoins it to do. (3) The fact that there is no limitation on the power of the legislature to make law depriving a citizen of his property need not deter us from recognising such power, as we can trust our legislatures and Parliament as the people of Great Britain have trusted their Parliament.

We cannot agree with the contention of the learned counsel that Art. 31(1) deals with "police power". In the view expressed by Das, J. (as he then was), the legislature can make any law depriving a person of his property and the only limitation on such power is its good sense. But "police power", as it is understood in American Law, can never be an arbitrary power. "Willis on Constitutional Law" says at p. 727 :

> "The United States Supreme Court has said that 'the police power embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety'."

In the Constitution of the United States of America, prepared by the Legislative Reference Service, Library of Congress (Senate Document No. 170, 82D Congress), "police power" is generally defined thus at p. 982 :

> "The police power of a State today embraces regulations designed to promote the public convenience or the general prosperity as well as those to promote public safety, health, morals, and is not confined to the suppression of what is offensive, disorderly, or unsanitary, but extends to what is for the greatest welfare of the State".

Prof. Willough by states in his Constitutional Law of the United States (Vol. III, p. 1774) : ".....the police power knows no definite limit. It extends to every possible phase of what the Courts deem to be the public welfare". Holmes, J., in Noble State Bank v. Haskell (219 U.S. 104) concisely defines "police power" thus : "It may be said in a general way that the police power extends to all the great public needs". It is, therefore, clear that police power cannot be divorced from social control and public good. We cannot, therefore, import the doctrine of police power in our Constitution divorced from the necessary restrictions on that power as evolved by judicial decisions of the Supreme Court of the United States. Indeed, uninfluenced by any such doctrine, the plain meaning of the clear words used in Art. 31(1) of the Constitution enables the State to discharge its functions in the interest of social and public welfare which the State in America can do in exercise of police power. The limitation on the power of the State to make a law depriving a person of his property, as we have already stated, is found in the word "law" and that takes us back to Art. 19 and the law made

can be sustained only if it imposes reasonable restrictions in the interest of the general public.

We find it also very difficult to accept the second and third aspects of the approach to the question. The duty of this Court is only to interpret the provisions of the Constitution in a liberal spirit, but not to eradicate or modify the fundamental rights. That apart, our Constitution-makers thought otherwise. The Constitution declares the fundamental rights of a citizen and lays down that all laws made abridging or taking away such rights shall be void. That is a clear indication that the makers of the Constitution did not think fit to give our Parliament the same powers which the Parliament of England has. While the Constitution contemplates a welfare State, it also provides that it should be brought about by the legislature subject to the limitations imposed on its power. If the makers of the Constitution intended to confer unbridled power on the Parliament to make any law it liked to bring about the welfare State, they would not have provided for the fundamental rights. The Constitution gives every scope for ordered progress of society towards a welfare State. The State is expected to bring about a welfare State within the framework of the Constitution, for it is authorized to impose reasonable restrictions, in the interests of the general public, on the fundamental rights recognized in Art. 19. If the interpretation sought to be placed on Art. 31(1) was accepted, it would compel the importation of the entire doctrine of police power and grafting it in Art. 31(1) or the recognition of arbitrary power in the legislature with the hope or consolation suggested that our Parliament and legislatures may be trusted not to act arbitrarily. The first suggestion is not legally permissible and the second does not stand to reason, for the Constitution thought fit to impose limitations on the power of the legislatures even in the case of lesser infringements of the rights of a citizen.

Another argument raised by learned counsel for the respondents may also be noticed. If the view expressed by us be correct, the argument proceeds, the law depriving a person of his property - however urgent the need may be and whatever grave danger or serious vice it seeks to avert or suppress - can never be a reasonable restriction on the right to enjoy property and therefore every such law would be void. The learned Attorney-General argues that in the present case the petitioner is not deprived of his property, but his right is only restricted. It depends upon the perspective from which we look at the facts. In one sense, the petitioner has been deprived of his shares in the property given by the statute to the respondents, but, even on that assumption, we do not think that the argument of the respondents has any substance. The correct approach to the question is, first to ascertain what is the fundamental right of the petitioners; then to see, whether the law infringes that right. If the law ex facie infringes that right, the State can support that law only by establishing that the law imposes reasonable restrictions on the petitioner's fundamental right in the interests of the general public. If so approached, the impugned Act by seeking to deprive the petitioner of his property certainly infringes his fundamental right. There is absolutely nothing on the record to sustain the validity of the law under the said clause (5) of Art. 19. The apprehension that deprivation can never be a restriction and therefore every law depriving a person of his property must necessarily be void, even if justifiable, cannot help the respondents, for if it is not saved cl. (5), that result must flow from the premises. But that apprehension has no justification. This Court has held in a recent decision that under certain circumstances a law depriving a citizen of his fundamental right to property may amount to a reasonable restriction. In Narendra Kumar v. The Union of India ((1960) 2 S.C.R. 375), Das Gupta, J., observed :

> "It is reasonably to think that the makers of the Constitution considered the word 'restriction' to be sufficiently wide to save laws 'inconsistent' with Art. 19(1), or 'taking away the rights' conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt therefore that they intended the word 'restriction' to

> include cases of 'prohibition' also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot therefore be accepted. It is undoubtedly correct, however, that when, as in the present case, the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court."

If so, the State can establish that a law, though it purports to deprive the petitioner of his fundamental right, under certain circumstances amounts to a reasonable restriction within the meaning of cl. (5) of Art. 19 of the Constitution.

We, therefore, hold that a law made depriving a citizen of his property shall be void, unless the law so made complies with the provisions of cl. (5) of Art. 19 of the Constitution.

This leads us to the question whether the provisions of the Act infringe Art. 19(1)(f) of the Constitution. The impugned Act is The Madras Marumakkathayam (Removal of Doubts) Act, 1955 (Madras Act No. XXXII of 1955). As the argument turns upon the provisions of the Act and as the Act itself is a short one, it will be convenient to set out all the provisions thereof.

The Madras Marumakkathayam (Removal of Doubts)

Act, 1955 (Act No. XXXII of 1955).

> (An Act to remove certain doubts in the Madras Marumakkathayam Act, 1932 (Madras Act XXII of 1933), in regard to sthanams and sthanam properties).

Whereas doubts have arisen about the true legal character of certain properties which are erroneously claimed to be or regarded as sthanam properties, but which are properties of the tarwad, the male members of which are entitled to succeed to the sthanam and it is necessary to remove those doubts in respect of this question :

Be it enacted in the Sixth Year of the Republic of India as follows :

1. This Act may be called the MADRAS MARUMAKKATHAYAM (REMOVAL OF DOUBTS) ACT, 1955.

> (2) It shall apply to all persons governed by the Madras Marumakkathayam Act, 1932 (Madras Act, XXII of 1933).

2. Notwithstanding any decision of Court, any sthanam in respect of which :-

> (a) there is or had been at any time an intermingling of the properties of the sthanam and the properties of the tarwad, or
>
> (b) the members of the tarwad have been receiving maintenance from the properties purporting to be sthanam properties as of right, or in pursuance of a custom or otherwise, or
>
> (c) there had at any time been a vacancy caused by there being no male member of the tarwad eligible to succeed to the sthanam,

shall be deemed to be and shall be deemed always to have been a Marumakkathayam tarwad and the properties appertaining to such a sthanam shall be deemed to be and shall be deemed always to have been properties belonging to the tarwad to which the provisions of the Madras Marumakkathayam Act, 1932 (Madras Act XXII of 1933), shall apply.

Explanation :- All words and expressions used in this Act shall bear the same meaning as in the Madras Marumakkathayam Act, 1932 (Madras Act XXII of 1933).

The Act presupposes the existence of a sthanam and its properties. It says that the sthanam and its properties possessing one or more of the characteristics mentioned therein shall be deemed and shall be always deemed to have been a Marumakkathayam tarwad and its properties respectively. The impugned Act applies also to sthanams whose title to properties has been declared by courts of law. Further the Act is given retrospective operation. It is suggested that the provisions of the Act have not been happily worded and, if properly understood with the help of the preamble, it would be clear that the sthanams were not converted into tarwads but only tarwads which were wrongly claimed to be sthanams were declared to be not sthanams. The preamble of a statute is "a key to the understanding of it" and it is well established that "it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt". We do not find any ambiguity in the enacting part of the Act. Assuming that there is some doubt, the preamble confirms our view of the construction of the Act. According to the preamble certain properties of the tarwad are erroneously claimed to be or regarded as sthanam properties and it has become necessary to remove those doubts by making the Act. The preamble also recognizes the existence of sthanams and the doubts related only to the title to the property of sthanams. The enacting part purports to resolve these doubts by laying down three tests, and if any one of these tests is satisfied, the sthanam shall be deemed to be a tarwad and the properties tarwad properties. In short, the Act, read with the preamble, takes the sthanam, lays down certain tests and proceeds to say that if one or other of the tests is satisfied in respect of any property claimed to be that of the sthanam, the sthanam by statutory fiction is treated as the tarwad and its properties as tarwad properties. The tests, as we will presently show, are arbitrary and not germane to the question whether the properties belong to a sthanam or a tarwad. Whatever may be the phraseology used, in effect and substance, the Act in the guise of applying certain tests seeks to convert certain sthanams into tarwards and their properties into tarwad properties. It applies equally to sthanams governed by decrees of courts and sthanams whose character and title to the properties can be established by clear evidence and to sthanams whose title is admitted. In the said cases no question of doubt can conceivably arise. The Act in the guise of dispelling doubts abolishes a class of sthanams and deprives them of their properties. The question is whether the said legislation can stand the test of Art. 19(5) of the Constitution.

The learned Advocate-General of Kerala seeks to support the legislation on the ground that under the Marumakkathayam law, the three characteristics of properties mentioned in s. 2 pertain to tarwad and, therefore, when wrong decisions were given by courts introducing confusion in titles, the legislature rightly stepped in to set right the wrong and declare such sthanams possessing definite characteristics of the tarwad to be and always to have been the tarwad properties. He further argues that, as the law was made to protect the rights of the members of the tarwad in a particular class of sthanams, the restrictions imposed on the sthanees' rights in their properties would be reasonable and would be in the interests of the general public, notwithstanding the fact that the legislation indirectly affects the rights of a few decree-holder sthanees, who have established their rights in a court of law.

Mr. Purshottam Tricumdas supported the learned Advocate-General in this contention.

Mr. A. V. Viswanatha Sastri, who followed him, preferred to found his contention on a broader basis, namely, that the members of a tarwad and a sthanee have some interest in each other's property and the legislation did nothing more than regulate their interest inter se to restore peace and harmony among them and to change the mutual relationship to bring it in accord with the concept of a modern welfare State. If that be the object of the Act, the argument proceeds, the mere fact that the law incidently disturbs the rights of parties who have obtained decrees of court does not make it unreasonable.

Before we consider the validity of these arguments, it would be convenient at this stage to notice the scope of Art. 19(1)(f) and Art. 19(5) of the Constitution. The said Articles read :

Article 19. (1) All citizens shall have the right -

> #.....##
>
> (f) to acquire, hold and dispose of property.
>
> #.....##
>
> (5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
>
> Under cl. (5), the State can make a law imposing reasonable restrictions on the fundamental rights embodied in Art. 19(1)(f) in the interests of the general public.
>
> What is "reasonable restriction" has been succinctly stated by Patanjali Sastri, C.J., in State of Madras v. V. G. Row ((1952) S.C.R. 597) thus at p. 607 :
>
> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

If we may say so, with respect, this passage summarizes the law on the subject fully and precisely. The learned Chief Justice in his description of the test of reasonableness, in our view, has not stated anything more than the obvious, for the standard of reasonableness is inextricably conditioned by the state of society and the urgency for eradicating the evil sought to be remedied. Some of the American decisions and passages from text-books cited at the Bar may be useful in ascertaining whether in the instant case the restrictions imposed by the statute are reasonable. In Willoughby's Constitutional Law it is stated at p. 795 thus :

> "As between individuals, no necessity, however great, no exigency, however

> imminent, no improvement, however valuable, no refusal, however unneighbourly, no obstinacy, however unreasonable, no offers of compensation, however extravagant, can compel or require any man to part with an inch of his estate."

The Supreme Court of the United States of America in Henry Webster v. Peter Cooper (14 Law Ed. 510, 517) observed :

> "The result of the decision is, that the constitution of the State has secured to every citizen the right of acquiring, possessing, and enjoying property and that, by the true intent and meaning of this section, property cannot, by a mere act of the Legislature, be taken from one man and vested in another directly; nor can it, by the retrospective operation of law, be indirectly transferred from one to another, or be subjected to the government of principles in a court of justice, which must necessarily produce that effect."

In The Citizen's Savings and Loan Association of Cleveland, Ohio v. Topeka City (22 Law Ed. 455, 461), the Supreme Court of the United States of America again declares the importance of individual property right thus :

> "The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the same. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B."

We have cited the relevant passages from the textbook and the decisions not with a view to define the scope of "reasonable restrictions" in Art. 19(5) of our Constitution, but only to point out that, as between citizens, the individual proprietary rights are ordinarily respected unless a clear case is made out for imposing restrictions thereon. There must, therefore, be harmonious balancing between the fundamental rights declared by Art. 19(1) and the social control permitted by Art. 19(5). It is implicit in the nature of restrictions that no inflexible standard can be laid down : each case must be decided on its facts. But the restrictions sought to be imposed shall not be arbitrary but must have reasonable relation to the object sought to be achieved and shall be in the interests of the general public.

Before we proceed to consider whether the restrictions imposed by the impugned Act are reasonable within the meaning of cl. (5) of Art. 19, it would be necessary to ascertain precisely the law on the following three matters : (1) What is a sthanam in Marumakkathayam law ?; (2) what is tarwad under the said law ?; and (3) what is the relationship between members of a tarwad and a sthanee ?

Marumakkathayam law governs a large section of people inhabiting the West Coast of South India. Marumakkathayam literally means descent through sisters' children. It is a body of custom and usage which have received judicial recognition. Though Sundara Aiyar, J., in Krishnan Nair v.

Damodaran Nair ((1912) 1 I.L.R. 38 Mad. 48) suggested that "Malabar law is really only a school of Hindu law", it has not been accepted by others. There is a fundamental difference between Hindu Law and Marumakkathayam system in that the former is founded on agnatic family and the latter is based on matriarchate. Marumakkathayam family consists of all the descendants of the family line of one common ancestor and is called a tarwad. The incidents of a tarwad are so well-settled that it is not necessary to consider the case-law, but it would be enough if the relevant passages from the book "Malabar and Aliyasanthana Law" by Sundara Aiyar are cited. The learned author says at p. 7 thus :

> "The joint family in a Marumakkathayam Nayar tarwad consists of a mother and her male and female children, and the children of those female children, and so on. The issue of the male children do not belong to their tarwad but to the tarwad of their consorts. The property belonging to the tarwad is the property of all the males and females that compose it. Its affairs are administered by one of those persons, usually the eldest male, called the karnavan. The individual members are not entitled to enforce partition, but a partition may be effected by common consent. The rights of the junior members are stated to be (1) if males, to succeed to management in their turn, (2) to be maintained at the family house, (3) to object to an improper alienation or administration of the family property, (4) to see that the property is duly conserved, (5) to bar an adoption, and (6) to get a share at any partition that may take place. These are what may be called effective rights. Otherwise everyone is a proprietor and has equal rights."

For the purpose of this case it is not necessary to go into further ramifications of the incidents of a tarwad, for nothing turns upon them.

We are concerned in this case with a sthanam. In the book of Sundara Aiyar the origin, scope and incidents of a sthanam are discussed at p. 249 :

> "As a technical word, 'stanom' means a position of dignity of this kind, that is, one to which certain specific property is attached, and which passes with it, and is held by the person as the "stani". .....The origin of stanom is by no means clear and is more or less a matter for speculation."

The learned author proceeds to give the three modes of the origin of sthanams, namely, (1) in a ruling family "it was considered necessary in the circumstances that for the maintenance of the dignity of the ruler he should own properties in which the members of the tarwad as such had no right or interest and which would pass with the Crown to his successor" : sthanams in the families of Zamorin, Palghat, Wulluvanad and other Rajas are given as instances of this class of sthanams; (2) "in the case of some chieftains and public officers, sthanams were created by the ruling king, who, when he appointed the head of a particular family to an office with hereditary succession attached also certain lands for the maintenance of the officer-holder" : Para Nambi is given as a prominent instance of this class; and (3) "when a family became very opulent and influential, it was sometimes deemed necessary in order to keep its social position and influence that the head should be able to maintain a certain amount of state, and for that purpose the members of the family agreed to set apart certain property for him, and such property, would descend to the head of the family for the time being". To some of the questions posed by the decisions or that are likely to arise, the learned author suggested some answers. The learned author describes the position of a sthanee vis-a-vis the members of the tarwad thus :

> "It is rather that of a member of a tarwad who separates himself from it by division. His accession to the stanom operates as a severance from the family. In consideration of his solely becoming entitled to the stanom property it was probably considered fair that he should give up his existing right in the property of the tarwad. But he and his tarwad will have the same right of succession to the properties of each other as if his severance from the family had been the result not of his accession to the stanom, but a voluntary division between him and the rest of the family."

Another difficulty visualized and attempted to be answered by the learned author is the case of a family which has no male member to succeed to the sthanam. He gives three possible answers, namely, (i) escheat to the Crown; (ii) descent according to the rules of devolution applicable to the property of a divided member; and (iii) on the assumption that the property is dedicated for the purpose of the tarwad, reverting to the tarwad. On the question, what would happen to the sthanam, if at the time of the death of the sthanee there was no male member in the tarwad, though he cited a decision of the Madras High Court where a subsequent born male infant was given a decree to recover the properties, he was of the view that the question was not an easy one to decide.

The decided cases considered the nature of this institution and also its incidents. A division bench of the Madras High Court in Vira Rayen v. The Valia Rani of Pudia Kovilagom, Calicut ((1881) I.L.R. 3 Mad. 141) held that according to the custom obtaining in the family of the Zamorin Rajas of Calicut, property acquired by a sthanam-holder and not merged by him in the properties of his sthanam, or otherwise disposed of by him in his lifetime, became, on his death, the property of the kovilagom in which he was born, and, if found in the possession of a member of the kovilagom, belonged presumably to the kovilagom as common property. In the course of the judgment, the learned judges pointed out that in the family of the Zamorin of Calicut there were five sthanams or places of dignity with separate properties attached to them, which were enjoyed in succession by the senior male members of the kovilagom. It appears from the judgment that the senior lady of the whole family also enjoyed a sthanam with separate property. The Judicial Committee in Venkateswara Iyan v. Shekhari Varma ((1881) I.L.R. 3 Mad. 384) was considering the validity of a perpetual lease of sthanam lands effected by one of the Valia Rajas of Palghat. In that context, Sir Arthur Hobhouse, delivering the judgment of the Judicial Committee, described a sthanam thus at p. 386 :

> "It appears that in the families of the Malabar Rajas it is customary to have a number of palaces, to each of which there is attached an establishment with lands for maintaining it, called by the name of a sthanam. The Palghat family have no less than nine sthanams. Each sthanam has a raja as its head or Sthanamdar. The Sthanamdar represents the corpus of his sthanam much in the same way as a Hindu widow represents the estates which have devolved upon her, and he may alienate the property for the benefit or proper expenses of the sthanam."

This passage equates a sthanamdar to a Hindu widow vis-a-vis his rights both in the matter or representation as well as his right to alienate the property pertaining to the sthanam. The decision in Mahomed v. Krishnan ((1888) I.L.R. 11 Mad. 106) dealt with a suit filed by the junior members of a tarwad, which consisted of the three sthanams, against the karnavan and others, including certain persons to whom he had alienated some tarwad property, inter alia, for a declaration that the alienations were invalid as against the tarwad and for possession of the property alienated. One of the questions raised was whether the plaintiffs were competent to maintain the suit. The suit was resisted on several grounds and one of them was that the tarwad was not a Malabar family in the

ordinary sense of the term, but that it consisted of three sthanams and three illakur houses or subsidiary tarwads. In considering the objections the learned Judges considered the nature of a sthanam property and made the following observations at p. 112 :

> "According to the custom of Malabar, the nature of stanom property is such that the present holder has in it a life interest and the successor derives no benefit from it during the life of his predecessor, whereas in ordinary tarwad property each member of the tarwad has a concurrent interest and a joint beneficial enjoyment. Although the position of a stani is analogous to that of a childless widow, in that both have a life interest, both represent the estate or the inheritance for the time being, and both have a disposing power only to the estate taken by reversioner. Each male reversioner becomes under Hindu Law the full owner when the reversion falls in, whereas the person that succeeds to a stanom takes the same qualified estate that his predecessor had. The legal relation therefore between the Vayoth Nair and the other stanomdars and the karnavans of the three subsidiary tarwads is that which subsists among a group of persons entitled to succeed to the stanom property in a certain order, each having only a life interest therein and qualified power of disposition over it. The relation between the stani and the junior members of each subsidiary tarwad is that which exists between the representative of the stanom for the time being and the class of persons who may become karnavans of their tarwads and therefore representatives of the junior and senior stanoms in the order of seniority."

This decision not only brings out the differences between a Hindu widow's estate and the sthanee's interest in a sthanam property but also points out that the interest of a member of a tarwad is only a right to succeed to the sthanam property in a certain order. It is nothing more than a spes successionis. Seshagiri Ayyar, J., in Krishnan Kidavu v. Raman ((1916) I.L.R. 39 Mad. 918) throws some light on the relationship to the tarwad of a person who had succeeded to a sthanam. The learned Judge says at p. 920 thus :

> "It is clear that if in his new sphere the stani acquires property and does not dispose of it, his tarwad will be entitled to it. The converse position is at least arguable. If the tarwad becomes extinct, the quondam member who had become a stani may lay claim to the property. It cannot, therefore, be said that the attainment to a sthanam severs the relationship altogether. The person thus ceasing to be a member is not in the position of a stranger."

The Judicial Committee in considering some of the aspects of the institution of a sthanam in K. Kochunni v. K. Kuttanunni (I.L.R. (1948) Mad. 672), a case that was fought out between the petitioner and some of the respondents in the present petition, accepted the meaning given to the word "sthanam" by Sundara Aiyar in his book on "Malabar and Aliyasanthana Law", namely, that it is a dignity to which property is attached for its maintenance and for the fulfilment of the duties attached to the position, but rejected the contention that the following two circumstances indicated that the sthanam was a tarwad : (1) maintenance was decreed against Moopil Nair to the junior members of the family and that maintenance was being paid to the junior members; and (2) the Court of Wards treated the sthanam property as tarwad property. The first circumstance was explained away with the following remarks at p. 691 :

> "The maintenance claimed was customary one, originating in ancient times when admittedly the Muppil Nair was a sthani in possession of sthanam rights. There is no

> evidence as to how the maintenance allowance arose, whether it was given in recognition of a legal claim or was only a generous provision made for the benefit of the women and younger members, which the Raja was perfectly competent to do out of property which he regarded exclusively as his own."

In respect of the second circumstances, the Judicial Committee remarked at p. 693 thus :

> "It appears from the evidence that the Court of Wards throughout the entire period of their management from 1872 till 1910 treated the estate as if it was a tarwad, but this was apparently without any investigation into the true nature of the property..... Besides there was no adult male at that time to question the treatment by the Court of Wards of the property as tarwad property."

A third circumstance was relied upon, namely, that in 1872 the only surviving member of the family was then a girl of six years of age and that, therefore, there being no male heir to succeed to the sthanam, the sthanam became extinct. The Judicial Committee did not allow this plea to be raised for the first time before them. That apart, quoting from Sundara Aiyar's book, they pointed out that the question whether a sthanam becomes extinct on the extinction of the male members or is only in abeyance during the absence of the male members so as to be capable of being revived, does not admit of an easy solution.....". This decision lays down that if once it has been established that a property is a sthanam property, the mere fact that the sthanamdar was giving maintenance to the members of the family or that the Court of Wards treated the entire property as tarwad property would not in itself convert what is sthanam property into a tarwad property.

To summarize : The origin of the sthanam is lost in antiquity. It primarily means a dignity and denotes the status of the senior Raja in a Malabar Kovilagom or palace. It is surmised that sthanams were also created by the Rajas by giving certain properties to military chieftains and public officers and also by tarwads creating them and allocating certain properties for their maintenance. Most of the incidents of a sthanam are well settled. Usually the seniormost male member of the family and occasionally a female member attains a sthanam. Properties are attached to the sthanam for the maintenance of its dignity. The legal position of a sthanee is equated to that of a Hindu widow in that he represents the estate for the time being and he can alienate the properties for necessity or for the benefit of the estate. Unlike a Hindu widow, the successor to a sthanee is always a life-estate-holder. In that respect his position is more analogous to an impartible estate-holder. He ceases to have any present interest in the tarwad properties. Like a Hindu widow or an impartible estate-holder, he has an absolute interest in the income of the sthanam properties or acquisitions therefrom. His position is approximated to a member separated from the family and that the members of the tarwad succeed to his acquisitions unless accreted to the estate and he succeeds to the tarwad properties, if the tarwad becomes extinct. Questions like what would happen if there is no male heir to a sthanam at any point of time - whether the properties pertaining to the sthanam would escheat to the State or devolve upon the members of the tarwad or whether a subsequent birth of a male heir would revive the sthanam - are raised by Sundara Aiyar in his book, but there is a decision of the Madras High Court where in the case of Punnathoor family a subsequent born male heir was given a decree for the possession of the properties of a sthanam. On the question whether a sthanam property, not being the property of a member of a tarwad, be blended with the property of the tarwad so as to make it a tarwad property, there is no direct decision. On principle if the sthanee, on attaining the sthanam is in the position of a separated member of a Hindu family, there may not be any scope for the application of the doctrine of blending. No member of a tarwad has any right to maintenance from out of the sthanam properties and the mere fact that a sthanee for the time being,

out of generosity or otherwise, gives maintenance to one or other members of the tarwad cannot legally have the effect of converting the sthanam property into a tarwad property; nor the fact that the sthanam properties are treated as tarwad properties can have such a legal effect.

Now, what is the relationship between the tarwad and the sthanee ? It is true that whatever may be the origin of the sthanam, ordinarily, the seniormost member of a tarwad succeeds to that position, but once he succeeds, he ceases to have any proprietary interest in the tarwad. So too, the members of the tarwad have absolutely no proprietary interest in the sthanam property. Thereafter, they continue to be only "blood relations" with perhaps a right of succession to the property of each other on the happening of some contingency. The said right is nothing more than a spes successionis; the tarwad may supply future sthanees.

With this background let us look at the terms of the Act to see what it purports to do. What is the effect of the impugned Act ? It is not the form that matters but the substance of it in its operation on the vested rights of citizens. The Act destroys the finality of decrees of courts establishing the title of janmies to the sthanam properties. It affects the undisputed title of sthanees in sthanam properties, though they may not have obtained decrees in respect thereof. It statutorily confers title retrospectively on the members of the tarwad who had none before. It arbitrarily dislocates the title of particular sthanees in respect of certain sthanam with particular characteristics, which have no relation to the title of the sthanees. The first characteristic mentioned in the impugned Act is that there is or had been at any time an intermingling of the properties of the sthanam and the properties of the tarwad. If the word "intermingling" conveys only the idea of mere factual mixing up of the sthanam properties with the tarwad properties, it cannot, by any known legal notion of Marumakkathayam Law or on any analogy drawn from Hindu Law, convert the sthanam property into the tarwad property. Even if it is understood in the sense of blending, the sthanee, who ceases to be a member of the tarwad and is in a position of a separated member, cannot legally blend his property with that of the tarwad, for the legal concept of blending implies that the person who blends his property with that of the family is an undivided member of the family.

The second characteristic mentioned in the impugned Act is that the members have been receiving maintenance from properties purporting to be sthanam properties as of right or in pursuance of custom or otherwise. This characteristic is foreign to the concept of sthanam. No member of a tarwad is entitled as of right to any maintenance from out of properties of the sthanam. Under this clause, if maintenance is so received, the sthanam is deemed to be a tarwad on the basis that the receipt of maintenance from the sthanee out of the sthanam property brings about the said result. If a sthanee creates any such right in favour of a tarwad, it may bind him, but it cannot certainly be binding on the sthanam properties or its successor. If a custom be established on evidence, it may become an incident of the sthanam, but it cannot obliterate or extinguish it or convert it into a tarwad. The word "otherwise" in the context, it is contended, must be construed by applying the rule of ejusdem generis. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must from a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary. On the basis of this rule, it is contended, that the right or the custom mentioned in the clause is a distinct genus and the words "or otherwise" must be confined to things analogous to right or custom such as lost grant, immemorial user, etc. It appears to us that the word "otherwise" in the context only means "whatever may be the origin of the receipt of maintenance". One of the objects of the legislation is to by-pass the decrees of courts and the Privy Council observed that the receipt of maintenance might even be out of bounty. It is most likely that a word

of the widest amplitude was used to cover even acts of charity and bounty. If that be so, under the impugned Act even a payment of maintenance out of charity would destroy the character of an admitted sthanam which ex facie is expropriatory and unreasonable.

Nor does the third characteristic embody an unimpeachable test of the extinction of a sthanam or the conversion of the same into a tarwad. Under the impugned Act, if there had been at any time a vacancy caused by there being no male member of the tarwad eligible to succeed to the sthanam the sthanam would be deemed to be a tarwad. Not only there is no justification for enacting that non-existence of such a male heir at any point of time should put an end to the character of the sthanam, but the only decided case of the Madras High Court on the point recognized the right of a subsequently born male member in a tarwad to succeed to the sthanam and its properties.

Therefore, the three tests laid down by the impugned Act to enable the drawing of the statutory fiction are not only not germane but extraneous to the object sought to be achieved.

What is more, the impugned Act is made retrospective so as to make the sthanee liable to arrears of maintenance and past profits. The contention that the impugned Act is nothing more than a readjustment of rights inter se between the members of the tarwad and the sthanee is without substance, for, before the Act, except ties of blood and a right to succeed in a particular contingency the members of the tarwad had no interest in presenti in the sthanam property nor vice versa. The impugned Act is only a legislative device to take the property of one and vest it in another without compensation, and, therefore, on its face stamped with unreasonableness. In short, the impugned Act is expropriatory in character and is directly hit by Art. 19(1)(f) and is not saved by cl. (5) of Art. 19.

Another condition for the application of cl. (5) of Art. 19 is that the restrictions should be in the interest of the general public. We assume for the purpose of this case that there are sthanams with characteristics similar to those of the petitioner's sthanam and that the Act confers title on the junior members of tarwad in properties of such sthanams and that they form a defined section of the public. If so, a question arises whether a section of the public is "general public" within the meaning of Art. 19(5). This fell to be considered by a full bench of the Calcutta High Court in Iswari Prosad v. N. R. Sen (A.I.R. 1952 Cal. 273). It was contended before the full bench of the said High Court that the words "in the interests of the general public" mean "in the interests of the public of the whole of the Republic of India". Negativing this contention, Harries, C.J., observed at p. 278 thus :

> "The phrase 'in the interests of the general public' means I think nothing more than 'in the public interest', and it may well be that legislation affecting a limited class of persons or a limited area might well be legislation in the public interests, though the public of other parts of India might not be directly affected by such legislation. If they are indirectly affected such would be quite sufficient to make such legislation in the public interest. Legislation affecting a particular class or a particular area would only directly affect the members of that class or the inhabitants of that particular area. But the removal of some serious abuse or grievance or discontent is a matter indirectly affecting the public generally. It is not in the interests of the general public or in the public interest to allow any class of persons to labour under some grievance and to be genuinely discontented. It is in the interests of the general public or in the public interest that all classes of the citizens of India are content and that their grievances should be removed. A festering sore on the human body may eventually affect the whole body though at first its effect is localised. Grievances or discontent

> in some particular area or in some State or in some class of persons may eventually affect the whole Republic of India, though originally the effects might be limited. The removal of any grievance, abuse or discontent is a matter not only where the discontent or grievance is genuine it may well be in the public interest to remove such, though the public in other parts of India may not be directly affected. It is in the public interest that persons should be governed justly and well and removal of hardship and grievances of a particular class is I think clearly a matter of public interest."

We agree with these observations.

Relying upon these observations, it is said that the decision of the Privy Council created a stir among the members of that class of the public who are governed by the Marumakkathayam Law, either because the pre-existing rights were disturbed or because there is no justification in a welfare State for one member of the tarwad succeeding to the entire sthanam property to the exclusion of the other members of the tarwad, and so, the argument proceeds, that the State has stepped in to rectify the mistake or to do justice consistent with modern trends. It is further argued that the redress of this grievance of a section of the community is in the interest of the public. This argument is purely based on surmises. We have pointed out that the junior members of the tarwad had never any interest in the sthanam properties. We cannot say on the materials placed before us that any public interest will be served by depriving a sthanee of his properties and conferring title in his properties so deprived on others. Nor is there any evidence that there was a real and genuine grievance in this particular section of the public belonging to tarwads justifying the interference by the State. We cannot on the materials placed before us hold that this reform is in the public interest.

The learned Attorney-General raised a further point that no law can impose restrictions retrospectively on fundamental rights and, in support of his contention, he relied upon the wording of cl. (5) of Art. 19 of the Constitution and also on the decision of the Privy Council in Punjab Province v. Daulat Singh ((1946) F.C.R. 1). But, as we have held that the restrictions imposed are not reasonable within the meaning of cl. (5) of Art. 19 of the Constitution, this question need not be decided in this case.

We declare that Madras Act 32 of 1955 is void and ultra vires the Constitution and issue a writ of mandamus restraining the State of Kerala from enforcing the provisions of the said Act against the petitioner and his sthanams. In the result, Petition No. 443 of 1955 is allowed with costs; Petition No. 40 of 1956 is allowed, but in the circumstances, without costs; and Petition No. 41 of 1956 is dismissed, but in the circumstances, without costs.

SARKAR, J. –

In our view these petitions fail.

The petitions challenge the validity of an Act passed by the Madras Legislature called the Madras Marumakkathayam (Removal of Doubts) Act, 1955. The substantive provisions of the Act are contained in s. 2 which is in these terms :

> "S. 2. Notwithstanding any decision of Court, any sthanam in respect of which -
>
> (a) there is or had been at any time an intermingling of the properties of the sthanam and the properties of the tarwad, or

(b) the members of the tarwad have been receiving maintenance from the properties purporting to be sthanam properties as of right, or in pursuance of a custom or otherwise, or

(c) there had at any time been a vacancy caused by there being no male member of the tarwad eligible to succeed to the sthanam,

shall be deemed to be and shall be deemed always to have been a Marumakkathayam tarwad and the properties appertaining to such a sthanam shall be deemed to be and shall be deemed always to have been properties belonging to the tarwad to which the provisions of the Madras Marumakkathayam Act, 1932 (Madras Act, XXII of 1933), shall apply."

Sthanams and tarwads are peculiar institutions of the Malabar area and a few words about them are necessary. A tarwad is an undivided family governed by the Marumakkathayam Law, the customary law of Malabar. The outstanding feature of that law is that for the purposes of inheritance, descent is traced through the female line. The property of the tarwad or family is owned by all its members but is managed ordinarily by the eldest male member, such manager being called the karnavan. Before the Madras Marumakkathayam Act, 1932, was passed, a member of the tarwad could not insist on a partition and a partition took place only when all the adult members agreed. The members had, however, the right to be maintained by the karnavan and had certain other rights to which it is not necessary for us to refer. The Madras Marumakkathayam Act, 1932, made some changes in the customary law. The more important changes were that the junior members were given power to inspect the accounts of the karnavan and a right to ask for partition subject to certain limitations.

We turn now to sthanams. A sthanam is a station, rank or dignity. A sthani is the holder of a sthanam. A sthanam usually has lands attached or granted to keep up the station, rank or dignity of the sthani and it appears to have come into existence in one or other of the manners hereinafter stated. The ancient rulers of the Malabar coast possessed sthanams and it may be taken that the lands which they held as rulers were regarded as being sthanam lands in character. The sthanam held by a ruler went by the name of Rajasthanam. The Rajasthanams have continued though there are no rulers now. Apart from Rajasthanams, there are other kinds of sthanams. The rulers often granted sthanams with lands attached to them to their subsidiary chieftains or other persons of consequence in their States. Sthanams with lands were also sometimes granted for rendering military service. Again when a family became opulent and influential the members of the tarwad sometimes agreed to set aside for the karnavan certain lands in order that he might keep up his social position and influence and so again a sthanam was created. A sthanam with the lands attached thereto devolved on the death of the holder for the time being to the next senior member of his tarwad. When a member of the tarwad becomes the sthani he loses his interest in the tarwad properties though he does not cease to be a member of the tarwad. The members of the tarwad in their turn have no interest in the sthanam lands. The sthani is entitled to utilize the income of the sthanam properties for his own purposes. For a more detailed statement of the character of a sthanam reference may be made to P. R. Sundara Aiyar's book on Malabar and Aliyasanthana Law. We have taken the greater part of what we have said in this paragraph from Kuttan Unni v. Kochunni (I.L.R. (1944) Mad. 515). The important point to note for the purposes of these petitions is that the sthani for the time being is alone entitled to the lands of his sthanam and the members of his tarwad are not entitled to them while all members of a tarwad except the sthani are entitled jointly to all the properties of a tarwad.

There are altogether three petitions before us bearing numbers 443 of 1955 and 40 & 41 of 1956

and they have been heard together. The petitioner in Petition No. 443 of 1955 is the Moopil Nayar or the senior member of the Kavalappara tarwad or family to which the parties to this petition other than the States of Kerala and Madras, belong. As the head of the family he claimed to be entitled to eight sthanams with the lands attached to them respectively.

It appears that the Kavalappara family was a ruling dynasty in pre-British times and ruled over the Kavalappara territory. The Moopil Nayar or senior member of this family for the time being was the ruler of the Kavalappara State. The Kavalappara territory was the Ruler's Rajasthanam. When Malbar was ceded by Tippu Sultan to the East India Company in 1792, the Kavalappara family lost its sovereign rights. The Kavalappara territory, however, continued as a Rajasthanam held by the Moopil Nayar or the senior member of the family for the time being. The petitioner in Petition No. 443 of 1955 has been the Moopil Nayar of the Kavalappara family since his elder brother's death in 1925 and claims the lands of the Rajasthanam as such. This is the first of the eight sthanams mentioned earlier. The head of the Kavalappara family was entitled to five other sthanams granted from time to time by the rulers of Palghat to whom the Kavalappara State was subordinate. Each of these sthanams also had lands attached to it. The lands attached to the Rajasthanam and sthanams granted by the rulers of Palghat were situate in the South Malabar district which originally appertained to the State of Madras and is now part of the State of Kerala. The head of the Kavalappara family was also entitled to two further sthanams with the lands attached to them which had been granted by the ruler of Cochin. The lands belonging to these two sthanams were situate in the former State of Cochin now merged in the State of Kerala. The petitioner made a gift of the lands attached to the five sthanams which had been granted by the Raja of Palghat, to his wife and daughters. The donees under this gift are the petitioners in Petition No. 40 of 1956. He likewise made a gift of the lands attached to the two sthanams which had been granted by the Raja of Cochin to his son who is the petitioner in Petition No. 41 of 1956. These gifts had been made before the impugned Act had been passed.

It is necessary now to refer to a previous litigation. On April 10, 1934, the then junior members of the Kavalappara family filed a suit in the Court of the Subordinate Judge of Ottapalam for a declaration that all the properties managed by the Moopil Nayar were tarwad properties belonging equally and jointly to all the members of the tarwad including the Moopil Nayar and that the latter was managing them as Karnavan and not as sthani. The defendant to this suit was the petitioner in Petition No. 443 of 1955, the Moopil Nayar or the senior member of the family. The Moopil Nayar resisted the suit claiming to be solely entitled to the disputed lands on the basis that they were sthanam lands and he was the sthani. This suit was dismissed by the learned Subordinate Judge but on appeal the decision of the Subordinate Judge was reversed by the High Court of Madras and a decree was passed as claimed in the suit. It is this judgment of the High Court which is reported in I.L.R. (1944) Mad. 515, to which reference has been made earlier. On a further appeal to the Privy Council by the Moopil Nayar, the decision of the High Court was set aside and that of the Subordinate Judge restored. The decision of the Judicial Committee was given on July 29, 1947. The result was that the petitioner, Moopil Nayar, was declared to be entitled as sthani to the disputed properties and it was held that those properties were sthanam properties and not tarwad properties.

The impugned Act came into force on October 19, 1955. At that time the South Malabar District was part of the State of Madras. Later, with the formation of the State of Kerala, this area became part of that State and continued to be governed by the Act. That Act was never extended to any other part of Kerala and never applied to the territories covered by the former Cochin State which had been merged in the State of Kerala. The petitions were filed challenging the validity of the Act soon after it came into force.

We will take up Petition No. 443 of 1955 first. In this petition we are concerned only with the Kavalappara Rajasthanam. The petitioner, the Moopil Nayar, was entitled at the date of the petition only to the lands attached to that sthanam for he had earlier given away the lands belonging to the other sthanams to his wife, daughters and son as already stated. He complains that as a result of the impugned Act he has been deprived of the exclusive ownership of the lands attached to the Kavalappara Rajasthanam and has to share it with the other members of his tarwad or family. It is not in dispute that the Act applies to Kavalappara Rajasthanam. The respondents to this petition are the junior members of the Kavalappara family and the States of Kerala and Madras. The State of Madras has not appeared perhaps because the Act applies to lands which have since the filing of the petition, been transferred from Madras to Kerala, upon which transfer the State of Kerala had been made a party to the petition. There are three interveners in this petition two of whom support the respondents and one supports the petitioner.

The petitioner, Moopil Nayar, first says that the Act violates Art. 14 of the Constitution inasmuch as it applies to the sthanam held by him only and to no other sthanams. This raises a question of fact. He, however, also says that the Act is bad as infringing Arts. 19(1)(f) and 31(1) of the Constitution as it deprives him of his right to hold property and that it is not saved by cl. (5) of Art. 19. If, however, the Act enacts a law within the meaning of Art. 31A of the Constitution, the petitioner cannot be heard to complain of violation of Arts. 14, 19(1)(f) and 31(1). So the question arises, is it saved by Art. 31A ? That article so far as is material in this case is set out below :-

> "Art. 31A. (1) Notwithstanding anything contained in article 13, no law providing for -
>
> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights,
>
> #.....
> ...##

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31.

Provided that where such law is a law made by the Legislature of a State, provisions if 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 and in the States of Madras and Kerala, any janmam right;
>
> (b) the expression 'rights', in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue".

It appears that the Act had been reserved for the consideration of the President and had received his assent.

If, then, the Act provides for a modification of rights in an "estate", it would not be void on the ground that it is inconsistent with Arts. 14, 19 and 31 the violation of which the petitioner complains. Under Art. 31A(2)(a), an "estate" includes, in the State of Kerala, any janmam right. This of course means lands held in janmam rights for janmam rights exist only in lands. Again, under sub-cl. (b) of cl. (2) of Art. 31A the expression "rights" used in relation to an "estate" in that article includes the rights of the proprietor of the estate or others holding under him. In regard to this sub-clause it has been held by this Court in Atma Ram v. State of Punjab ((1959) Supp. 1 S.C.R. 748) that the expression "rights" in relation to an estate has been used in a very comprehensive sense and includes not only the interest of the proprietor or sub-proprietor but also of lower grades of tenants, that is, all those who have acquired rights under him by what are called processes of sub-infeudation.

The respondents contend that the rights affected by the Act are janmam rights and, therefore, the Act is one contemplated by Art. 31A. The petitioner, Moopil Nayar, states that the respondents have not alleged that the sthanam properties are held in janmam right. It appears that in the affidavit of the State of Kerala it is stated that the Act is saved by virtue of the provisions of Art. 31A. As we are concerned with lands in the State of Kerala, the Act could be saved by Art. 31A if the lands were held in janmam rights or in rights held under the holder of the janmam rights. The allegation that the Act is saved by Art. 31A, therefore, clearly implies that the lands attached to the sthanams were held in janmam rights or rights subordinate to janmam rights. There is no statement by the petitioner anywhere on the records that the lands were not held on such rights. On the other hand, it would appear from what we state later that the rights in the lands were janmam rights or rights subordinate to janmam rights.

Janmam right is really a freehold interest in land. In s. 3(k) of the Malabar Tenancy Act, 1929, a janmi has been defined as a person entitled to the absolute proprietorship of land. What we have earlier stated leaves no doubt that the lands, belonging to the sthanams were lands held in absolute proprietorship, that is, in freehold interest. It has not been alleged that the freehold interest in the sthanam lands has undergone any change. Neither has it been shown to us that in the Malabar area land can be held in any right other than janmam right or subordinate rights created by the holder of a janmam right. Again in his written statement in the suit of 1934, earlier mentioned, which is on the record of this case, the petitioner, Moopil Nayar, stated that the lands of the sthanams situated in Madras remained in the management of the Court of Wards, Madras, from 1872 to 1916 and were registered as held in janmam rights. Therefore, it seems to us that it has been established that the lands belonging to the sthanams in South Malabar district are held in janmam rights. That being so, rights in such lands would be rights in an estate within the meaning of Art. 31A(1)(a).

It is said on behalf of the petitioner, Moopil Nayar, that the Act compels him to share the lands with the other members of his family. If so it seems to us that the effect of the Act is to modify the interest of a holder of a sthanam in the lands attached thereto. His rights as sole owner of the lands are modified by making him one of the joint owners of them along with the other members of his family. As the lands were held in janmam rights or rights subordinate thereto, the Act would be saved by Art. 31A though it may infringe Arts. 14, 19(1)(f) or 31(1).

The petitioner, however, contends that even if the lands were held in janmam rights, Art. 31A would not protect the Act. He first says that the Act contemplated by Art. 31A(1)(a) is an Act passed with the object of effecting agrarian reforms which the Act before us is not. But we find nothing in the article to justify this contention. The article does not mention any agrarian reform. Under it any janmam right may be acquired, extinguished or modified; this would be so whether the land held on

janmam right was agricultural land or land which can never be used for agricultural purposes.

Article 31A was introduced into the Constitution by the Constitution (First Amendment) Act, 1951. It was subsequently amended by the Constitution (Fourth Amendment) Act, 1955. Both these Acts made the amendments with retrospective effect from the commencement of the Constitution. The petitioner seeks to support the contention that the Act contemplated by Art. 31A(1)(a) is an Act dealing with agrarian reforms by referring to the objects and reasons stated in the Bills by which the Acts amending the Constitution were introduced in the Parliament. It does not seem to us that it is permissible to refer to such objects and reasons for the construction of a statute : see Aswini Kumar Ghose v. Arabinda Bose ((1953) S.C.R. 1). We conceive therefore, that we are not entitled to read the word "law" in Art. 31A(1) in relation to sub-cl. (a), only as a law intended to achieve agrarian reforms on the basis of the supposed object of the legislature in enacting Art. 31A. We also observe that apart from the objects and reasons found in the Bills, there is nothing on which the contention that the law contemplated by Art. 31A(1)(a) is a law intended to achieve agrarian reform, can be based.

It is next said that the Act did not effect any modification of janmam rights and hence again Art. 31A is of no avail to protect it. It is contended that the modification contemplated by the Article is a modification of the incidents of the janmam rights. It is said that what the Act did was to distribute janmam rights among various persons and several owners held the same janmam rights which, before the Act, had been held by one. That, it may be stated, is so but that does not affect the real question for decision. When the Article talks of modification of janmam rights it does not talk of such rights in the abstract. It contemplates the modification of the rights held by a person. It would be as much modification of janmam rights if such rights held by one person are directed to be held by a number of persons jointly, as when the incidents of such rights are altered. Further our view receives support from two decisions of this Court, namely, Sri Ram Ram Narain Medhi v. The State of Bombay ((1959) Supp. 1 S.C.R. 489) and Atma Ram v. The State of Punjab ((1959) Supp. 1 S.C.R. 748). These cases dealt with Acts one of the provisions of which compelled a landlord to sell to his tenant the whole or a portion of the land held by the latter at a price to be fixed in the manner indicated. It was held that though this provision violated Art. 19(1)(f) yet it was saved by Art. 31A. It will be seen that here the incidents of the tenure on which the landlord held the land were not altered. After he had been compelled to transfer the lands to his tenants, he held the remainder on the same terms as before, yet it was held that the Acts compelling the landlord to sell a part of the land held by him were saved by Art. 31A. In our view, therefore, the Act now before us is saved by Art. 31A and it cannot be declared invalid even if it violates the provisions of Arts. 19(1)(f), 14 and 31(1) of the Constitution. In this view of the matter it is not necessary for us to consider whether the Act in fact violates Arts. 14, 19(1)(f) and 31(1) or any of them or is saved by cl. (5) of Art. 19.

Next it is said that the Act is bad as it is really an exercise by the legislature of judicial power which it does not possess and not an exercise of a legislative power at all. We are unable to hold that this is so. There are two things in the Act on which this contention has been based. The first is that the Act has been given a retrospective operation. It is quite clear to us that that by itself does not make the Act a thing done in the exercise of judicial power. The legislature has the power to give retrospective operation to an Act. That of course interferes with vested rights but the legislature can interfere with such rights in the exercise of its legislative power. That is not adjudicating between parties affected by the Act. It is laying down the law to be followed by courts in future. It is so none the less that the law is altered as from a past date.

Then it is said that the Act provides that it is to have effect notwithstanding any decision of the

Court contrary to its provisions. That the Act no doubt does. Can it be said that it thereby adjudicates and not legislates ? In Piare Dusadh v. King Emperor ((1944) F.C.R. 61) it was pointed out that in India the legislature very often in the enactments that it makes sets aside decisions of Courts. In America a rule appears to obtain that "Legislative action cannot be made to retroact on past controversies and to reverse decisions which the courts in the exercise of their undoubted authority have made" : Cooley's Constitutional Limitations, 8th Ed., p. 190. It was held in Piare Dusadh's case ((1944) F.C.R. 61) at p. 104, that this rule had no application in India. The observation there made may be set out :-

> "It is clear from the American authorities that this limitation has been derived from the interpretation placed by the American courts on what are known as the Fifth and Fourteenth Amendments which provide against any person being "deprived of life, liberty or property without due process of law". The expression "due process of law" has been interpreted as referring only to 'judicial process' and as not including legislation,..... As this requirement had been made part of the written constitution, it followed that on enactment passed by a legislature limited by that constitution could authorise anything in violation of it..... Hence the rule (stated by Cooley) that 'it would be incompetent for the legislature, by retrospective legislation, to make valid any proceedings which had been had in the courts but which were void for want of jurisdiction over the parties.' The constitutional position in India is different."

It seems to us that this observation of the Federal Court which no doubt was made with reference to the Government of India Act, 1935, applies with equal force to the position obtaining under our Constitution. It has been held by this Court that there is no scope under our Constitution for the application of the American concept of "due process of law". The American cases cited in support of the contention that a legislation cannot override judicial decisions therefore afford no assistance in our country. Article 31B itself provides that it would apply notwithstanding any judgment, decree or order of any court to the contrary and it had been enacted by an Act passed by the Parliament. There have been many Acts passed since the Constitution came into force which contained similar provisions. In no case has it ever been contended that such an Act amounted to an exercise of the judicial function by the legislature. The Act before us lays down a law to be applied by courts in future in the adjudication of disputes between parties. It also says that the courts shall apply the law notwithstanding that there is an earlier decision on the rights of the parties which are being litigated upon in a subsequent proceeding. The Act does not itself annul any decision of any court. All that it says is that the law laid down is to be applied by courts irrespective of any previous decision. It does not in any sense adjudicate between parties. It, therefore, seems to us that the contention that the impugned Act is really an exercise of judicial power is ill-founded.

In our view, the challenge brought against the impugned Act fails. Petition No. 443 of 1955 should, therefore, be dismissed with costs.

Coming now to the Petition No. 40 of 1956 the petitioners here are the wife and the two daughters of the petitioner in Petition No. 443 of 1955. The respondents are the junior members of the tarwad as also the Moopil Nayar. The petitioners claim as donees from the Moopil Nayar to be entitled to the sthanam lands in the Palghat area. It is not necessary for us to decide whether the petitioner in Petition No. 443 of 1955 had the right to make the gift in favour of his wife and daughters. That question has not been gone into by consent of the parties. If the gift is valid then what we have said earlier in connection with Petition No. 443 of 1955, will apply to this petition also and it must for the same reason fail. If the gift is invalid, the petition must fail on the ground that the Act has not

affected the petitioner's rights in any lands held by them. We would, therefore, dismiss that petition with costs except the costs of the hearing before us for all the three petitions were heard together.

Lastly, we come to Petition No. 41 of 1956. This petition must clearly be dismissed. It was filed by the son of the petitioner in Petition No. 443 of 1955 claiming to be entitled to the sthanam lands situate in an area which was formerly part of the Cochin State. It is not in dispute that the impugned Act was never extended to that area. Therefore, whether the gift to him was valid or not, as to which we say nothing, the petitioner in this petition is not affected by that Act at all. His petition is clearly misconceived. His petition is, therefore, dismissed and he will pay the costs excepting the costs of the hearing.

ORDER OF COURT.

In view of the judgment of the majority, Petition No. 443 of 1955, is allowed with costs, Petition No. 40 of 1956, is allowed without costs, and Petition No. 41 of 1956, is dismissed without costs.

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