Guru Datta Sharma

Vs

State of Bihar

Civil Appeal No. 41 of 1960

(CJI B.P. Sinha, A.K. Sarkar, K.C. Das Gupta, N. Rajgopala Ayyangar, J.R. Mudholkar JJ)

24.04.1961

JUDGMENT

AYYANGAR, J. –

This appeal comes before us on a certificate granted by High Court of Patna under Art. 133(1) of the Constitution.

The appellant had filed a suit against the State of Bihar before the Subordinate Judge, Daltonganj and had succeeded in obtaining a decree in his favour the details of which we shall presently narrate. The State preferred an appeal to the High Court and by the judgment now under appeal the learned Judges of the High Court had allowed the appeal and dismissed the suit with costs, and the plaintiff has come up on appeal to this court.

The facts giving rise to the suit and the appeal may now be briefly stated. The village of June in the district of Palamau in the State of Bihar was within the estate of the Raja of Ranka. This proprietor had granted a mokarari lease of the village which consisted mostly of forest lands, in favour of certain persons who have been referred to in these proceedings as the Manjhis. The Manjhis in their turn entered into a registered agreement on February 23, 1946, with Gurudutt Sharma - the appellant before us, whereby the latter was, in consideration of the payment of a sum of Rs. 6,000, granted the right to cut and remove bamboos and certain other timber to be found in a specified area of this forest-village. This right the appellant was to have for a period of 8 years ending on March 1, 1954. By a further deed executed on March 15, 1946, which was however unregistered, the Manjhis granted to the appellant the right to pluck, or collect and carry away bidi leaves in the same forest area for a period of 9 years ending March 1, 1955, for a consideration of Rs. 200. It is the case of the appellant that immediately after these deeds were executed, he started cutting the trees and otherwise exercising the rights granted to him under them.

Meanwhile the Governor of Bihar who had, by proclamation issued by him under s. 93 of the Government of India Act, 1935, assumed to himself the powers vested in the Provincial Legislature, enacted in exercise of the powers so assumed, the Bihar Private Forests Act, 1946 (Bihar 3 of 1946). It is the validity of this enactment and the interpretation of its provisions and of the similar provisions in the Bihar Private Forests Act, 1947 (Bihar 9 of 1948), by which it was repealed and re-enacted, that form the main subject of controversy in this appeal. It is therefore necessary to set out certain of the relevant provisions and also the action taken under them in order to appreciate the contentions raised by learned Counsel for the appellant. The Governor's Act of 1946 extended to the whole of the Province of Bihar and came into force on February 25, 1946, when having received the assent of the Governor-General it was first published in the Bihar Gazette. There were certain

forests which were excepted from the operation of this Act by its second section, but the forests in the village of Jun with which this appeal is concerned were not among them. The Act contained the definition of a "landlord" as meaning 'the owner of the estate or tenure in which a forest is comprised who is entitled to exercise any rights in the forests'. It is obvious that the Manjhis would be "landlords" within this definition. Section 4 of this Act enacted :

> "The rights of the landlord and..... the rights of any other person to cut, collect or remove trees, timber or other forest produce in or from..... in any forest shall not be exercised in contravention of the provisions made in or under this Act."

There were other restrictions on the rights of landlords or persons claiming through them but these are not very material for the point required to be decided in this appeal. Chapter III of this enactment which comprised ss. 13 to 30 dealt with "private protected forests" which were defined in s. 3(10) as 'a forest specified in a notification issued under sub-s. (1) of s. 29'. Section 13 with which this Chapter opens made provision for the Provincial Government, "if satisfied that it was necessary in the public interest to apply the provisions of this Chapter to any private forest" to constitute such forest "a private protected forest." Section 14 required the Government, when proposing to constitute a private forest as a "private protected forest" "to issue a notification (a copy of which shall be served on the landlord in the prescribed manner) (a) declaring its proposal, (b) specifying the situation and limits of the forests and stating that landlords whose interests are likely to be affected by the constitution of the private protected forests to state their objections in writing against the proposal." Section 15 prescribed the procedure for hearing the objections which might be presented under s. 14 and after the disposal of the objections a notification might issue declaring "that it has been decided to constitute" a demarcated area as "a private protected forest" and for other consequential matters including the determination of the existence and nature of rights other than those of the landlords in or over such forests. After the issue of the notification under s. 15, the Forest Settlement Officer was required by s. 16 to publish a proclamation in the village in the neighbourhood of the forest requiring persons claiming rights other than those of a landlord, to appear before him and state the particulars thereof and the compensation which they claimed for the infringement of their rights. Sections 17 and 18 dealt with the enquiry by the Forest Settlement Officer in respect of these objections and his powers in doing so. Section 19 made provision for the extinction of the rights and claims which had not been preferred in response to a notification under s. 16 unless the officer was satisfied that the same was not made for sufficient cause. Section 29 enacted :

> "29. (1) When the following events have occurred, namely :-
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> (a) the period fixed under section 16 for preferring claims has elapsed, and all claims, if any, made under sections 16 and 22 have been disposed of by the Forest Settlement Officer; and
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> (b) if any such claims have been made, the period limited by section 26 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer,
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> the Provincial Government shall publish a notification in the official Gazette, specifying definitely according to boundary marks erected or otherwise the limits of the forest which is to be constituted a private protected forest and declaring the same to be a private protected forest from a date fixed by the notification, and from the

> date so fixed such forest shall be deemed to be a private protected forest :
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> Provided that, if in the case of any forest in respect of which a notification under section 14 has issued, the Provincial Government considers that the enquiries, procedure and appeals referred to in this Chapter will occupy such length of time as in the meantime to endanger the conservation of the forest, the Provincial Government may, pending the completion of the said enquiries, procedures and appeals, declare such forest to be a private protected forest, but not, except as provided in sections 20 and 21, so as to abridge or affect any existing rights.
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> (2) Any declaration made in respect of any forest by the Provincial Government under the proviso to sub-section (1) shall cease to have effect from the date of any final order passed under section 15 directing that the proposal to constitute such forest a private protected forest shall be dropped, or of any order passed under sub-section (1)."

But pending this notification by which "a private protected forest" was constituted there were provisions for keeping things in status-quo and for the extinguishment of rights by payment of compensation of the interests of persons who were not landlords. Section 20 imposed a ban on landlords entering into contracts with any other person conferring on the latter the right to cut, collect or remove trees, timber or other forest produce after the issue of a notification under s. 14. Having thus dealt with the landlord s. 21 proceeded to enact a similar ban to have effect between the date of the notification under s. 14 and the formal constitution of "a private protected forest" by a notification under s. 29 against the cutting, collection or removal of trees by every person including the landlord as well as any person claiming rights under him. Section 22 laid down the procedure for dealing with claims of persons who had entered into contracts with landlords whereby they had obtained the right to cut, collect and remove trees, timber or other forest produce etc. It also made provision for the payment of compensation to such contractors. Sections 23 to 28 made provision for miscellaneous matters to which it is not necessary to refer.

There are other provisions which are material for the points raised in this appeal but to these we shall advert later.

To resume the narration of facts, there was issued on October 14, 1946 a notification under ss. 14 and 21 under Bihar Act III of 1946 of which the operative words were :

> "In exercise of the powers conferred by s. 14 of the said Act the Governor is pleased to declare his intention of constituting the said forest (described in the 1st Schedule hereto annexed) a private protected forest and direct that any landlord whose interests are likely to be affected by the said declaration may, within 3 months from the date of this notification, present to the Deputy Collector of Palamau an application in writing stating his objection to the said forest being constituted a private protected forest."

The notification contained a further paragraph containing a direction purporting to be by virtue of the power contained in s. 21 "to prohibit every person from cutting, collecting or removing any tree or class of trees from the forests until the publication of the notification under s. 29 of the Act." In the Schedule annexed village Jun was included with details of its location. Against the column headed "Name of the proprietor" was entered the Raja of Ranka though, as stated already, the rights

over the forest had passed to the Manjhis whose name had been entered in the revenue records. It is stated that until October 21, 1946 no rules had been framed under the Act prescribing the form and contents of the notification and of the procedure to be followed in the issue of the notification as well as for the conduct of the subsequent proceedings.

Immediately on the issue of this notification the officials of the respondent-State prevented the appellant from working the forest any further.

The appellant at first took proceedings on the basis of his rights under the Act. Meanwhile as the life of the Bihar Act III of 1946 was limited by the terms of s. 93 of the Government of India Act, 1935, the Legislature of the Province of Bihar enacted the Bihar Private Forests Act, 1948 (Act IX of 1948), repealing and re-enacting the Governor's Act. This enactment came into force on March 3, 1948 and its terms, subject to immaterial variations, were identical with those contained in the Governor's Act which it replaced. The proceedings taken by the appellant continued even after Act IX of 1948 came into force. But it is not necessary to refer to the steps taken by the appellant to assert certain rights and prefer certain claims under this enactment, because they either failed or were withdrawn at a later stage and nothing turns on them.

Having failed in these proceedings under the Act, the appellant filed the suit which has given rise to the present appeal T.S. 1 of 1952 in the Court of the Subordinate Judge of Daltonganj impleading the State of Bihar and one A.R. Chaudhuri to whom the right to cut and collect bamboo and timber in a portion of the area covered by the appellant's contract was granted by the Government, as the second defendant. The plaint set out the various proceedings which the plaintiff had taken under the Act, but the grounds on which he sought the reliefs claimed were rested on : (1) The Forest Acts of 1946 and 1948 were unconstitutional and void as being in contravention of the provisions of the Government of India Act, 1935. (2) That even if valid when originally enacted, their provisions violated the fundamental rights guaranteed by Part III of the Constitution and could not therefore be operative or be enforced after January 26, 1950. (3) The proceedings by which the suit-forest was declared "a private protected forest" were illegal and invalid principally for the reasons that (a) the notification under s. 14 did not conform to the requirements of the statute, (b) the notices required to be served on the landlord under the Act were not served, and (c) the notifications were not properly published in the village as required by the Act.

Based on these grounds, the reliefs sought in the plaint were set out in para. 17 and of these the material ones were : (1) a declaration that the plaintiff had a right to work the forests by cutting and carrying away the trees, timber etc. and the bidi leaves which he was entitled to do under the deeds dated February 23, 1946 and March 15, 1946, executed by the Manjhis in his favour unaffected by the Bihar Private Forests Act, the validity of the proceedings under which was impugned, (2) a decree for Rs. 55,000 being the estimated damages suffered by the plaintiff by reason of the wrongful acts of the Government, (3) restoration to possession of the forest lands included in the two deeds, and (4) for mesne profits.

The learned Subordinate Judge who tried the suit, though he held the Act valid, accepted the plaintiff's contention that the notifications issued under s. 14 and the other provisions of Chapter III of the Act were invalid, primarily for the reason that the name of the Manjhis as the landlord had not been mentioned in the notification issued under s. 14 and on this ground he passed a decree directing the State to restore possession of the forest to the plaintiff so as to enable him to enjoy the same for a substituted period making allowance for the 7 1/2 months for which he had worked the jungle before his enjoyment was interfered in October 1946. In this view the claim for damages for

Rs. 55,000 and for mesne profits was disallowed.

The State filed an appeal to the High Court of Patna from this judgment and decree. The learned Judges reversed the decree of the Subordinate Judge and dismissed the suit with costs, holding that the omission of the name of the Manjhis in the notification issued on October 14, 1946, did not render the same invalid and that even otherwise the proceedings under Ch. III of the Act had been validated by s. 2 of Act XII of 1949 to whose terms we shall refer in due course. In view of the previous decisions of the High Court which upheld the constitutional validity of the Bihar Private Forests Act, that point was not pressed in the High Court. The plaintiff thereafter applied to the High Court for a certificate under Art. 133(1)(a) of the Constitution and having obtained it has preferred the present appeal. In the petition of appeal as originally filed, the constitutional points regarding the validity of the Private Forests Act were not raised, but subsequently the appellant filed an application under O. XVIII, r. 3(2) of the Supreme Court Rules for permission to urge additional grounds in support of the appeal which we granted. The principal ground urged in this application was that the main operative provisions of the Bihar Private Forests Act, both as originally enacted in 1946 as well as when re-enacted in 1948, were unconstitutional as contravening the requirements of s. 299(2) of the Government of India Act, 1935.

We consider that it will be convenient to deal first with the point as to whether, assuming that the Bihar Private Forests Act, 1946 and 1948 were valid, the proceedings under Chapter III of the Act for declaring the village of Jun as "a private protected forest" were legal before considering the question as to the constitutionality of the Act raised by the additional grounds urged before us. As would have been noticed even from the narration of the facts, the principal point urged for impugning the validity of the proceedings under Ch. III of the Act was that the Manjhis, whose name had been entered in the record of rights as the land-holders of the suit-village of Jun had not been set out in the notification published under s. 14 of the Act and this was the ground upon which the learned Subordinate Judge decided the suit in favour of the appellant. The provisions of s. 14 are in these terms :

> "14. Whenever it is proposed by the Provincial Government to constitute any private forest a private protected forest, the Provincial Government shall issue a notification (a copy of which shall be served on the landlord in the prescribed manner) -
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> (a) declaring that it is proposed to constitute such forest a private protected forest;
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> (b) specifying as nearly as possible, the situation and limits of such forest; and
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> (c) stating that any landlord whose interests are likely to be affected if such forest is constituted a private protected forest may, within such period, not being less than three months from the date of the notification, as shall be stated in the notification, present to the Collector in writing any objection to such forest being constituted a private protected forest.
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> Explanation - For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries."

It would be seen that s. 14 contemplates two stages; (1) the issue of a notification, and (2) the service of the notification, as issued, on the landlord which has to be in the prescribed manner. The

expression 'Landlord' is defined in s. 3(6) as :

> "the owner of the estate or tenure in which a forest is comprised who is entitled to exercise any rights in the forest."

So far as the notification itself is concerned, while provision is made for the specification of the three matters which are set out in sub-cls. (a), (b) and (c), there is no requirement in terms, that the name of the landlord should be set out. It will further be observed that the notification enables any person claiming interest as a landlord and who considers that his interest are likely to be affected by the proceedings taken to prefer his objections to the declaration as a "private protected forest". In other words, the notification is a general notice and its aim is to specify the land in respect of which the declaration is proposed to be made, so that the emphasis is more upon the identity of the land than about the person who owns the land or has rights over it. Besides, the section in terms specifies what the legal and essential requirement as regards the contents of the notification are and the ordinary rule of construction would point to those requirements being exhaustive of what the law demands. If therefore the specification or mention of the name of the landlord is not an express requirement of the section, is such a specification or mention a requirement by any necessary intendment ?

We have already set out the text of the impugned notification dated October 14, 1946, and it would be seen that it did mention the name of the landlord, but this was incorrect in the sense that the Raja of Ranka who was the proprietor of the estate but who had parted with his rights over the forests by a mokrari lease in favour of the Manjhis was shown as the landlord instead of the Manjhis. It was never the case of the appellant that the mention of the proprietor's name in the notification misled him or anyone as regards the identity of the land. We might also mention that Mr. Jha, learned Counsel for the appellant admitted that he could not impugn the validity of the notification if notwithstanding that the name of the landlord specified was incorrect, the notification was served upon the proper landlord. It is also common ground that the appellants took part in the proceedings under Ch. III, so that he knew the identity of the property which was intended to be dealt with by the notification.

The succeeding provisions of the enactment far from supporting the case that the correct specification of the name of the landlord is a legal pre-requisite of a valid notification, points to the conclusion that so far as the notification is concerned the name of the landlord is not a legal requirement. For instance, reference may be made to s. 21 where provision is made for the issue of an order prohibiting, until the date of the publication of a notification under s. 29, the cutting, collecting or removal of any trees in any forest. Such an order might be issued simultaneously with a notification under s. 14 and the order is "to be published in the neighbourhood of the forest". Provisions of this sort indicate what we have already mentioned, that the emphasis in the notification is on specification of the land and not so much on who the owner or the person interested in it was. We are therefore clearly of the opinion that the learned Judges of the High Court were right in holding that the notification under s. 14 did not contravene the statute.

The next question that arises is whether the notification which was legal under s. 14, had been properly served on the interested persons as required by the provisions of Ch. III. The principal point that was urged to call in question the validity of the service of the notifications was based on the fact that the notices had to be served under the terms of s. 14 "in the prescribed manner" and that the rules which prescribed the manner of service were framed and issued only on October 21, 1946, with the result that any service of notice effected before that date could not be deemed to be a

proper service or a service in accordance with the rules and therefore of the statute. We might however state that it was admitted that no notices were, in fact, served. Any enquiry, however, of the validity of the service of notices required by s. 14 or other provisions of the Act or the effect of the failure to serve them has been rendered superfluous by the provisions of s. 2 of the Bihar Private Forests (Validating) Act (Act XII of 1949) which enacted :

> "No proceeding or action taken under section 15, 21 and 29 of the Bihar Private Forests Act, 1946 or under section 15, 21 or 30 of the Bihar Private Forests Act, 1948, or under any other section of any of the said Acts from the respective dates of commencement of the said Acts, to the date of commencement of this Act shall be deemed to be invalid or shall be called in question in any Court, or proceeding whatsoever merely on the ground that a copy of the notification under section 14 of any of the said Acts was not served on the landlord, or that there was any defect or irregularity in the service of such notification, nor shall any suit, prosecution or other legal proceeding whatsoever, lie in any Court of law against any servant of the crown for or on account of or in respect of any such proceeding or action taken by him."

The learned Subordinate Judge, by a process of reasoning which we are unable to follow, held that the terms of this enactment were insufficient to validate the non-service of the notice on the landlord as required by s. 14 and the other provisions of Ch. III of the Bihar Private Forests Act. The learned Judges of the High Court, on the other hand, held and, in our opinion, correctly, that the effect of the failure to serve notices or any informality in the service of the notices required by s. 14 and succeeding sections of the Act was rectified and validated by the Act. In agreement with the learned Judges of the High Court we hold that the proceedings taken under Ch. III of the Act, including the notification issued under s. 14 were valid and in accordance with the law and that if the Bihar Private Forests Act were valid the plaintiff could have no legal ground of complaint which he could agitate in the suit and that the suit was therefore properly directed to be dismissed.

This leaves the question of the constitutional validity of the Act for consideration. It is necessary to state at the outset, that under the deeds dated February 23, 1946 and March 15, 1946, the status of the appellant quod the Manjhis is only that of a licensee or contractor having the right to cut and remove the trees etc. and not that of a lessee. This was the conclusion reached by the Subordinate Judge on the relevant terms of the two deeds and this was apparently not even challenged in the High Court. On this basis the only provisions of the Act which could be said to directly invade the rights of the appellant are those contained in Ch. III the material sections of which we have already set out. As provisions is made in s. 22 of the Act for the ascertainment and payment of compensation to forest contractors whose rights were either modified or extinguished, the plea that there was a violation of the guarantee against acquisition by the State without compensation contained in s. 299(2) of the Government of India Act, 1935, would be seen to have no factual foundation. But learned Counsel for the appellant urged that the extinction of the rights of contractors under the provisions of Ch. III, was really in the nature of an ancillary provision complementary to and designed to render effective, the taking over of the management of "private protected forests" under Ch. IV (to which we shall immediately advert) and that if the taking over of the management was constitutionally impermissible, the provisions of Ch. III must also be struck down as unconstitutional. We see force in this contention and will therefore consider the constitutional validity not so much of Ch. III as of Ch. IV.

When a private forest is declared a "private protected forest" under the provisions of Ch. III the provisions of Ch. IV come into operation. Section 31 with which this Chapter opens enacts :

"31. The control and management of every private protected forest shall vest in the Provincial Government."

The management and control thus vested is to be exercised through forest officers and s. 32 provides :

"32. The Provincial Government shall, by notification, appoint a Forest-Officer for the purposes of each private protected forest or of a specified portion of each private protected forest."

His powers are defined by the succeeding sections and next we have s. 35 which defines the limits subject to which the landlord is permitted to remove timber and other produce from private protected forests whose control vests in the Provincial Government under s. 31, and s. 36 enables the Collector to grant permission to the landlord to erect embankments at suitable places within the forest for the purpose of irrigating the land beyond the boundaries of the said forest. The section that follows is important and so we shall set it out in full :

"37. The Provincial Government shall receive all revenues accruing from the working and management of a private protected forest and shall pay the whole expenditure incurred in the working and management of such forest, and the landlord of such forest or any other person shall not be entitled to make any objection to any expenditure that the Provincial Government may consider it necessary to incur on such working and management."

Section 38 requires the Provincial Government to maintain the revenue and expenditure account with an obligation to supply an extract of the yearly account to the landlord of such forests. The disbursement of the revenues which it receives or the income which it collects under s. 37 is provided for by s. 39 which runs :

"39. (1) The Provincial Government shall, during the period of its control and management of any private protected forest pay, at prescribed intervals, to the landlord of the forest -

(a) an allowance calculated on the total area of the forest as determined by the Conservator of Forests at the rate of one anna per acre per annum or such higher rate not exceeding one anna and six pies per acre per annum as the Provincial Government may, from time to time, by general or special order, determine; and

(b) the net profits, if any, accruing from the working and management of the forest,

(2) For the purpose of calculating the net profits, the total expenditure incurred on the working and management of the forest shall be adjusted against the total income from the working and management up to the date of account and the amount of any deficit shall be carried forward with interest at the prescribed rate from year to year till such amount is made up and surplus is effected.

(3)..... ....." and s. 40 which might be termed a residuary provision reads :

"40. The rights of right-holders in a private protected forest shall be exercised in

accordance with the rules."

It is only necessary to add that the provisions contained in the re-enacted Act IX of 1948 are substantially identical except as to variation in the numbering of the sections and it is therefore unnecessary to cumber this judgment with a reference to the corresponding provisions of that enactment.

In the main, the argument of Mr. Jha, learned Counsel for the appellant on this point was based on the reasoning contained in the judgment of a Special Bench of the Patna High Court in M.D. Kameshwar Singh v. State of Bihar [(1950) I.L.R. 29 Patna 790.] where the learned Judges held the Bihar State Management of Estates and Tenures Act, 1949, to be ultra vires of the powers of the Provincial Legislature as contained in the Government of India Act, 1935. The Act there impugned was one which was described as an "Act to provide for the State Management of estates and tenures in the Province of Bihar". Provision was made for Government notifying any estates or tenures in the Province and on such notification the management of the estate or tenure was to vest in an officer designated by the Act. On such management being taken over, the power of the proprietor or tenure-holder to manage the estate was to cease and he was rendered incompetent to deal with or have any right to create interests in the property by way of mortgage or lease. The rents and profits accruing from the estate were to be payable to and to be collected by the Manager who alone was, under the statute competent to grant valid receipts therefor. There were special provisions empowering the Manager to order the removal of mortgagees or lessees-in-possession by virtue of agreements with the proprietor or tenure-holder. Special provisions were also made for dealing with the claims of creditors - both secured and unsecured. Section 20(5) of the Act made provision for the disposal of the income, rents and profits received by the manager. They were to be applied first for the payment of revenue to Government, then to municipal rents, next to costs of management and supervision, then for an allowance to the proprietor to be fixed by rules made by Government, and any surplus remaining thereafter was to be paid to the proprietor at the end of each financial year with power, however, to the manager to retain such portion of the surplus which he might consider necessary as a working balance for the ensuing year. The manager was to have power to contract loans on the security of the estate or tenure. The jurisdiction of the civil courts was barred in respect of matters for which provision was made by the Act. Though there was a direction that the manager should have his accounts audited with a right to the proprietor or tenure-holder to inspect these accounts, in cases however where these accounts were not audited the right of the proprietor was merely to draw the attention of the Government to the lapse, with however a bar on enforcing such rights by resort to the courts even in the event of the Provincial Government not taking any action.

The validity of the enactment was challenged principally on two grounds : (1) that an Act of this sort which deprived the proprietors and tenure-holders of possession of their property for no default on their part and for no justifiable reason grounded on public interest was beyond the legislative competence of the Province, (2) that even if competent, it amounted to "an acquisition of property without compensation" and for a purpose which was not a public purpose so as to be repugnant to the provisions of s. 299(2) of the Government of India Act, 1935. Justice Shearer and Justice Sinha, as he then was, were of the opinion that the Act in question was beyond the legislative competence of the Province under item 21 of the Provincial Legislative List. Justice Das, as he then was, being the other learned Judge constituting the Special Bench however took the view that the variety of matters set out in Entry 21 of the Provincial Legislative List was wide enough to include legislation of the type then before the Court. Both Sinha and Shearer, JJ. were of the opinion that the Act violated the requirements of s. 299(2). Learned Counsel - Mr. Jha - submitted that there was, under

the Bihar Private Forests Act, 1946 and 1948, the same type of deprivation of possession and management of the proprietor or tenure-holder, the same restrictions placed upon enjoyment, and a similar vesting of powers and duties on the officers of the State Government as the manager of the estate under the Bihar Act of 1949 and on these premises he contended that on the same line of reasoning, the Act now impugned should be held to be both beyond the competence of the Provincial Legislature as well as unconstitutional as violating the requirements of s. 299(2) of the Government of India Act, 1935. Before entering on a discussion of the points urged we should add that the constitutional validity of the Acts now impugned has been the subject of decision of the Patna High Court on two occasions and these judgments are reported in Sm. Khemi Mahatani v. Charan Napit [A.I.R. 1953 Patna 365.], and K.B.N. Singh v. State [(1956) I.L.R. 36 Patna 69.]. In both of them the learned Judges of the High Court have distinguished the decision in Kameshwar Singh v. State of Bihar [(1950) I.L.R. 29 Patna 790.] and have upheld the validity of the Acts now impugned.

Learned Counsel for the appellant formulated three points in support of his plea regarding the invalidity of the impugned enactment and its application to the petitioner : (1) that the Bihar Private Forests Acts of 1946 and 1948 were beyond the competence of the Provincial Government - not being within the legislative entries in the Provincial Legislative List in Sch. VII of the Government of India Act, 1935, (2) that even if the legislation was competent in the sense of being covered by the entries in the List, the same was unconstitutional as being in contravention of the constitutional requirements of s. 299(2) of the same Act, (3) that even if the legislation were competent and also constitutionally valid under the Government of India Act, 1935, its provisions could not be enforced against the petitioner after the Constitution came into force on January 26, 1950, as the provisions of the enactment contravened Arts. 19(1)(f) and 31(2) of the Constitution.

We shall now proceed to deal with these points in that order : (1) Legislative incompetence under the Government of India Act, 1935. - The argument of learned Counsel on this head was half-hearted and was based on reliance on passages in the judgment of the Special Bench of the Patna High Court in Kameshwar Singh v. State of Bihar [(1950) I.L.R. 29 Patna 790.]. It is not necessary for the purposes of this case to canvass the question as to whether the taking over, for better management, of an estate in the manner as was done by the Bihar Act of 1949 is or is not within item 21 of the Provincial Legislative List in Sch. VII to the Government of India Act, 1935. The enactments now impugned are certainly in relation to "forests" and fall within item 22 of the Provincial Legislative List which reads "22 Forests". It is not necessary to decide whether entry 21 dealing with "Land etc." would cover legislation on forests, because of the special provision in Entry 22 in relation to "forests" - an entry which has come down from the Devolution Rules under the Government of India Act, 1919. In our opinion, the item "Forests" would permit all and every legislation which in pith and substance, to use a phrase familiar in this branch of the law, was on the subject of "forests". It is not possible to argue that the two Acts here impugned do not satisfy this test.

Learned Counsel faintly suggested that item 22 'Forests' would not cover legislation regarding "management" of forests. We consider this submission wholly without substance. The considerations arising from the width or amplitude to be attached to the meaning of expressions dealing with the conferment of legislative power occurring in a constitutional document should suffice to reject this submission. In this connection we might refer to the decision of the Federal Court in Administrator, Lahore Municipality v. Daulat Ram Kapur [[1942] F.C.R. 31.] which dealt with the scope of the entry 'Salt' in the Central Legislative List in Sch. VII.

Besides, reference may be made also to the legislative practice which preceded the Government of India Act, 1935, as having relevance to the understanding of the scope and ambit of the entry. The Indian Forests Act of 1878 which repealed the earlier enactments and consolidated the law in relation to the control over forests primarily dealt with forests which were the property of the Government or in which Government had proprietary rights. But it had also a chapter - Ch. VI - dealing with "control on forests or land not being the property of the Government". Section 35 of the Act enabled the local Government by a notification in the local official gazette to regulate the maintenance of forests for particular purposes and pass orders in that behalf, and s. 36 enacted that "in case of neglect of, or wilful disobedience to, such regulations", and what is more important, "if the purposes of any work to be constructed under s. 35 so require", the local Government may, after notice in writing to the owner of such forests or land and after considering his objections, if any, "place the same under the control of a Forest-officer, and may declare that all or any of the provisions of the Act relating to reserved forests shall apply to such forest or land.

The net profits, if any, arising from the management of such forest or land shall be paid to the said owner."

Statutes with similar provisions were also enacted by various local Legislatures (vide, for example, Madras Forests Act, 1882). This Central enactment of 1878 was repealed and re-enacted in a consolidated form by the Indian Forests act, 1927. Chapter V of the later statute - ss. 35 and 36 thereof - reproduce in practically the same terms the provisions of the Act of 1878 in relation to the taking over the management of private forests. As we are now dealing with the legislative power in this regard, we are not so much concerned with the grounds upon which the Government could take over and manage forests belonging to private proprietors, as with the practice of the Government taking over the management of the forests if public interests so require. This interest might vary from time to time but the above legislation would show that if public interest did require, the Act authorized Government to take over the management of private forests on terms of making over the income received to the proprietor.

It is unnecessary to dilate upon the role of forests in a country whose economy is predominantly agricultural and it has been this aspect that has prompted the legislation to which we have just now adverted. Apart from being an important source of fuel and of raw materials necessary for domestic, industrial and agricultural purposes, their preservation is essential for the development of cattle-wealth by providing grazing grounds. Their function in the conservation of soil-fertility and in the maintenance of water-regime by improving the tilth and the water-holding capacity of the soil cannot be exaggerated. They protect the land against excessive soil-erosion caused either by rainfall or against a desiccation and erosion by winds. Their beneficial influence on the growth of crops and on the maintenance of an equitable climate cannot be over-stressed (vide First Five Year Plan, p. 285). Thanks to the inroads made on forest-wealth owing to the necessities created by the war, we had the spectacle of large forest areas denuded of their timber, afforestation making either a slow progress or not attempted at all. So long as the war continued the sacrifice of the forests was one of the incidents which the country had to bear as part of the war-effort but owing to the high prices of fuel and timber, the practice of denudation of forests, which started during the wartime, continued and landholders owning private forests sought to make quick gains by leasing out their forests for large scale cutting. In these circumstances public interest and national economy required that this process should be stopped and the ravages caused by wartime destruction should be made good by scientific management and regulation of forests and by a process of afforestation. It was in these circumstances that in several Provinces of India during the year 1946 when these Provinces were under the rule of Governors under s. 93 of the Government of India Act, 1935, enactments were

passed vesting in Government power to take over and manage for the purposes abovementioned areas of forest-lands belonging to private persons. The situation, therefore, demanded that there should be a large extension of the grounds upon which such private forests would be taken over for better management by the State officials as compared with Ch. V of the Indian Forests Act, 1927. The correlation between Bihar Act III of 1946 now impugned and the Indian Forests Act, 1927, is brought out in the long title of the former, the operative words of which are repeated in the preamble :

> "An Act to provide for the conservation of forests which are not vested in the Crown or in respect of which notifications and orders issued under the Indian Forests Act, 1927 are not in force."

The impugned Act was therefore an Act supplementary to, or rather a complement of the Indian Forests Act of 1927 and is clearly covered by the Entry 'Forests' in item 22 of State Legislative List. The argument, therefore, that Entry 22 enabled a legislation to be passed in relation to "forests" but did not include therein the power to assume management and control of forests belonging to private proprietors is entirely without foundation. In view of what we have just now stated it would follow that the argument concerning the legislative competence to enact the Bihar Acts of 1946 and 1948 must be rejected.

The next submission to be considered is whether the impugned enactments violate s. 299(2) of the Government of India Act, 1935. Section 299(2) runs in these terms :

> "299(2). Neither the Federal nor a provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, it is to be determined."

The main, if not the entire argument of learned Counsel for the appellant on this point was vested on certain passages found in the decision of this Court in Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd. [[1954] S.C.R. 674.]. The validity of the law that was there considered was a post-Constitution enactment (Act XXVIII of 1950 dated April 10, 1950) which replaced an Ordinance issued in January, 1950. The rights of the appellant before this court had to be considered in the light of the guarantees contained in Part III of the Constitution. Under the provisions of the enactment there impugned the management of the Sholapur Spinning & Weaving Co. Ltd., was taken over by the Government and the question that was debated was whether this taking over amounted to "an acquisition" such as is referred to in Art. 31(2) of the Constitution in these terms :

> "31(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."

Mahajan, J. (as he then was) who delivered the majority decision of the Court in dealing with this point expressed himself in these terms :

> "The next contention of the learned counsel that the word 'acquisition' in Art. 31(2) means the acquisition of title by the State and that unless the State becomes vested with the property there can be no acquisition within the meaning of the clause and that the expression 'taking possession' connoted the idea of requisition cannot be sustained and does not, to my mind, affect the decision of the case..... For the proposition that the expression 'acquisition' has the concept of vesting of title in the State reliance was placed on the opinion of Latham, C.J. in Minister of State for the Army v. Dalziel..... Latham, C.J., made the following observations :
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> "The Commonwealth cannot be held to have acquired land unless it become the owner of land or of some interest in land. If the Common-wealth becomes only a possessor but does not become an owner of land, then, though the Common-wealth may have rights in respect to land, which land may be called property, the Commonwealth has not in such a case acquired property.....' The majority of the Court held otherwise and expressed the opinion that the taking..... by the Common-wealth for an indefinite period of the exclusive possession of property constituted an acquisition of property within the meaning of section 51 (xxxi) of the Constitution. This is what Rich, J. said, representing the majority opinion :-
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> 'It would, in my opinion, be wholly inconsistent with the language of the placitum to hold that, whilst preventing the legislature from authorizing the acquisition of a citizen's full title except upon just terms, it leaves it open to the legislature to seize possession and enjoy the full fruits of possession, indefinitely, on any terms it chooses, or upon no terms at all.'
>
> ..... In my judgment, the true concept of the expression 'acquisition' in our Constitution as well as in the Government of India Act is the one enunciated by Rich, J., and the majority of the Court in Dalziel's case. With great respect I am unable to accept the narrow view that 'acquisition' necessarily means acquisition of title in whole or part of the property."

Learned Counsel naturally relied on the reference to the provisions of the Government of India Act contained in the above passage. Before we deal with this argument, however, we consider it proper to refer to the judgment of this Court in State of West Bengal v. Subodh Gopal Bose [[1954] S.C.R. 587.], which was composed of four of the Judges who formed the bench in the case of Dwarkadas Shrinivas, etc. (supra) and in which judgment was delivered almost at the same time (December 17 and December 18). In the West Bengal case, the leading judgment was delivered by Patanjali Sastri, C. J., Mahajan, J., merely expressing his concurrence stating that the principles enunciated by the learned Chief Justice were the same as those which he had formulated in the Sholapur case. It is because of this context that the manner in which this point was dealt with by Patanjali Sastri, C.J., assumes more importance. It was urged before the Court that the meaning of the word "acquired" in the phrase 'taken possession of or acquired' in Art. 31(2) as it then stood, connoted nothing more than and was intended to confer the identical guarantee as was contained in s. 299(2) of the Government of India Act, 1935, which had used the expression 'acquired', the words 'taken

possession of' being added merely to overcome the decisions which had held that requisitioning of property was not within the constitutional protection. It was therefore urged that the words 'acquired' or 'taken possession of' implied that the legal title in the property passed to the State and could not be taken to signify or include forms of deprivation of private property which did not involve the element of the passing of title to the State. Repelling this argument the learned Chief Justice said :

> "I see no sufficient reason to construe the words 'acquired or taken possession' used in clause (2) of Art. 31 in a narrow technical sense. The Constitution marks a definite break with the old order and introduces new concepts in regard to many matters, particularly those relating to fundamental rights, and it cannot be assumed that the ordinary word 'acquisition' was used in the Constitution in the same narrow sense in which it may have been used in pre-Constitution legislation relating to acquisition of land. These enactments, it should be noted, related to land, whereas Art. 31(2) refers to moveable property as well, as to which no formal transfer or vesting of title is necessary. Nor is there any warrant for the assumption that 'taking possession of property' was intended to mean the same thing as 'requisitioning property' referred to in the entries of the Seventh Schedule..... I am of opinion that the word 'acquisition' and its grammatical variations should, in the context of Art. 31 and the entries in the Lists referred to above, be understood in their ordinary sense, and the additional words 'taking possession of' or 'requisitioning' are used in Art. 31(2) and in the entries respectively, not in contradiction of the term 'acquisition', so as to make it clear that the words taken together cover even those kinds of deprivation which do not involve the continued existence of the property after it is acquired..... The expression 'shall be taken possession of or acquired' in clause (2)..... implies such an appropriation of the property or abridgement of the incidents of its ownership as would amount to a deprivation of the owner."

It would be see from the extracted passages in the two judgments, that the reference to the meaning of "acquired" in s. 299(2) of the Government of India Act, 1935 made by Mahajan, J., as he then was, in Dwarkadas Shrinivas [[1954] S.C.R. 674.] was but an incidental remark by way of obiter and was not and was not intended to be, a decision regarding the scope or content of that section. If support were needed for this position, reference may be made to the observations of Das, Acting C.J. in Bhikaji Narain Dhakras v. The State of Madhya Pradesh [[1955] 2 S.C.R. 589.]. The learned Chief Justice said :

> "Prior to the Constitution when there were no fundamental rights, s. 299(2) of the Government of India Act, 1935, which corresponds to Art. 31 had been construed by the Federal Court in Kunwar Lal Singh v. The Central Provinces (1944 F.C.R. 284) and in the other cases referred to in Rajah of Bobbili v. The State of Madras (1952 1 M.L.J. 174) and it was held by the Federal Court that the word 'acquisition' occurring in s. 299 had the limited meaning of actual transference of ownership and not the wide meaning of deprivation of any kind that has been given by this Court in Subodh Gopal Bose's case (1954 S.C.R. 587) to that word acquisition appearing in Art. 31(2) in the light of the other provisions of the Constitution."

During the years when the Government of India Act, 1935, was in operation the Privy Council had no occasion to pronounce upon the meaning of s. 299(2), but we might, however, usefully refer to the recent decision of the House of Lords in Belfast Corporation v. O.D. Cars Ltd. [[1960] A.C.

490.] where the House had to consider the import of the expression 'take any property' occurring in a similar context in the Government of Ireland Act, 1920 (X & XI George V, Ch. 67), s. 5(1) where the relevant words were :

> "In the exercise of their power to make laws neither..... the Parliament of Northern Ireland shall make a law so as to either directly or indirectly..... take any property without compensation."

The facts in the case before the House of Lords were that the respondent who carried on business as garage proprietors and general motor engineers made an application to the appellant for the grant of permission to erect certain factories and shops on its land. This was refused on the ground that the height and character of the proposed buildings would not be accordance with the requirements of the zone in which the site was situate. The respondent thereupon claimed compensation for injurious affection on the ground that its property had been "taken". The Court of Appeal of Northern Ireland upheld the respondent's claim and the appellant Corporation brought the matter in appeal to the House of Lords. The argument pressed before the House, and which found favour with the Court below in Ireland, was based on the extended meaning of the word 'acquired' attributed to it in the decisions of the Supreme Court of the United States which have been referred to and adopt by this Court in Dwarkadas Shrinivas etc. [[1954] S.C.R. 674.] and in Subodh Gopal Bose's cases [[1954] S.C.R. 587.]. Viscount Simonds, delivering the leading judgment, observed :

> "I come then to the substantial questions : what is the meaning of the word 'take' ? what is the meaning of the word 'property' ? what is the scope of the phrase 'take any property without compensation' ? ..... I hope that I do not over-simplify the problem, if I ask whether anyone using the English language in its ordinary signification would say of a local authority which imposed some restriction upon the user of property by its owner that that authority had 'taken' that owner's 'property'. He would not make any fine distinction between 'take', 'take over' or take away '. He would agree that 'property' is a word of very wide import, including intangible and tangible property. But he would surely deny that any one of those rights which in the aggregate constituted ownership of property could itself and by itself aptly be called 'property' and to come to the instant case, he would deny that the right to use property in a particular way was itself property, and that the restriction or denial of that right by a local authority was a 'taking', 'taking away' or 'taking over' or 'property'..... Fully recognizing the distinction that may exist between measures that are regulatory and measures that are confiscatory and that a measure which is ex facie regulatory may in substance be confiscatory....."

Lord Radcliffe followed on the same lines and referred in this context to Slattery v. Naylor [(1988) 13 App. Cas. 446.], where the validity of a municipal bye-law which prevented an owner from using the property which he had purchased - burial ground - for the only purpose for which it could be used was upheld by the Judicial Committee as not amounting to depriving as owner of his property without compensation.

We consider the principles laid down in the Belfast case (supra) apt as an aid to the construction of the content of the expression "acquired" in s. 299(2) of the Government of India Act, 1935. The contention urged by learned Counsel for the appellant that the deprivation of the land-holder of the right of management and control over the forest without his legal title thereto or beneficial enjoyment thereof being affected amounts to acquisition of land within s. 299(2) of the Government

of India Act, 1935 must be rejected. The extract we have made earlier from the judgment of Viscount Simonds affords a sufficient answer to a submission that the right of the landholder to possession was itself a right of property and as this had been taken over it constituted an acquisition within the constitutional provision. Property, as a legal concept, is the sum of a bundle of rights and in the case of tangible property would include the right of possession, the right to enjoy, the right to destroy, the right to retain, the right to alienate and so on. All these, of course, would be subject to the relevant law - procedural or substantive - bearing upon each of these incidents, but the strands that make up the total are not individually to be identified as those constituting "property". So understood, there is no scope for the contention that the imposition, so to speak, of a compulsory Governmental agency for the purpose of managing the forest with liability imposed to account for the income as laid down by the statute is an "acquisition" of the property itself within s. 299(2) of the Government of India Act, 1935.

A very minor point was urged by the learned Counsel based upon the language of sub-s. (5) of s. 299 which reads :

> "299(5). In this section 'land' includes immovable property of every kind and any rights in or over such property, and 'undertaking' includes part of an undertaking."

Learned Counsel suggested that the right to possession, management and control over the estate was "a right in or over such property" and that if it was so construed, the taking over of such a right would be tantamount to "acquisition of land" within in s. 299(2). There is no substance in this argument, because the rights referred to in s. 299(5) are derivative rights, like interests carved by an owner - a lessee, mortgagee etc. - and not an incident of a property right regarding which we have already expressed ourselves. We therefore hold that the impugned enactments were validly enacted and are not obnoxious to the provisions of the Government of India Act, 1935.

There remains for consideration the third point urged that even if the Bihar Private Forests Acts, 1946, and 1948 were valid when enacted, the relevant provisions cannot be enforced against the appellant on the ground that the enforcement would violate the fundamental rights granted to the appellant by Arts. 19 and 31 of the Constitution. The argument was this : The lease in favour of the appellant was for terms of 8 or 9 years and would have continued, if nothing else had happened, till certain dates in 1954 and 1955. He has, however, been deprived of the benefit of the lease by the operation of the impugned legislation and the appellant's rights which he could have otherwise enjoyed beyond January 26, 1950 have been denied to him, and this is tantamount to the impugned enactments operating beyond January 26, 1950. In support of this submission learned counsel invited our attention to a passage in the judgment of this Court in Shanti Sarup v. Union of India [A.I.R. [1955] S.C. 624, 628.]. That case was concerned primarily with the constitutionality of an order dated October 21, 1952 passed by the Central Government under s. 3(4) of the Essential Supplies (Temporary Powers) Act, 1946, by which the petitioner-firm was dispossessed of a textile-mill which they owned and managed. There had been an earlier order of the State Government dated July 21, 1949, also which was similarly impugned B.K. Mukherjee, J., as he then was, who spoke for the Court, after pointing out that the order of the Central Government was not supportable under the terms of the enactment under which it was made and therefore had deprived the petitioner of his property under Art. 31 of the Constitution proceeded to add :

> "But even assuming that the deprivation took place earlier and at a time when the Constitution had not come into force, the order effecting the deprivation which continued from day to day must be held to have come into conflict with the

> fundamental rights of the petitioner as soon as the Constitution came into force and become void on and from that date under Art. 13(1) of the Constitution."

We are unable to construe these observations as affording any assistance to the appellant. The lease or licence which the appellant had obtained by contract from the landholder was put an end to, once and for all by virtue of the provisions contained in s. 22 of the impugned enactment which made provision for compensation for the extinguishment of those rights. That took place long before the Constitution, in 1946. We have held that the legislation under which the appellant's rights were extinguished, subject to his claim for compensation, was a valid law. It would therefore follow that the appellant could have no rights which could survive the Constitution so as to enable him to invoke the protection of Part III thereof. On this point also we must hold against the appellant.

The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

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