Gulabhai Vallabhbhai Desai Etc.

Vs

Union of India & Ors.

Writ Petitions Nos. 148, 149, 233 & 238 of 1962 and 216 of 1963

(M. Hidayatullah, S. M. Sikri, V. Ramaswami-I JJ)

27.09.1966

JUDGMENT

HIDAYATULLAH, J.

This judgment will dispose of Writ Petitions Nos. 148, 149, 233 and 238 of 1962 and 216 of 1963. They raise a common question about the validity of the Daman (Abolition of Proprietorship of Villages) Regulation, 1962 (No. VII of 1962). We shall refer to this Regulation as "the Regulation" in this judgment.

By the Constitution (Twelfth Amendment) Act, 1962, the First Schedule to the Constitution was amended by including under the heading "The Union Territories" after Entry 7, a new Entry which read :

> #"8. Goa, Daman and Diu The territories which immediately before the twentieth day of December, 1961 were comprised in Goa, Daman and Diu".##

Similarly, in Art. 240 which gives power to the President to make regulations for Union territories the words "Goa, Daman, and Diu" were inserted. This followed the annexation of the territories belonging to India which had passed into Portuguese hands. On March 5, 1962 the President promulgated the Goa, Daman and Diu (Administration) Ordinance, 1962 to operate from the appointed day, namely, December 20, 1961 providing, among other things, for the continuance of all laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof until amended or repealed by a competent Legislature or other competent authority. A power to extend laws, with or without modification, and to remove difficulties by an order consistent with the Ordinance was also conferred on the Central Government.

In exercise of the powers so conferred the Regulation was enacted. The general scheme of the Regulation follows that of the other Reform Acts abolishing intermediaries in India. In some respects the Regulation makes a special provision in view of the laws in force in the former district of Daman. To these special features we may now refer. The Regulation purports to abolish the proprietorship of villages in Daman District. It defines the "appointed date" as the date on which it came into force and "land" as meaning "every class or category of land" and including "(i) benefits to arise out of such land, and (ii) things attached to earth." It also defines "proprietor" to mean "a person who holds any village or villages granted to him or any of his predecessors-in-interest by the former Portuguese Government by way of gift, sale or otherwise" and includes his co-sharers. "Cultivation" is defined as the use of lands for the purpose of agriculture or horticulture. It further defines the phrase "to cultivate personally" as meaning "to cultivate on one's own account"

specifying in how many different ways a person could be said so to do, and a "cultivating tenant" as a person who cultivates personally any land belonging to another under an agreement, express or implied, and pays rent therefor in cash or kind or derives a share of the profit. By s. 3, the proprietary rights, title and interest of every proprietor in or in respect of all lands in his village or villages were extinguished and vested in the Government, free from all encumbrances etc., any contract, grant or document or any law for the time being in force to the contrary, notwithstanding. Section 4, however, saved, subject to other provisions, to the proprietor his homestead, buildings, structures together with land appurtenant thereto in the occupation of the proprietor and also lands under his personal cultivation, not being pastures or grass lands. By s. 7 cultivating tenants, who had been evicted from any land after the 1st April, 1954, were restored to possession if the proprietor was personally cultivating those lands on December 20, 1961 provided an application was made in that behalf on or before December 31, 1962. After the appointed day all proprietors became occupants of the land. So also the cultivating tenants. Compensation was payable to the proprietors whose rights, title and interest in respect of their lands vested in Government and it was stated to be 20 times the annual payment (Contribuicao Predial) which the proprietor was liable to pay to the former Portuguese Government immediately before December 20, 1961. The other provisions of the Regulation need not detain us because they lay down the machinery for giving effect to these fundamental changes.

We are concerned with five petitioners. The petitioner in Writ Petition 148 of 1962 purchased in auction a whole village Regunvara for Rs. 50,051 in 1930. The sale deed stated that the village was sold for purpose of cultivation. It contained on the date appointed under the Regulation, 320 acres of cultivable land (180 cultivated by the petitioner and 140 by his tenants), 14 acres roads etc., 91 acres grass lands and 20 acres public pastures. The annual payment was Rs. 342.66 and the petitioner claims that his income was Rs. 10,000 per year. In Writ Petition 149 of 1962 the village of Dundorta was granted to the predecessor of that petitioner. It contains 1,300 acres of land and the annual payment is Rs. 1,190 which was made up of Rs. 532 annual payment (Contribuicao Predial) and Rs. 600 and odd as rent. It contains some salt lands and salt pans, hill lands and a stone quarry. In Writ Petition 233 of 1962 village Dholer Dhonoly was purchased for Rs. 35,525/- at a public auction. It contains 190 acres of land of which 75 acres are paddy lands and 15 acres gardens. The annual payment was Rs. 325 which was made up of Rs. 232 annual contribution and Rs. 93 rent. In Writ Petition 238 of 1962 the village Varacunda is held by two brothers. The area of the land is 360 acres of which 140 acres are under cultivation, 100 acres are salt lands and pans, 30 acres are hills and quarries, 50 acres are abadi, 30 acres are covered by babool trees and 140 acres are with tenants. The annual payment was Rs. 1,988.68 and the annual income is said to be Rs. 9,000. Writ Petition 216 of 1963 concerns village, Catria Moray which was sold to one Patha in 1876, who, in his turn, sold it to one Cowasjee in the same year. It has since passed by succession to the present petitioner. The area is 963 acres of which 863 are under cultivation and 100 acres are included in Daman Municipality. The yearly payment is Rs. 1,221.50.

The petitioners have challenged the Regulation under Arts. 14, 19 and 31 of the Constitution. It is hardly necessary to specify the grounds on which the challenge proceeds because the Union Government claims that the Regulation is protected by Art. 31 A of the Constitution. That article, as is well-known, has been amended more than once with retrospective effect and at present reads as follows after omitting portions not relevant here :-

> "31-A. Saving of laws providing for acquisition of estates, etc.
>
> (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, or

#. . . ..##

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 :

#. . . ..##

(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 -

(i) any jagir, inam and muafi or other similar grant and in the States of Madras and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(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 intermediary and any rights or privileges in respect of land revenue."

The learned Attorney General claims that the proprietary interest abolished by the Regulation was (a) "estate" or (b) "a jagir, inam or muafi or other similar grant", or (c) "land held or let for purposes of agriculture or purposes ancillary thereto" including the lands as stated in the definition of "estate" in the Constitution. The other side joins issue but concedes that if the interest abolished answers the definition of "Estate" then the challenge under Arts. 14, 19 and 31 must fail. We have, therefore to consider first if the interest abolished by the Regulation comes within the compendious definition of "estate" in Art. 31-A inserted by the Constitution (Seventeenth Amendment) Act from the inauguration of the Constitution. Next we have to consider whether the Regulation is a piece of agrarian reform. Justification for abolition of estates has been held by this Court to involve agrarian reform in the public interest.

In attempting to determine whether the proprietary interest can be regarded as an estate or its equivalent in relation to land tenures in force in Daman we are required to enter into the scheme of Revenue Administrative law existing in the District of Daman on December 20, 1961. The word "estate" as such has not been used in any of the laws in that territory and that disposes of one limb of the enquiry. We have to see only whether there was in Portuguese law in force in Daman any other tenure which can be said to be its equivalent. On an earlier occasion this Court felt some difficulty in finding out the appropriate laws and their true nature and by an order made in February 1964, Fourteen points were remitted to the Judicial Commissioner, Goa who was to examine experts and to forward the record of their evidence to this Court for consideration. After this remand two witnesses were examined on behalf of the petitioners and two on behalf of the State. These

witnesses also produced some Portuguese Legislative Enactments with their official translations and gave their respective interpretations of those laws. The interpretation so made by them is contradictory. We have, however, not found it necessary to rely upon oral testimony because, in our opinion, an examination of the laws in question renders in unnecessary.

There are only two legislative measures which are relevant. The first is Legislative Enactment No. 1785 of 1896 which was modified by the Legislative Enactment No. 1791 of 1958. This Enactment is known as the Contribuicao Predial Regulation. The other Legislative Enactment is the Portuguese Civil Code of which only a few relevant articles were considered at the hearing. The Contribuicao Predial Regulation is divided into three titles which contain 177 articles between them. The first title described Contribuicao Predial in general, the second the Conjoint Contribuicao Predial and the third Urban and Rustic Contribuicao Predial. By this Legislative Enactment all income of immovable property, whatever its modality (including even incidental income), unless exempted, was subjected to an annual payment (Contribuicao Predial). The property itself was considered to be under a hypothecation for the amount which had to be paid punctually into the Revenue Office. For the purpose of the imposition the properties were divided into three kinds (a) Bonjoint (b) urban and (c) rustic. The Conjoint Contribuicao Predial was imposed on normal presumable income derived by agricultural corporations (Communidades) from immovable property irrespective of the nature of the beneficiaries or of the income. The taxable income from Conjoint property might have been derived as rent properly speaking or as foro or as licence fee for hunting or fishing, or from sale of agricultural and forest produce or from working of the quarries, gravelpit or limestone, but it made no difference what the source was except in cases in which a mining tax was levied. As we are not concerned either with Communidades or with conjoint property enjoyed by them, we need not refer further to this kind of property.

The Urban Contribuicao Predial fell on the normal persumable income from building lots including buildings, the amount of income being determined by valuation principally on the basis of rents. However, buildings situated for agricultural exploitation but not including constructions used for purposes other than the exploitation of the soil, were exempt. Rustic Contribuicao Predial fell on normal presumable income from rustic properties or from any integral part of the same. This income was also determined by valuation. Article 6 described what were to be considered as rustic properties and provided as follows :-

> "(a) The lands destined to any cultivation or forest exploitation, including the house constructions existing in it specially destined to shelter labourers or employees and produce, cattle and agricultural implements;
>
> (b) The lands and building constructions destined to any cattle-breeding exploitation with or without stabling of animals;
>
> (c) The lands destined for any exploitation such as quarry, gravelpit or limestone, but with exclusion of salt-works in case the owner pays 'contribuicao industrial' for them;
>
> (d) The lands granted for playing grounds, gardens or any recreations provided that not to be considered as a simple free ground near a house or as lands destined to building houses, in accordance with what is laid down in clause (d) of article five".

There were sixteen classes of properties which were exempt but as none covers the villages of the petitioners it is not necessary to specify them. Properties which were jointly urban and rustic were

liable to tax for the income derived from each source but so as not to impose double taxation. In the case of leasehold properties the lessor (unless the State was the lessor) was taxed by the amount of the foro (rent) and the lessee on his income less the foro. In case of leases for more than 20 years the property was taxed on the amount of the rent and the lessee on the difference between the amount of the rent and the taxable income. Separate inventories were maintained and composite rustic and urban properties were included in both the inventories but were taxed only once. There was a permanent Committee of Valuation of rustic properties. Registers were maintained which showed the name, the situation and the area of the property, the taxable income, the foros and other perpetual charges, the gross income in kind or money, the average produce, the percentage of expenses, the uncultivated lands and names and addresses of tenants for long periods and the rents paid by them. The taxable income was determined by classification of land according to its agricultural utilisation, spontaneous products and circumstances of a permanent character. Even periodical income from scattered trees was taken into account. There were sub-divisions of these classifications and schedules of income from each class or sub-class were maintained. Lands not used for cultivation were also assessed on their normal productivity, emphasis being laid both on the quantity and quality of production, the standard being taken from "pattern" plots and "pattern" trees. The classification held goods for a period of five years at a time. There were also provisions for remissions but foros, census and pensions were not annulled or decreased. The Contribuicao Predial in all three cases - conjoint, urban and rustic - was 12 per cent of the total income calculated by the application of a global percentage.

So much for the Contribuicao Predial Regulation. The other Legislative Enactment to refer is the Portuguese Civil Code. As already stated we were referred to a few of the articles from that Code. They dealt with different kinds of leases. These leases were known as 'emprazamento', 'aforamento' or 'enfiteuse' and came into existence when the use (dominio util) was given by the proprietor to another on condition of paying a fixed pension called a foro or canon. The enfiteuse was perpetual but if a term was specified it became a tenancy (arrendamento). The emphyteuta or subemphyteuta holding an emprazamento or a subemprezamento (as the case may be) of a duration of more than 20 years could obtain "redemption" by paying 20 times the pension together with any appreciation in value (laudemio) deducting however the foro. Similarly, a subemphyteuta could redeem the charge of the emphyteuta and the head lessor (senhorio directo) : the head-lessor receiving the foro with laudemio which the emphyteuta was bound to pay him and the emphyteuta receiving the value of the free pension to which the head-lessor was not entitled. The prazos (leases) which were hereditary like alloidal property could not be divided into plots unless the head lessor agreed. But the heirs could apportion and divide the income among them according to their shares. If no heir wanted it, the lease was sold and the proceeds were similarly divided. If a leasehold was divided among heirs each share became a separate lease and the respective foro was payable by each. All this needed the written consent of the headlessor otherwise the original lease continued and each part was liable for the whole of the foro. At first the prazos were for life or for two or three lives but by the Code all prazos of all the kinds were made purely hereditary and all prazos then took the character of "fateusins'. The properties involved here have been sufficiently described already. The question is whether we can regard them as 'estates'.

The word 'estate' has been considered in a number of cases of this Court dealing with the land laws of different States and observations from those cases were presented before us by the respective parties to show an equivalence or the absence of it. This was in any event the only course open to the learned Attorney General because the word 'estate' is nowhere to be found in the Legislative Enactments or the Civil Code. Support, therefore, had to be found by trying to establish an equivalence between estate properly understood and the nature of the right enjoyed under the

Portuguese law. It is clear to us that this has not been successfully established. To begin with an 'estate' in Indian revenue law ordinarily means land which is separately assessed to land revenue under a single entry in a Record of Right and such land is held under a tenure. At one end of the line such land may be a whole village or even a group of villages and at the other it may be a part of a village or even a mere holding. Thus in Sri Ram Narain Medhi v. The State of Bombay ([1959] 1 Supp. S.C.R. 489.), relying upon the definition in s. 2(5) of the Bombay Land Revenue Code of 1879 even unalienated lands were held to be estates. The definition of "estate" as "any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same" was held to apply equally to alienated as well as unalienated lands. That case was followed and applied in Shri Mahadeo Paikaji Kolhe Yavatmal v. The State of Bombay ([1962] 1 S.C.R. 733.) because the Madhya Pradesh Land Revenue Code, 1954 (2 of 1955) defined a "holding" as a parcel of land separately assessed to land revenue and "tenure-holder" as a person holding as Bhumiswami or Bhumidar. In other words, Bhumiswamis, who included persons holding lands as occupants in Berar were held to be estate-holders because they held land and paid land revenue. In Atma Ram v. State of Punjab ([1959] 1 Supp. S.C.R. 748.) the definition of "holding" in s. 3(3) of the Punjab Land Revenue Act 1887 as "a share or portion of an estate held by one landowner or jointly by two or more landowners" was held sufficient to attract the protection of Art. 31-A.

However, in K.K. Kochuni & Ors. v. State of Madras and others ([1960] 3 S.C.R. 887.) the Madras Marumakkathayam (Removal of Doubts) Act, 1955 (32 of 1955) was not held to come within the protection of Art. 31-A as it did not contemplate any agrarian reform or seek to regulate the rights inter se of landlords and tenants or modify or extinguish any of the rights appertaining to janman rights. It was pointed out that Art. 31-A was concerned with a land-tenure which could be described as an estate and with the acquisition, extinguishment or modification of the rights of the land holders or subordinate tenure-holders. It was stated at p. 904 that Sri Ram Narain's ([1959] 1 Supp. S.C.R. 489.) and Atmaram's ([1959] 1 Supp. S.C.R. 748.) cases did not support the contention that Art. 31-A comprehended modification of the rights of an owner of land without reference to the law of land-tenures.

The above exposition was accepted in P. Vajravelu Mudaliar v. Special Deputy Collector, Madras & Anr. ([1965] 1 S.C.R. 614.) and N.B. Jeejeebhoy v. Assistant Collector, Thana Prant, Thana ([1965] 1 S.C.R. 636.) and also in passing in Ranjit Singh and others v. State of Punjab and others ([1965] 1 S.C.R. 82.) although in the last case a wider meaning to the expression agrarian reform was given.

It will thus be clear that before an 'estate' or its equivalent can be found there must be land which pays land revenue and is held in accordance with a law relating to land tenures. The lands with which we are concerned in these petitions cannot be said to be held in this way. Nor can they be said to pay land revenue as such. Daman District, as we have seen, had several kinds of land. There were perpetual and period leases from Government. Villages and lands were sold or were granted for life or lives which later became hereditary possessions. This made little difference, in so far as Government was concerned, because there was neither a tenure nor payment of land revenue. No condition on which the land was held could properly be said to be a condition denoting tenure and the payment to Government was either rent or a percentage of the presumable income from land. As all lands belonged to the Crown, Portuguese law contemplated only three kinds of dealing with the land : (a) grant of a permanent lease, (b) grant of a period lease, and (c) sale. There was no difference between land revenue and a tax on income whether or urban or agricultural property and the tax was in every case a percentage of the income. In our jurisdiction we distinguish between land revenue and agricultural income-tax and if any resemblance is to be found, it exists on the side

of agricultural income-tax. The holders were paying a kind of income-tax which only distantly resembled land revenue such as we know. Even if it be regarded as land revenue it is clear enough that there was no law of land tenures because all the property, urban or agricultural was held alike on lease or as owner by purchase. The expression "estate" thus cannot be said to have had an equivalent in Daman District.

This is not the end of the matter. The definition of "estate" in Art. 31-A is also an inclusive one and includes three other entities. We shall consider the first two now. The definition includes, firstly, any jagir, inam or muafi or other similar grant, and, secondly, any land held under ryotwari settlement. The second need not detain us because there was no ryotwari settlement or tenure in Daman District. The first, however, deserves some notice. A jagir was defined by Baden Powell as an assignment of the land revenue of a territory for a specific service with or without right in the soil and an "inam" as a holding free or partially free from land revenue with a right in the land also. (See Land system in British India Vol. I p. 189 and Vol. 3 pp. 81 and 140). There were in Portuguese India Desai Inams which were regulated by the Desai Regulation of 1880 but the Desai Regulation did not apply in Daman. Decree No. 3612 of 1917 for Goa, Daman and Diu dealt with concessions of lands which, as one witness described, were similar to grants contemplated by Art. 31-A. The question is whether any of the villages in the petitions before us can be described as a grant so that the action taken against them can come within the protection of the Article. Judged of in this sense the Sales of Regunvara and Dholer Dhonoly cannot be called a jagir, inam or similar grant. They were pure sales of immovable property without the element of grant or concession. There was, however, a difference in respect of Varacunda. Here the village was conferred in grant for the upkeep of one Arab horse. It is well-known that in Moghul times grants were made for the upkeep of a certain number of horsemen and the idea underlying this grant appears to be the same although the condition of service was made a mere token. This grant was to be resumed after the third life in succession but by the Code the period lease was made permanent. The words of the article "any jagir, inam or muafi or other similar grant" would presumably cover this grant although there does not appear to be a concession in the matter of land revenue as such. It appears to be a pure service grant without any concession except the right to hold the village for three lives. Although the words "other similar grant" must be construed ejusdem generis with the words "jagir, inam and muafi" and the generic terms that precede indicate a concession of some kind in land revenue, we are not quite clear that Varacunda was not held on concessional terms. If it was, then the action against this village would definitely be protected by Art. 31-A. On the evidence there is some difficulty in reaching a definite conclusion although all the indications are that the village was a grant.

There is, however, the last clause in the definition of estate to consider and that clause says that in the word "estate" must be included "any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans". All the villages with which we are concerned were agricultural villages. Regunvara was sold for encouraging cultivation as the sale deed expressly says so. Similar considerations attached to the other villages whether granted for the upkeep of a horse as was the grant of Varacunda or for settlement of weavers and artisans in Daman District as in some other cases. As a village must be considered a single unit notwithstanding the fact that the sale deeds and other documents mentioned plots we must consider whether the lands in the villages can come within the inclusive definition. That they do is inescapable because the bulk of the land in all the villages of which the proprietorship was with the several petitioners was either devoted to agriculture or pastures. Attempt was, however, made before us to show that certain parts of the villages did not answer the definition of 'estate' as extended by the third clause and specific mention was made of salt pans, gravelpits,

quarries and hills. On the other side it was contended that the concept of rustic property in Daman was such that even quarries and uncultivated lands were held to be included in it. The Legislative Enactment dealing with Contribuicao Predial was referred to show that quarries and uncultivated land including pastures were equally considered rustic property. There is, however, no mention of salt pass, but these, it was submitted, would be included in rustic property unless Contribuicao Industrial was payable in respect of them, and that there was no evidence in the case that Industrial Contribuicao Predial was being paid for them.

The definition of "land" in s. 2(g) of the Regulation is wider than the definition of "estate" in Art. 31-A as introduced by the Seventeenth Amendment. The question is whether we can use the definition of land as including all categories of land in the teeth of the restricted definition of "estate". In our opinion we cannot. One side relies upon the decision of this Court in Romesh Thaper's case ([1950] S.C.R. 594.) in which at page 603 it is observed as follows :-

> "... Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void."

The other side relies upon the decision in R.M.D. Chamarbaugwalla v. The Union of India ([1957] SCR 930.) where the doctrine of severability was explained by Mr. Justice Venkatarama Ayyar. In the last cited case seven principles are laid down on which a provision of law at variance in part with a constitutional provision (including a Fundamental Right) may be allowed to stand in respect of the remaining part, if the offending part can be severed from it without affecting its operation. The principle of severability is thus made applicable to laws enacted by Legislatures with limited power which are partly within and partly outside the legislative competency of a Legislature. It is pointed out that there is no basis for the contention that the principle applies only when the Legislature exceeds its powers as regards the subject-matter of the legislation and not when it contravenes a constitutional prohibition. Romesh Thapar's ([1950] S.C.R. 594.) case was distinguished in the same way as in State of Bombay v. F.N. Bulsara ([1951] S.C.R. 682.). The resulting position is stated thus :

> "When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid. It is immaterial for the purpose of this rule whether the invalidity of the statute arises by reason to its subject-matter being outside the competence of the legislature or by reason of its provisions contravening constitutional prohibitions."

The question again arose in The Superintendent, Central Prison Fatehgarh v. Ram Manohar Lohia ([1960] 2 S.C.R. 821.), where, the two different approaches were noticed but no opinion was expressed because the section then considered could not be saved even after removing the offending portion.

In addition to Chamarbaugwalla's case ([1957] S.C.R. 930.) the learned Attorney General also drew our attention to In Re the Hindu Women's Rights to Property Act, 1937, and the Hindu Women's Right to Property (Amendment) Act, 1938 etc. () and Punjab Province v. Daulat Singh and Others

([1946] F.C.R. 1.). In the former case Gwyer C.J. lays down that there is a presumption that the Legislature intends to act within its powers and general words used by it must only be understood as intended to operate within its powers, and that the Legislature in using general words does not seek to enlarge its powers. Limitations, therefore, must be found out and the general words read so as to apply within the four corners of the Legislature's powers.

The difficulty in the present case is that all the constitutional amendments have come with retrospective effect. The Seventeenth Amendment replaces Art. 31A with modifications retrospectively from 26th January, 1950. It is not, therefore, possible to read Art. 31A in any manner other than that indicated by the Seventeenth Amendment. It is also not possible to say that the President in the 13th year of the Republic of India anticipated what Parliament would introduce retrospectively into the Constitution in the 15th year of the Republic. The President cannot, therefore, be said to have been cognizant of the limits of his own power in 1962 when he made the Regulation and to have made it accord with the definition of "estate" in Art. 31A. In this connection it is not possible to compare the definition of "land" in the Regulation with the definition of "estate" as given in the earlier versions of Art. 31A because by the force of the Seventeenth Amendment the earlier version of the Article completely disappears and may be said to have never existed at all. The result, therefore, is that the definition of "land" in the Regulation being at variance with the definition of "estate" cannot stand with it. But as it is severable it does not affect the operation of the Regulation which will operate but the protection of Art. 31-A will not be available in respect of land not strictly within the definition of Art. 31-A. In other words "land" would include not every class or category of land but only lands held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pastures or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans. Land which does not answer this description is not protected from an attack under Arts. 14, 19 and 31 and it is from this point of view that the cases of the petitioners before us must be examined where categories of land other than those stated in Arts. 31A(2)(a)(iii) are mentioned.

Applying the above considerations to the petitions our conclusions are as follows :-

Writ Petition No. 148 of 1962.

In Writ Petition 148 of 1962 the present petitioner is the original purchaser of village Regunvara. The village was sold to him for cultivation and has been put to agricultural use as is evident from the fact that out of the 334 acres 320 are cultivated. The remaining 14 acres represent roads etc. In this state of affairs it is clear that the village will fall within the definition of an "estate" as explained by us above. Writ Petition 148 of 1962 must therefore fail. It will be dismissed but without costs.

Writ Petition No. 149 of 1962.

This petition concerns village Dundorta. The present petitioner is the successor-in-interest of the original grantee. This village contains 152 acres (30 according to Government) of hilly land and stone quarries, 225 acres of salt lands and salt pans (32 acres according to Government). The rest of the land is with the tenants. We would hold that the proprietorship of the village ceases and the Regulation operates upon in except in the matter of hilly land, salt pans and salt lands and quarries. What is their extent will have to be determined hereafter. Compensation for them, if acquired, would have to be assessed and given on considerations other than those in the Regulation. With these observations we would dismiss this petition also but make no order about costs.

Writ Petition No. 233 of 1962.

In this petition the whole village was purchased at a public auction and it appears that the whole of the land in the village is devoted to agricultural or horticultural purposes. In this view of the matter the extended definition covers the village Dholer Dhonoly. This petition must, therefore, fail. It will be dismissed but without any order about costs.

Writ Petition 238 of 1962.

In this petition we are concerned with village Varacunda. Here also there are 100 acres of salt lands and salt pans (66 acres according to Government) and 30 acres of, hills and quarries (denied by Government). What we have said in connection with village Dundorta also applies here and subject to our observations made regarding salt lands and pans and hills and quarries, the petition will stand dismissed but without any order as to costs.

Writ Petition No. 216 of 1963.

This leaves over for consideration Writ Petition No. 216 of 1963. This concerns village Catria Moray. The original owner purchased it in 1876 and sold it the same year to the predecessors of the present petitioners. By a Municipal Statute (postura) of 16th May, 1949 the Municipality of Daman was established and the area of its jurisdiction was determined. This involved about 100 acres from the original grant. There are 600 houses including markets and a cemetery on this area. The petitioners contend that this cannot come within 'estate'. The petitioners are right in this submission. It is not possible to include these areas within the term 'estate' because the term operates only according to its tenor and not further. The Writ Petition 216 of 1963 will, therefore, be dismissed with the declaration that the Municipal area does not vest in the Government under the Regulation and Art. 31A(2) does not lend its protection to this expropriation. Compensation, therefore, for this part of the land will have to be assessed on considerations other than those stated in the Regulation. There will be no order about costs in this petition also.

V.P.S.

Writ petitions dismissed with directions

</html