SUPREME COURT OF INDIA

Ramanlal Gulabchand Shah

Vs.

State of Gujarat

(M. Hidayatullah, C.J.I., S. M. Sikri, R. S. Bachawat, G. K. Mitter, C. A. Vaidialingam and K. S. Hegde, JJ.)

19.04.1968

JUDGEMENT

HIDAYATULLAH, C. J.:-

1. These appeals come before us on a reference by the Constitution Bench referring the question - whether the amendment of Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 by Section 35 (1) of the Bombay Act XIII of 1956, which added the words:

"or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control."

has the protection of Articles 31A and 31-B of the Constitution, At the hearing of this reference before this Special Bench (which included judges of the original Constitution Bench) it was decided to enlarge the reference to include the whole appeals so that they might he decided in their entirety at the same sitting.

2. These are appeals against the judgment and order of the High Court of Gujarat, 4/5 May, 1966 from many petitions questioning the declaration made by the Deputy Collector, Bulsar under Section 65 of the Act. Below is given the text of the section with the amended portion material to these appeals underlined (bracketed herein, Ed.). As a result of the declaration the appellants stand to lose possession of their lands. The facts on which the several declarations have come to be made may now be stated.

3. The appellants own and possess lands in the district of Bulsar and claim to carry on agricultural operation by raising and cutting grass used as fodder. They were served with notices under Section 65 of the Act. A sample notice is Annexure 'B' to tile petition of Ramanlal Gulabchand Shah in the High Court. It was issued from the office of the Deputy Collector on February 5, 1966 addressed to Ramanlal Gulabchand Shah. It read as follows:-

" ....

....

This is to inform you that during the inquiry made by us it has been found that you are holding the following grass land together with the others:-

On making inquiry it has been found that on account of your fault (not) beyond your control you have allowed to grow the grass naturally in the aforesaid land of your possession continuously for two years namely 1963-64 and 1964-65 and in two years prior to that kept the said land uncultivated. That you have not made full and efficient use of the said land for the purpose of agriculture.

Therefore, I Shri M. B. Shaikh, Dist. Deputy Collector, Bulsar, in view of the authority vested in me under Section 65 of the Tenancy Act, have to inform you and call upon you to show cause as to why the management of the aforesaid land or a portion thereof should not be assumed by the Government under Section 65 of the Tenancy Act.

.....

.....

65. Assumption of management of lands which remained uncultivated.

(1) If it appears to the State Government that for any two consecutive years, any land has remained uncultivated (or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control) the State Government may, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

(2) On the assumption of the management, such land shall vest in the State Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land:

Provided that the manager may in suitable cases give such land on lease at rent even equal to the amount of its assessment.

Provided further that, if the management of the land has been assumed under sub-section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed."

4. In consequence of the notice the parties appeared and denied the allegation that for two consecutive years they had not cultivated these lands. Ramanlal Gulabchand in his reply stated that:

". . . . . since 1946-47 or thereafter we have been getting the said land cultivated by plough and by saving good seeds of grass therein, we have made the grass to grow therein and by ploughing the land it is brought in level and in this manner formerly after cultivating the land with plough the seeds have been sown therein and since last six years or thereafter by cultivating the said lands continuously with the Tractor and sowing seeds of grass therein, the grass is being grown in the said land. Therefore, that allegation that said land has been kept uncultivated continuously for two years namely 1963-64 and 1964-65 and for the years prior to that made in the notice is absolutely false and we specifically deny the same. Further, over and above the cultivation in the said land we are also making the said land clean and also we are erecting hedge round about it we are also removing the thorns and other things lying in the said land and also keeping continuous watch over the same as soon as the grass grown therein and when the grass becomes fit to be cut, we cut the same and bring the same at our house for our cattle and our cattle eat the same for the whole year. . . . .(sic)".

The case was then sent to the Additional Mamlatdar for report. The Mamlatdar's report is not before us. On February 28, 1965 the Dist. Deputy Collector, Bulsar made his declaration and we get the gist of the Mamlatdar's report from his declaration. It appears that the Mamlatdar reported that the lands were "cultivable" and "food crops and fruit trees can be grown" but the owners had merely "allowed grass naturally to grow therein" and by such operations only they had "not made full and efficient use of the land in the two consecutive years viz. 1963-64 and 1964-65." The Deputy Collector declared that he was satisfied that full and efficient use of the lands had not been made consecutively during the years 1963-64 and 1964-65 as contemplated under Section 65 of the Act and that the default was not due to circumstances beyond the control of the owners. He also declared that the lands could grow food crops or fruit trees. He accordingly appointed the Mamlatdars as managers of said lands directing that they "should take immediate steps to lease out the lands for cultivation of food crops and manage the land as provided for management of estates under the provisions contained in Chapter IV of the Bombay Tenancy and Agricultural Lands Act, 1948". 'This declaration was questioned by the writ petitions from which the present appeals arise.

5. Before the High Court six grounds were urged in support of the petition. Broadly speaking they were: the constitutionality of Section 65 of the Act under Articles 14, 19 (1) (f) and (g) and 31; breach of principles of natural justice on the ground that the Deputy Collector who made the declaration did not hear the parties; and lastly that the declaration was vitiated on account of omission to take into consideration factors relevant for the purpose of taking action. Another ground of attack was that the exercise of power was mala fide and actuated by political considerations. This last ground was not presented to us and therefore may not be mentioned again.

6. The constitutional validity of the addition to Section 65 by the Amending Act was also questioned before us. The argument was that the added words introduced a condition which, even if taken with the Rules, was destructive of the fight of a person to hold and enjoy his property and to deprive him of it for all times without compensation. It was also submitted that in the law thus made too much power and discretion was left to the officer concerned, without indicating any standards of an objective nature to control them. It was also contended that the appellants, in any event, were fulfilling the requirements of cultivation as laid down in the Act itself.

7. Before entering into a discussion of these points we may first see what the Act enacts to achieve by itself and by its Rules. The Act has a long preamble which indicates the object of the law. It says inter alia:

"And whereas on account of the neglect of a landholder or disputes between a landholder and his tenants, the cultivation of his estate has seriously suffered, or for the purpose of improving the economic and social conditions o peasants to ensuring the full and efficient use of land for agriculture, it is expedient to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant

thereto belonging to or occupied by agriculturists, agricultural labourers and artisans in the Province of Bombay and to make provisions for certain other purposes hereinafter appearing it is hereby enacted as follows:-

The following definitions are material to our purpose. Section 2 (1) provides:

"Agriculture" includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle, the use of any land whether or not an appendage to rice or paddy land, for the purpose of rab manure but does not include allied pursuits, or the cutting of wood only:

Provided that in the case of such tracts of land abounding in natural growth of grass as the State Government may, by notification, in the official Gazette, specify, 'agriculture' shall include the cutting of grass for any purpose."

"To cultivate" is defined by S, 2 (5). It reads:"

'"To cultivate' with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression "uncultivated" shall be construed correspondingly.

Explanation.-A person who takes up a contract to cut grass or to gather the fruits or other produce of trees on any land, shall not on that account only be deemed to cultivate such land."

"To hold land" is defined by S. 2 (6c) and means only that the person must be lawfully in actual possession of the land as an owner or tenant, as the case may be.

'Land-holder" is defined in S. 2 (9) thus:

"Land-holder' means a zamindar, jagirdar, saranjamdar, inamdar, talukdar, malik or a khot or any person not hereinbefore specified who is a holder of land or who is interested in land and whom the State Government has declared on account of the extent and value of the land or his interest therein

to be a landholder for the purposes of this Act."

It must be noticed that this definition does not take into account a tenant. That word is defined in Section 2 (18) and reads:

"Tenant means a person who holds land on lease and includes :-

(a) a person who is deemed to be tenant under Section 4;

(b) a person who is protected tenant; and

(c) a person who is permanent tenant:and the word "landlord" shall be construed accordingly."

8. Chapter II deals with tenancies, but with its provisions we are not concerned because they bear only upon matters connected with the setting up of tenancies, their continuance and termination, the quantum of rent payable and other such matters. Section 5 of this Chapter prescribes the ceiling area of tenancy lands with reference to jirayat, seasonal irrigated and perennially irrigated lands, Section 7 authorises Government to vary the ceiling area and economic holding taking into consideration the situation of the land, its productive capacity, its situation in backward areas and any other factor that may be prescribed. Chapter III then deals with special rights and privileges of tenants and makes provision for distribution of land for personal cultivation. We are not concerned with any matter involved in it Chapter IV deals with management of estates held by landholders. In view of the definition of ' landholder' this Part cannot be applied directly to non-landholders but the provisions of S. 65 (2) make the provisions of Chapter IV applicable to the lands of non-landholders. The intention of Chapter V is to arrange for the management of the land of landholders with a view to better management and the liquidation of their debts. The relevant sections in this chapter (which applies in this indirect manner to non-landholders' lands) are Sections 44 to 48, 58, 59 and 61. Section 44 reads:

"Notwithstanding any law for the time being in force, usage or custom or the terms of contract or grant when the State Government is satisfied that on account of the neglect of a landholder or disputes between him and his tenants, the cultivation of his estate has seriously suffered, or when it appears to the State Government that it is necessary for the said purpose or for the purpose of ensuring the full and efficient use of land for agriculture to assume management of any landholder's estate, a notification announcing such intention shall be published in the Official Gazette, and the Collector shall cause notice of the substance of such notification to be given at convenient place in

the locality where the estate is situated. Such notification shall be conclusive."

Section 45 vests the estate in the State Government and the management is deemed to commence from the date on which the notification is published. Section 46 gives the effect of declaration of management. As a result of the publication of the notification under Section 44 all proceedings and processes in civil courts in respect of actions against the landholders get automatically stayed and while the management continues, no further proceedings can be commenced. The holder of the estate also becomes incapable of entering into any contract, mortgage, etc. or to grant valid receipts for rents and profits. The manager, however has competence to do all these things. Section 47 then enumerates the powers of the Manager in the management. He is entitled to receive and recover all rents and profits due in respect of the property under management and for this purpose possesses all the powers of the holder as well as the powers of the Collector under the law for the time being in force. Under Section 48 the Manager is entitled to deduct from the recoveries the cost of the management and repairs, Government revenue and all other debts to Government, the rent to a superior holder and such periodical allowances as the Collector from time to time fixes for the maintenance and other expenses of the holder and such members of his family as the Collector directs and the costs of such improvement of the estates as the manager thinks necessary or as approved by the Collector. The balance is then applied by the Manager for the liquidation of the debts and liabilities of the landholders and if anything remains thereafter, it is paid to the land-holder. Sections 49 to 57 deal with claims to be made against the estate and the power to remove the mortgage in possession. Sections 58 and 59 may be read here. They confer powers of sales and lease on the Manager and to pass receipts for any moneys, rents or profits raised or received by him and the discharge of the persons on the strength of such receipts.

"58. Subject to the rules made under this Act, the Manager after the liquidation scheme has been sanctioned as aforesaid, shall have power to sell or grant on lease all or any part of the estate under the management:

Provided that the estate or any part thereof shall not be sold or leased for a period exceeding ten years without the previous permission o the Collector:

Provided further that the Collector shall not give such permission unless he is satisfied that such sale or lease is necessary for the benefit of the estate (or unless such sale is in favour of a tenant under Sections 32, 32-F, 32-1 or 82-O). The decision of the Collector shall be final.

59. The Manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom or from being concerned to see to the application thereof."

Section 61 next provides for the termination of the management. It must be read in full:

"61. The State Government, when it is of opinion that it is not necessary to continue the management of the estate, by order published in the Official Gazette direct that the said management shall be terminated. On the termination of the said management, the estate shall be delivered into the possession of the holder, or, if he is dead, of any person entitled to the said estate together with any balances which may be due to the credit of the said holder. All acts done or purporting to be done by the Manager during the continuance of the management of the estate shall be binding on the holder or to any person to whom the possession of the estate has been delivered.

The provisions though applicable to landholder are applied by S. 65 (2) mutatis mutandis to the lands of non-landholders In other words, tile scheme of the management (apart from liquidation of debts) applies to non-landholders. The other provisions dealing with management for the liquidation of debts, which are in the nature of the provisions of the Court of Wards Act, may not be considered here because they are not relevant to our purpose.

9. We may next see some of the Rules which have been framed under S. 82 of the Act. Rule 30 provides for a notice before action under S. 44 is taken and provides that the landholder's statement shall be recorded as regards the intention of the Government to assume management of the estate. Rule 33 provides that when a Manager proposes to sell any estate or any part thereof under S. 58 he shall give notice to the landholder to show cause why the estate or a part thereof should not be sold and must afford him an hearing. The method of selling or leasing of the estate under management or any part thereof is indicated in Rule 34 and it is by public auction unless such a course is, in the opinion of the Manager, unnecessary or inexpedient. Rule 35 is important and may be set down in extenso:

"35. Period of continuance of management of estates.

(1) The Manager of an estate of which management has been assumed shall, before the 31st day of March following the year in which the management has been assumed, send to the State Government a report regarding the management of the estate and shall state whether in his opinion it is necessary to continue the management for the purpose for which it was assumed

(2) After taking into consideration the report of the Manager made under sub-rule (1) the State Government shall decide whether the management should be terminated under Section 61 or continued further and if so, for what period, such period not being in excess of five years at a time.

(3) If the State Government decides to continue the management the Manager shall, from time to time, forward his report through the Collector and shall in any case submit a report not letter than two months before the expiry of the current period of the management to enable Government to decide whether the management shall be terminated under Section 61 or shall further be continued:

Provided that if the management is to be continued beyond the expiry of ten years from the date on which it was assumed the Collector shall hold a formal inquiry in the manner prescribed by the Bombay Land Revenue Code, 1879, and after recording the statement of the landholder or any person acting on his behalf, shall submit the record and proceedings of the inquiry and his report to the State Government, which shall be taken into consideration by the State Government before it decides to continue the management any further."

The other Rules do not bear upon the present controversy and may be left out of consideration. We may now proceed to consider this case.

10. The first question to consider is the vires of the addition to S. 65 by the Amending Act, which addition has been shown in the section quoted already. This matter has to be considered with reference to Arts. 31-A and 31-B read with the Ninth Schedule. The protection is claimed on the basis of these two articles by the State. Article 31-B no doubt gives protection to all statutes listed in Schedule IX of the Constitution and this Act is so listed. But it was listed before the amendment of S. 65 and that amendment cannot be said to have been considered when the Amendment of the Constitution was made. That Amendment if accepted as unassailable will have the indirect effect of amending the original Schedule IX by including something in it which was not there before. This is undoubtedly beyond the competence of any State legislature. The argument of the learned Attorney General that the general scheme of the Preamble and the provisions of S. 44 made applicable by S.65 (2) both of which have the protection of Art. 31-B must give protection is fallacious. Even if the preamble and S. 44 could be read (and we do not decide that they can be so read) to give validity it is clear that the preamble talked only of landholders and the addition of the words to S. 65 is intended to apply the principle to non-landholders. Similarly the provisions of S. 44 under the unamended Act, could not have been made applicable to such landholders. The amendment of S. 65 was really carrying the Act into new fields and not being considered as an amendment of the Constitution, how can it claim the protection given to the unamended Act ? Therefore Art. 31-B and the Ninth Schedule cannot be called in aid.

11. The matter may, however, be considered under Art. 31-A. If Art. 31-A gives protection there would be an end to the appellants' contention if not the matter must be considered on principles settled by this Court. Art. 31-A was relied upon strongly by the learned Attorney General. He attempted to bring the amendment of S. 65 under Clauses (a) and (b) of Art. 31-A (1). We may now consider the matter under these two clauses separately. Art. 31-A (1) (a) and (b) read:

"31-A (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 my such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, 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.

* * * * *"

The amendment of S. 65 gives additional power of taking over lands of non-landholders for management on two grounds. The first is that the land must have remained uncultivated for two consecutive years and the second is that full and efficient use of the land had not been made of the land. In so far as the first is concerned S. 65 in its original form included that condition and it cannot be challenged because of the protection of Art. 31-B read with the Ninth Schedule. Therefore action could be taken against any land which had remained uncultivated for two years. The action in this case is not taken because of this part of S. 65. But in so far as the second part is concerned the question must arise whether taking over of management can be said to be (a) acquisition by State or (b) extinguishment of the rights of the holder or (c) modification of any such rights. Of these it is impossible to say that this was an acquisition by the State. That phrase has received construction on more than one occasion in this Court. Although the decisions connot be said to be uniform, one thing is certain that the taking away must be for the State and by the State. Such acquisition must transfer the ownership of the property to the State or to a corporation owned or controlled by the State. Since S. 65 or the other provisions of the Act do not spell out any such thing, there is no acquisition by the State. There is also no extinguishment of the rights of the holder. The rights are merely suspended and he continues to be the owner. There can of course be extinguishment of rights without acquisition by the State but there must be extinguishment, that is complete termination of the rights. The scheme of the Act in S. 61 contemplates return of the lands unless sold to others and in those cases in which a sale is not affected it cannot be said that there is an extinguishment of the rights. Therefore that part of Art. 31-A (1) (a) does not apply. The third part namely modification of rights have been considered by us but this Court in Raghubir Singh v. Court of Wards, Ajmer, 1953 SCR 1049 = (AIR 1953 SC 373) gave a limited meaning to the expression and that case has been applied on many occasions. It was observed there:

"The learned Attorney-General laid emphasis on the word "modification" used in Article 31-A. That word in the context of the article only means 'a modification of the proprietary right of a citizen like an extinguishment of that right" and cannot include within its ambit a mere suspension of the right of management of estate for a time, definite or indefinite."

(emphasis (here in ' ') added)

Thus mere suspension of the right of management of one's property without modification of the proprietary right was not held sufficient to give protection of Art. 31-A (1) (a). We would have given more thought to this matter but for the re-enactment of Art. 81-A with retrospective effect after Raghubir Singh's case, 1953 SCR 1049 = (AIR 1953 SC 373). Raghubir Singh's case, 1953 SCR 1049 = (AIR 1953 SC 373) did not interpret the article as it is today. In view of the retrospective amendment of the article it may be said that this Court interpreted an article which never was enacted in that form. Therefore the less we speak of the matter from the angle of observations in Raghubir Singh's case, 1953 SCR 1049 = (AIR 1953 SC 373) the better. But even so the matter is not advanced much further.

12. Looking at the matter in the light of Art. 31-A as it is today (and it must be deemed to have been so always) 'management' is specially provided in (b) and must be considered under that clause. The words of that clause are 'the taking over of the management of any property'. 'Any property' means property of any kind and would embrace land of landholders and non-landholders alike. The words 'by the State' indicate that the taking over must be by the State. The next requirement is that this taking over must be either in the public interest or in order to secure the proper management of the property. And lastly the taking over must be for a limited period. The case here is covered by this clause and clause (a) is therefore not attracted.

13. It is, however, objected that the taking over is not limited to any period. S. 61 which is protected by the Ninth Schedule and cannot be called in question says that the State Government may announce the termination of the management when it is satisfied that it is not necessary. This does not set any limit leaving the matter at large. The learned Attorney General however desired us to read the rules to show that there is a limit of time. He says that the rules be read in conjunction with the provisions of S. 61 because the section does not give any indication of any limit of time. Although S. 61 may not by itself be challengeable, the rules may be, notwithstanding that they were made under powers given by S. 82. A limit of time was deliberately put in by the constitutional amendment to distinguish between cases which fall within management from those of extinguishment and modification. Without a limit of time the management would be an excuse for deprivation of property without compensation and that is not the intention of Art. 31. It is hardly to be thought that an antinomy between Art. 31 and 31-A (1) (b) was deliberately introduced.

14. We do not express an opinion whether the rules can be read to indicate the limited period of management or that the scheme of the Act and the rules must be viewed together in this connection. But we are clear that the rules do not improve matters. Although it may not be possible to attack S. 61 which enables the State to hold the property as long as necessary as the section is protected, the action of the State in making such rules as give no indication of a limit of time may be a circumstance to consider if the claim of protection is made out. Under clause (b) of Art. 31-A (1) protection is to State action in taking over management for a limited period and to laws enabling this to be done, but not to management unlimited in time. Section 61 read with S. 82 must therefore require that any rule made should accord with the protection given on these terms by Art. 31-A otherwise the protection will fail. Advantage of the words of S. 61 cannot be taken to create a permanent deprivation of the property and yet claim protection of Art. 31-A (1) (b). It is in this context that we must examine the provisions.

15. We must first clear one misapprehension and it is that the provisions of Chapter IV can be said to apply in toto. It must be remembered that that chapter is primarily concerned with the liquidation of liability of landholders and schemes to effect that purpose. Section 58 does not give a clean power of sale but only after a liquidation scheme is sanctioned. That applies to landholders and may not be made applicable to non-landholders.

16. To see how the management is to work in respect of non-landholders we have to turn to the rules. Here the pertinent rule is R. 35. That rule requires a report from the Manager after about a year to enable the State Government to consider whether it is necessary to continue management. The State Government may then decide to release the land from management, or continue it. The management may continue for periods of 5 years at a time on the strength of periodic reports but if management is to continue beyond 10 years a formal inquiry is necessary and then Government may decide to continue the management further. No limit of time is then indicated. There is, therefore, no limit set at all. The protection of Art. 31-A (1) (b) is available only when there is a definite limit in the law for the period of management. Neither S. 61 alone, nor read with the rules indicates any such limit and the condition of protection from Articles 13, 14, 19 and 31 is thus not available. The argument of the learned Attorney General that so long as there is a possibility of a return of the land to the original owner, we must construe the management as of a limited period is not acceptable to us. It is hardly to be expected that a return of property which is on the Greek Kalends can be construed as a return within a limited period. Therefore the scheme of the Act ought to have shown the limit. It may not be possible to question the unamended Section 65 because of Art. 31-B or the provisions of S. 61 which is also protected but in respect of the addition to S. 65 the protection of Art. 31-A (1) (b) can only be invoked if the law can show a real limit for the period of management. If the management is likely to continue for an indefinite period it is not in any sense limited and, therefore, the amended part cannot claim protection, S. 61 notwithstanding.

17. Once the matter can be gone into the provisions of the additional part will have to be examined for reasonableness. Here the difficulties are many for the State. We mention only a few of them. There is nothing to show what are the requirements of action. The deprivation of property is made to depend upon the subjective determination of an officer. Take for example this case itself. Action

is taken under the impugned part of S. 65. Agriculture includes growing of grass, and other definitions emphasise the need of growing grass by including the operation in the word 'cultivation'. Grass is as important for agricultural communities as foodgrains and fruits. Without the former the cattle must die just as without the latter there would be human starvation. The Act, therefore, gives importance to both, naming grass along with crops and garden produce and horticulture. If grass is being grown as an agricultural operation, one cannot just take grass lands and convert them into orchards. Similarly orchards cannot be taken and turned into pastures. Before action is taken it must be quite clearly, established that the kind of agriculture which is being carried on is being carried on inefficiently or that there is some distinct advantage in the new management to carry on the new kind of agriculture. The Deputy Collector merely, thinks that the land can grow grain or fruits. But so can any grass land or pasture. There is nothing to show that from an agrarian point of view grass grown in these lands was not necessary at all or was being inefficiently grown. A person is entitled to hold and enjoy his property as he thinks best. If regard is to be had for the benefits of society a clear law and a clear determination are required. Both the elements are missing. It is not said in what circumstances cultivation can be said to be inefficient. It is also not said what would be considered efficient cultivation and what inquiries are needed to determine this. It is also not said under what circumstances different kind of cultivation can be imposed upon the land. The law does not provide for an opportunity to the cultivator to change his cultivation from one kind to another. It does not even require that the management should be efficient. After taking over the lands the Manager can lease them to others but it is not stated what conditions they have to observe. Merely on the opinion of an officer, land may be taken away because the officer thinks that wheat is to be preferred to fruits and fruits to grass and so on and so forth. The management is taken over without any clear limit of time. In these circumstances it is difficult to uphold the declarations made in these cases or to give them the protection of Art. 31-A (1) (b).

18. The appeals will, therefore be allowed with costs and the orders of the Deputy Collector quashed. There shall be one set of hearing fee in each group, where same counsel appeared for all the appeals.

Appeals allowed.