The Godavari Sugar Mills Ltd.

Vs

S. B. Kamble and Others

Civil Appeal No. 1426 of 1974

(H. R. Khanna, P. N. Bhagwati, P. K. Goswami JJ)

07.03.1975

JUDGMENT

KHANNA, J. -

1. The short question which arises in this appeal filed on certificate by Godavari Sugar Mills Ltd. and its two shareholder directors against the judgment of the Bombay High Court is the constitutional validity of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act No. 27 of 1961) (hereinafter referred to as the principal Act) as amended by Maharashtra Acts Nos. 16 of 1968, 33 of 1968, 37 of 1969 and 27 of 1970. The High Court has upheld the validity of the Act on the ground that it is protected by Articles 31A and 31B of the Constitution.

2. The principal Act came into force on January 26, 1962. According to its long title, it was an Act to impose a maximum limit (or ceiling) on the holding of agricultural land in the State of Maharashtra; to provide for the acquisition and distribution of land held in excess of such ceiling; and for matters connected with the purposes aforesaid. Section 3 of the Act deals with ceiling on holding of agricultural land. According to that section, in order to provide for the more equitable distribution of agricultural land amongst the peasantry of the State of Maharashtra (and in particular, to provide that landless persons are given land for personal cultivation), on the commencement of the Act, there shall be imposed to the extent, and in the manner hereinafter provided, a maximum limit (or ceiling) on the holding of agricultural land throughout the State. Section 4 provides that no person shall hold land in excess of the ceiling area, while Section 5 specifies as to what area would constitute ceiling area under each class of land in specified local area. Returns have to be submitted to the Collector in respect of surplus land under Section 12 of the Act. Section 14 gives power to the Collector to hold an enquiry for determining as to what area in respect of the holding of a person should be declared to be in excess of the ceiling area. On completion of the enquiry if the Collector finds the holding of a person in excess of the ceiling area, the Collector shall make a declaration under Section 21 of the Act about the area, description and full particulars of the land which is delimited as surplus land. The declaration is then notified under Section 21(2) in the official Gazette. According to sub-section (4) of that section, the Collector shall after the publication of the notification under sub-section (2) take in the prescribed manner possession of the land which is delimited as surplus land. It is further provided that the surplus land shall with effect from the date on which the possession thereof is taken as aforesaid be deemed to be acquired by the State Government for the purposes of the Act and shall accordingly vest free from all encumbrances in the State Government. Section 27 makes provision for the distribution of the surplus land. Section 28 of the Act makes provision in respect of land taken over from industrial undertaking to ensure efficient cultivation and continued supply of raw material. The section as it stood before its

amendment by Act 33 of 1968 read as under :

> 28. (1) Where any land held by an industrial undertaking is acquired by, and vests, in the State Government under Section 21, such land being land which was being used for the purpose of producing or providing raw material for the manufacture or production of any goods, articles or commodities by the undertaking, the State Government shall take particular care to ensure that the acquisition of the land does not affect adversely the production and supply of raw material from the land to the undertaking.
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> (2) Notwithstanding anything contained in Section 27, but subject to any rules made in this behalf for the purpose of so ensuring the continuance of the supply of such raw material to the undertaking, and generally for the full and efficient use of the land for agriculture and its efficient management, the State Government -
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> (a) may, if it is in the opinion of that Government necessary for the purpose aforesaid (such opinion being formed after considering the representation of persons interested therein) maintain the integrity of the area so acquired, in one or more compact blocks, and
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> (b) may, subject to such terms and conditions (including in particular, conditions which are calculated to ensure the full and continued supply of raw material to the undertaking at a fair price), grant the land or any part thereof to a joint farming society (or a member thereof) consisting as far as possible, of -
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> (i) persons who had previously leased such land to the undertaking,
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> (ii) agricultural labour (if any) employed by the undertaking on such land,
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> (iii) technical or other staff engaged by the undertaking on such land, or in relation to the production or supply of any raw material,
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> (iv) adjoining landholders who are small holders,
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> (v) landless persons :
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> Provided that, the State Government may -
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> (a) for such period as is necessary for the setting up of joint farming societies as aforesaid being not more than three years in the first instance (extensible to a further period not exceeding two years) from the date of taking possession of the land, direct that the land acquired, or any part thereof, shall be cultivated by one or more farms run or managed by the State, or by one or more corporations (including a company) owned or controlled by the State;
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> (b) grant to the landlord so much of the surplus land leased by him to the undertaking, which together with any other land held by him does not exceed the ceiling area (but if the landlord be a public trust and the major portion of the income from the land is being appropriated for purposes of education or medical relief, grant the entire land to the public trust) on condition that the landlord, or as the case may

be, the public trust lease the land to a farm or corporation described in clause (a) aforesaid, and thereafter, in the case of a landlord (not being a public trust) that he becomes a member of the joint farming society, and in the case of a public trust, that it leases the land to a joint farming society.

(3) The State Government may provide that, -

(a) for the breach of any term or condition referred to in clause (b) of sub-section (2), or

(b) if the landlord to whom the land is granted fails to lease the land to the farm or corporation or to become a member of a joint farming society;

(c) if it considers after such inquiry as it thinks fit, that the production and supply of raw material to the undertaking is not maintained at the level or in the manner which, with proper and efficient management it ought to be maintained, or

(d) for any other reason it is undesirable in the interest of the full and efficient cultivation of the land, that the joint farming society should continue to cultivate the land,

the grant shall, after giving three months' notice of termination thereof and after giving the other party reasonable opportunity of showing cause, be terminated, and the land resumed. Thereafter, the State Government may make such other arrangements as it thinks fit for the proper cultivation of the land and maintenance of the production and supply of raw material to the undertaking.

3. At this stage we may advert to the facts giving rise to the present appeal. The appellant company owns two factories for the manufacture of sugar and allied products. The company held large areas of land in Ahmednagar district for the cultivation of sugarcane for its factories. On March 1, 1963 Special Deputy Collector respondent No. 2 declared an area of 8468 acres 26 1/2 gunthas in village Sakarwadi held by the appellant company to be in excess of the ceiling area. On March 7, 1963 Special Deputy Collector respondent No. 1 passed an order declaring 3677 acres 16 gunthas of appellant-company's land situated in Lakshmiwadi to be in excess of the ceiling area. Thus a total area of 12146 acres 1/2 guntha was declared to be surplus. Appeals against the aforesaid orders were filed by the appellant company to the Maharashtra Revenue Tribunal. The appellants and some others also filed petitions challenging the constitutional validity of the principal Act. A Division Bench of the Bombay High Court as per judgment dated October 25, 1963 delivered in a petition filed by another party upheld the constitutional validity of all the provisions of the principal Act, except Section 28 which was struck down. It was held that the provisions of the Act other than Section 28 were a measure of agrarian reform and as such protected by Article 31A of the Constitution. Section 28 was held to be violative of Article 14 of the Constitution.

4. On June 20, 1964 the Constitution (Seventeenth Amendment) Act was passed. As a result of the Seventeenth Amendment of the Constitution the principal Act including Section 28 was included in the Ninth Schedule. The petition filed by the appellants challenging the validity of the principal Act

was in view of the Seventeenth Amendment dismissed by a Division Bench of the Bombay High Court on March 10, 1965. The appellants came up in appeal to this Court against the judgment of the Bombay High Court but that appeal was dismissed by this Court on April 10, 1968. The judgment of this Court is reported in (1968) 3 SCR 712 (State of Maharashtra v. Madhavrao Damodar Patilchand, AIR 1968 SC 1395 : 1968 Lab IC 1525). It may be stated that a stay order was made during the pendency of the appeal filed by the appellants. After the dismissal of the appeal on application filed by the respondents, the Counsel for the appellants gave an undertaking on April 26, 1968 to deliver possession of 10315 acres of land on or before May 2, 1968. Possession of 10315 acres of land in pursuances of the above undertaking was handed over by the appellant company in May 1968. As the joint farming societies referred to in Section 28 had not yet been formed, till such formation the said land along with some other land taken over from others in similar circumstances was given for cultivation to the Maharashtra State Farming Corporation Limited respondent No. 5. The said Corporation was incorporated on March 6, 1963 under the Companies Act and is owned and controlled by the State of Maharashtra respondent No. 3.

5. On May 17, 1968 amending Act 16 of 1968 was published. As a result of the amending Act Section 28-1A was inserted in the principal Act. This section extended the period for the setting up of joint farming societies contemplated by Section 28 of the principal Act by one year. It also empowered the State Government to make a scheme for the interim period. On June 26, 1968 the appellants filed petition under Articles 226 and 227 of the Constitution for a declaration that the principal Act as amended by Act 16 of 1968 was unconstitutional. Interim injunction was issued restraining the respondents from taking any steps under the amended Act on June 27, 1968. The injunction was thereafter vacated in respect of 10315 acres of land. The appellants also gave an undertaking that they would not press their appeals before the Tribunal in respect of 10315 acres of land. Accordingly, on July 22, 1968 the Maharashtra Revenue Tribunal dismissed the appeals of the appellants in respect of 10317 acres 37 gunthas of land. The appeals regarding the rest of the land measuring 1829 acres were kept pending in view of the injunction issued by the High Court.

6. On December 28, 1968 amending Act 33 of 1968 was published. Section 2 of the amending Act added an explanation in Section 28 as under :

> Explanation. - For the avoidance of doubt, it is hereby declared that a producer or raw material (being a person, a joint farming society, or corporation including a company) referred to in sub-section (2) shall be liable to supply raw material to the undertaking concerned only on that undertaking agreeing to accept such supply at the fair price.

The amending Act also introduced Section 28-1B, the material part of which was as under :

> 28-1B. The supply of raw material by any producer (being a person, a joint farming society or corporation including a company) to the undertaking during any season shall be regulated, and the fair prices at which such supply is to be made to the undertaking shall be fixed, in accordance with the provisions of the Third Schedule.

Clause 3 of the Third Schedule provided for the formation of a Committee for fixation of the fair price.

7. On July 26, 1969 amending Act 37 of 1969 was published. The Amending Act made changes in the Third Schedule and provided for the setting up of a Board for fixation of the fair price of the

raw material supplied to an undertaking under the principal Act.

8. Amending Act 27 of 1970 was published on May 19, 1970. The long preamble of the Act reads as under :

> Whereas, Section 28 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 inter alia provides that the State Government shall take particular care to ensure that the acquisition of land held by an industrial undertaking (being land which was being used for the purpose of producing or providing raw material for the manufacture or production of any goods, articles or commodities by the undertaking) does not affect adversely the production and supply of raw material from such land to the undertaking; and that for the purpose of so ensuring the continuance of supply of such raw material to the undertaking, and generally for the full and efficient use of the land for agriculture and its efficient management, the State Government may maintain the integrity of the area so acquired in one or more compact blocks, and may grant the land, or any part thereof, to a joint farming society (or a member thereof) consisting of persons referred to in clause (b) of sub-section (2) of that section;

And whereas, that section inter alia further provides that for such period as is necessary for the setting up of joint farming societies as provided in sub-section (2) of that section (being not more than five years in the aggregate from the date of taking possession of the land), the land acquired or any part thereof should be cultivated by one or more farms run or managed by the State, or by one or more corporations (including a company) owned or controlled by the State; And whereas, the State Government have accordingly constituted the Maharashtra State Farming Corporation Limited (a company formed and registered under the provisions of the Companies Act, 1956), for managing the farms till the setting up of the joint farming societies aforesaid;

And whereas, efforts so far made in the setting up of such societies including the efforts made for the setting up of such societies under the Maharashtra Agricultural Land (Ceiling on Holdings) Setting up of Joint Farming Societies Scheme, 1968, made under Section 28-1A of the said Act have not borne fruit, and the periods for the setting up of such societies are due to expire between the months of May and October 1970; And whereas, in the light of experience mentioned aforesaid, it is not possible to say that any such joint farming societies can be set up at all; and whereas, short extensions of time for the setting up of such joint farming societies is hampering the full and efficient use of the land for agriculture and its efficient management for the reason that the Maharashtra State Farming Corporation is thereby prevented from undertaking any plans or schemes for the improvement of the land and it is finding it difficult to carry out the objects of clause (b) of sub-section (2) of Section 28; And whereas, most of the undertakings have also represented to the State Government that cultivation of the land may be continued with the Maharashtra State Farming Corporation on a permanent basis for the reason that implementation of the joint Farming Societies Scheme aforesaid will lead to fragmentation of land and that since the economic development of land is part of agrarian reform, the continuation of the management of the lands by the said Corporation will subserve the purpose of agrarian reform in consonance with the objects of the said Act; And whereas, the State Government after carefully considering the question, in particular, in the light of what has been set out hereinabove, is also of opinion that the cultivation of the land should be continued with the Maharashtra State Farming Corporation on a permanent basis; And whereas, it is necessary to amend the said Act for the purposes aforesaid, and also for certain other purposes hereinafter appearing; It is hereby enacted in the Twenty-first Year of the

Republic of India as follows :-

> Sections 2 and 3 of the amending Act inserted additional words in the long title and preamble of the principal Act so as to include the words :
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> also to provide that the lands taken over from undertakings and the integrity of which is maintained in compact blocks for ensuring the full and efficient use of the land for agriculture and its efficient management through corporations (including a company) owned or controlled by the State, be granted to such corporations or company;

Section 4 of the amending Act amended Section 21 of the principal Act by providing in a newly inserted sub-section (5) that where possession of any land delimited as surplus is handed over by the holder in pursuance of an undertaking given by him in any court, and the appeal filed by the holder against the declaration of that land as surplus has been subsequently withdrawn or dismissed, the land, notwithstanding anything contained in sub-section (4), shall with effect from the date on which the possession thereof is taken by the Collector, be deemed to be duly acquired by the State Government for the purposes of the Act. Section 7 of the amending Act deleted Section 28-1A of the principal Act. Section 28-1AA was inserted by Section 8 of the amending Act. Sub-sections (1) and (2) of Section 28-1AA read as under :

> 28-1AA. (1) The State Government, may, by notification in the official Gazette, not later than ninety days from the commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1970, grant the surplus land taken over from the industrial undertakings and referred to in Section 28 and which is being cultivate by one or more corporations (including a company) owned and controlled by the State to such corporation, or corporations, as the case may be, subject to such terms and conditions, including in particular, the condition of maintaining the integrity of the surplus land, in one or more compact blocks, and conditions which are calculated to ensure the full and continued supply of raw material to the undertaking at a fair price. On the grant of such surplus land to one or more corporations as aforesaid, the provisions of Section 28 so far as they provide for setting up of joint farming societies shall not apply in relation to such surplus land.
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> (2) The State Government may provide that, -
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> (a) for the breach of any term or condition referred to in sub-section (1), or
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> (b) if it considers after such inquiry as it thinks fit, that the production and supply of raw material to the undertaking is not maintained at the level or in the manner which, with proper and efficient management it ought to be maintained, or
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> (c) for any other reason it is undesirable in the interest of the full and efficient cultivation of the land, that the corporation (including a company) should continue to cultivate the land,
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> the grant shall, after giving three months' notice of termination thereof, and after giving the corporation reasonable opportunity of showing cause be terminated, and the land resumed. Thereafter, the State Government may itself take steps by running or managing one or more farms for the proper cultivation of the land and

> maintenance of the production and supply of raw material to the undertaking at a fair price.
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> Explanation. - For the avoidance of doubt, it is hereby declared that a producer of raw material being the corporation (including a company) or the State Government referred to in this section shall be liable to supply raw material to the undertaking concerned only on that undertaking agreeing to accept such supply at the fair price.

9. It may be mentioned that the principal Act has also been amended by Maharashtra Act 50 of 1973 which was published on December 22, 1973. Petitions challenging the validity of the principal Act as amended by Act 50 of 1973 are stated to be pending in the High Court. The High Court in the case which is the subject-matter of the present appeal allowed amendment of the petition so as to include challenge to the principal Act as amended by Act 27 of 1970. It may also be stated that before the amendment made by Act 27 of 1970, the principal Act was amended by various amending Acts, besides those of which reference has already been made, but we are not concerned with those other amending Acts.

10. To complete the narration we may also refer to the Maharashtra Agricultural Lands (Ceiling on Holdings) Grant of Surplus Lands Taken Over from Industrial Undertakings Order, 1970 which was issued by the Maharashtra Government on August 13, 1970 in exercise of the powers conferred by Section 28-1AA of the Act. Clause 2(c) of the Order defines "Corporation" to mean the Maharashtra State Farming Corporation Ltd. Clause 3 of the Order reads as under :

> Grand of lands to Corporation. - The lands specified in column 3 of the schedule hereto (being surplus lands taken over from the undertakings referred to in Section 28 and specified in column 2 of the schedule) and which are being cultivated by the Corporation are hereby granted to the Corporation on payment of occupancy price and on the terms and conditions specified in this Order.

Clause 4 of the Order specifies the conditions for maintaining the integrity of surplus land, while Clause 5 deals with conditions so as to ensure full and continued supply of raw material to industrial undertaking. Clause 6 provides for conditions as to termination of grants.

11. By the judgment under appeal the High Court, as already mentioned, has upheld the validity of the impugned Act on the ground that it is protected by Articles 31A and 31B of the Constitution.

12. Mr. Sen on behalf of the appellants has at the outset assailed the finding of the High Court in so far as it has held the impugned Act to be protected by Article 31B of the Constitution.

13. The High Court while affording the protection of Article 31B of the Constitution to the impugned Act has referred to the fact that the principal Act including Section 28 was inserted in the Ninth Schedule to the Constitution as item No. 34 by the Seventeenth Amendment to the Constitution. The submission advanced on behalf of the respondents that the amending Acts of 1968 and 1970 were only ancillary or incidental to Section 28 of the principal Act and as such the amended Act was protected under Article 31B found favour with the High Court. The High Court accordingly observed :

> We, therefore, hold that Section 28-1A and Section 28-1AA are only ancillary or incidental to Section 28 of the principal Act and Section 21(5) is also ancillary or incidental to Section 21 and, therefore, all these three amendments are protected by

Article 31B of the Constitution.

14. We have given the matter our consideration and are unable to agree with the above conclusion of the High Court. Article 31B reads as under :

> 31B. Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force. The above article was inserted in the Constitution by the First Amendment. The object of this article is to give a blanket protection to the Acts and Regulations specified in the Ninth Schedule and the provisions of those Acts and Regulations against any challenge to those Acts, Regulations or the provisions thereof on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Part III of the Constitution. The result is that howsoever violative of the Fundamental Rights may be the provisions of an Act or Regulation once the Act or Regulation is specified in the Ninth Schedule it would not be liable to be struck down on that score. This immunity against the above challenge would be available notwithstanding any judgment, decree or order of any court or tribunal to the contrary. The effect of Article 31B, however, is not to prevent challenge to an enactment on the ground that it is beyond the legislative competence of the Legislature which enacted it. It is also plain from the language of the article that the specification of an Act or Regulation would not prevent the competent Legislature to repeal or amend it.

15. The protection and immunity afforded by article 31B is, however, restricted to the provisions of the Act or Regulation as they exist on the date the Act or Regulation is included in the Ninth Schedule. The inclusion of the Act and Regulation would protect not only the principal Act or Regulation which is included in the Ninth Schedule but also the amendments which have been made therein till the date of its inclusion in the Ninth Schedule, even though the constitutional amendment by which the Act or Regulation is included in the Ninth Schedule refers only to the principal Act and Regulation and not to the amendments thereof. The protection or immunity enjoyed by the Act or Regulation, including the amendments thereof till the date of its inclusion in the Ninth Schedule would not, however, extend to the amendments made in the Act or Regulation after the date of its inclusion in the Ninth Schedule. The reason for that is that the inclusion of an Act or Regulation in the Ninth Schedule can be brought about only by means of an amendment of the Constitution. The amendment of the Constitution can be carried but in accordance with Article 368 of the Constitution. Such a power is exercised not by the Legislature enacting the impugned law but by the authority which makes the constitutional amendment under Article 368, viz., the prescribed majority in each House of Parliament. Such a power can be exercised in respect of an existing Act or Regulation of which the provisions can be scrutinized before it is inserted in the Ninth Schedule. It is for the prescribed majority in each House to decide whether a particular Act or Regulation should be inserted in the Ninth Schedule, and if so, whether it should be so inserted in its entirety or partly. In case the protection afforded by Article 31B is extended to amendments made in an Act or Regulation subsequent to its inclusion in the Ninth Schedule, the result would be that even those provisions would enjoy the protection which were never scrutinized and could not in the very nature

of things have been scrutinized by the prescribed majority vested with the power of amending the Constitution. It would, indeed, be tantamount to giving a power to the State Legislature to amend the Constitution in such a way as would enlarge the contents of Ninth Schedule to the Constitution.

16. The protection of Article 31B can also not be extended to a new provision inserted as a result of amendment on the ground that it is ancillary or incidental to the provisions to which protection has already been afforded by including them in the Ninth Schedule. Article 31B carves out a protected zone. It has inserted Ninth Schedule in the Constitution and gives immunity to the Acts, Regulations and provisions specified in the said schedule from being struck down on the ground of infringement of Fundamental Rights even though they are violative of such rights. Article 31B thus excludes the operation of Fundamental Rights in matters dealt with by those Acts, Regulations and provisions. Any provision which has the effect of making an inroad into the guarantee of Fundamental Rights in the very nature of things should be construed very strictly, and it would not, in our opinion, be permissible to widen the scope of such a provision or to extend the frontiers of the protected zone beyond what is warranted by the language of the provision. No Act, Regulation or provision would enjoy immunity and protection of Article 31B unless it is expressly made a part of the Ninth Schedule. The entitlement to protection being confined only to the Acts, Regulations and provisions mentioned in the Ninth Schedule, it cannot be extended to provisions which were not included in that schedule. This principle would hold good irrespective of the fact whether the provision to which entitlement to protection is sought to be extended deals with new substantive matters or whether it deals with matters which are incidental or ancillary to those already protected.

17. We are fortified in the above conclusion by the previous decisions of this Court. In the case of Sri Ram Ram Narain Medhi v. State of Bombay (1959 Supp 1 SCR 489 : AIR 1959 SC 459) the Constitution Bench of this Court dealt with the question as to whether an amendment made by an Act of 1956 would be protected by Article 31B if the 1948 Act in which that amendment was made had been included in the Ninth Schedule to the Constitution. The question was answered in the negative. Bhagwati, J. speaking for the Court observed :

> The impugned Act which was passed by the State Legislature is 1956 was a further measure of agrarian reform carrying forward the intentions which had their roots in the 1948 Act. Having regard to the comparison of the various provisions of 1948 Act and the impugned Act referred to above it could be legitimately urged that if the cognate provisions of the 1948 Act were immune from attack in regard to their constitutionality, on a parity of reasoning similar provisions contained in the impugned Act, though they made further strides in the achievement of the objective of a socialistic pattern of society would be similarly saved. That position, however, could not obtain because whatever amendments were made by the impugned Act in the 1948 Act were future laws within the meaning of Article 13(2) of the Constitution and required to be tested on the self-same touchstone. They would not be in terms saved by Article 31B and would have to be scrutinized on their own merits before the courts came to the conclusion that they were enacted within the constitutional limitations. The very terms of Article 31B envisaged that any competent Legislature would have the power to repeal or amend the Acts and the Regulations specified in the Ninth Schedule thereof and if any such amendment was ever made the vires of that would have to be tested.

To the same effect is the decision of this Court in the case of Sajjan Singh v. State of Rajasthan ((1965) 1 SCR 933 : AIR 1965 SC 845). Gajendragadkar, C.J. speaking for the majority observed :

> There is one more point to which we would like to refer. In the case of Sankari Prasad (Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar, 1952 SCR 89 : AIR 1951 SC 458) this Court has observed that the question whether the latter part of Article 31B is too widely expressed, was not argued before it, and so, it did not express any opinion upon it. This question has, however, been argued before us, and so, we would like to make it clear that the effect of the last clause in Article 31B is to leave it open to the respective Legislatures to repeal or amend the Acts which have been included in the Ninth Schedule. In other words, the fact that the said Acts have been included in the Ninth Schedule with a view to make them valid, does not mean that the Legislatures in question which passed the said Acts have lost their competence to repeal them or to amend them. That is one consequence of the said provision. The other inevitable consequence of the said provision is that if a Legislature amends any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Article 31B and its validity may be liable to be examined on the merits.

In the case of Ramanlal Gulab Chand Shah v. State of Gujarat ((1969) 1 SCR 42 : AIR 1969 SC 168) Hidayatullah, C.J. also dealt with a similar question and observed :

> The first question to consider is the vires of the addition to Section 65 by the Amending Act, which addition has been shown in the section quoted already. This matter has to be considered with reference to Articles 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 Section 65 and that amendment came to 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 schemes of the Preamble and the provisions of Section 44 made applicable by Section 65(2) both of which have the protection of Article 31-B must give protection is fallacious. Even if the Preamble and Section 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 Section 65 is intended to apply the principle to non-landholders. Similarly the provisions of Section 44 under the unamended Act, could not have been made applicable to such non-landholders. The amendment of Section 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 Article 31-B and the Ninth Schedule cannot be called in aid.

The concluding part of the above passage did not lay down, as seems to have been assumed by the High Court, that if a amending Act does not cover a new field but contains provisions which are incidental and ancillary to those which are protected by Article 31B, the amending Act would also get the protection of Article 31B. This Court in the concluding part merely repelled the contention which had been advanced by the Attorney General. The principle which should guide the courts in such cases was, however, laid down in the earlier part of the passage wherein this Court repelled the argument that the amending Act was unassailable because of the original Act having been included

in the Ninth Schedule.

18. It may be stated that Shah, J. was also a party to the above decision. In the subsequent case of State of Orissa v. Chandra Sekhar Singh Bhoi ((1970) 1 SCR 593 : (1969) 2 SCC 334), Shah, J. relied upon the above decision and observed as under : [SCC p. 336, para 2]

By the amendments made in the Constitution by the Seventeenth Amendment Act the principal Act is incorporated in the Ninth Schedule to the Constitution with effect from June 20, 1964. The Act is therefore not liable to be attacked on the plea that it is inconsistent with or takes away or abridges any of the fundamental rights conferred by Part III of the Constitution. But the power of the competent Legislature to repeal or amend the Act incorporated in the Ninth Schedule is not thereby taken away. The amending Act passed after the enactment of the Constitution (Seventeenth Amendment) Act, 1964 does not therefore qualify for the protection of Article 31-B. See Ramanlal Gulabchand Shah v. State of Gujarat (supra) and Ram Ram Narain Medhi v. State of Bombay (supra). This position is not disputed.

19. In the case of State of Maharashtra v. Madhavrao Damodar Patilchand ((1968) 3 SCR 712 : AIR 1968 SC 1395) which was decided between these very parties, a seven Judge Bench of this Court repelled the contention that Article 31B does not protect amending Act 13 of 1962 because in the Ninth Schedule to the Constitution only the Maharashtra State Agricultural Lands (Ceiling on Holdings) Act, 1961, had been included and not the amending Act of 1962, Sikri, J. (as he then was) speaking for the Court observed :

> But then there are many other Acts which had been amended before they were inserted in the Ninth Schedule, and we can hardly imagine that Parliament intended only to protect the Acts as originally passed and not the amendments made up to the date of their incorporation into the Ninth Schedule. The reason for this express insertion of certain amending Acts seems to be that some States, out of abundant caution, recommended that their amending Acts be specifically inserted in the Ninth Schedule.

It was further observed :

> Accordingly we must overrule the first submission made by the learned Counsel for the appellant and hold that Article 31B protects the impugned Act including the amendments made in it upto the date of its incorporation into the Ninth Schedule.

20. The next question which arises for consideration is whether the impugned provisions are protected by Article 31A of the Constitution. According to Mr. Sen, the effect of the aforesaid provisions is to acquire land held by the appellants and as the acquisition is not for the purpose of agrarian reform, the provisions do not enjoy the protection of Article 31A. As against that, the learned Attorney General on behalf of the respondents has contended that the impugned provisions constitute a measure of agrarian reform and as such are protected by Article 31A.

21. It is now well-established that before the protection of Article 31A can be afforded to the acquisition of any land by the State, the acquisition should be for the purpose of agrarian reform. As observed by Subba Rao, J. (as he then was) speaking for the majority in the case of Kavalappara Kottarathil Kochuni v. State of Madras ((1960) 3 SCR 887 : AIR 1960 SC 1080) the object of inserting Article 31A in the Constitution and of subsequently amending it was to facilitate agrarian

reforms. It was held in that case that an enactment which sought to regulate the rights of sthanees and the junior members of a tarwad by depriving the sthanee of its properties and vesting them in the tarwad under the Madras Marumakkathayam (Removal of Doubts) Act, 1955 was not a measure of agrarian reform.

22. In P. Vajravelu Mudaliar v. Special Deputy Collector ((1965) 1 SCR 614 : AIR 1965 SC 1017) Subba Rao, J. Speaking for the Court while reiterating that the object of Article 31A was to enable the State to implement pressing agrarian reforms held that the purpose of slum clearance for which the land was sought to be acquired under the Land Acquisition (Madras Amendment) Act, 1961 could not be related to agrarian reform. It is significant that this Court in that case dealt with the acquisition of land for development of the areas as "neighbourhood" in the city of Madras for housing schemes.

23. In the case of Ranjit Singh v. State of Punjab ((1965) 1 SCR 82 : AIR 1965 SC 632) this Court dealt with the validity of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, the Punjab Gram Panchayat Act and the Punjab Village Common Lands (Regulation) Act and the proceedings taken under these enactments, as a result of which proprietor's interest was acquired by the State without compensation. It was held that the impugned provisions as also the provisions of the Punjab Security of Land Tenures Act were all a part of a general scheme of agrarian reform and the modification of rights envisaged by them had the protection of Article 31A. Hidayatullah, J. (as he then was) speaking for the Court observed :

> The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to village Panchayat for the use of the general community, for hospitals schools, manure pits, tanning grounds etc. enure for the benefit of rural population must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands.

24. In the case of Balmadies Plantations Ltd. v. State of Tamil Nadu ((1973) 1 SCR 258 : (1972) 2 SCC 133) it was held while dealing with the provisions of Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act that the object and general scheme of the Act was to abolish intermediaries between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State. The Act, as such, in its broad outlines was held to be a measure of agrarian reform and protected by Article 31A. The acquisition of forests in Janmam Estates was held to be not in furtherance of the objective of agrarian reform and consequently not protected by Article 31A. This Court in that context observed : [SCC p. 149, para 18]

In the absence of anything in the Act to show the purpose for which the forests are to be used by the Government, it cannot be said that the acquisition of the forests in Janmam land would be for a purpose related to agrarian reform. The mere fact that the ownership of forests would stand transferred to the State would not show that the object of the transfer is to bring about agrarian

reform. Augmenting the resources of the State by itself and in the absence of anything more regarding the purpose of utilisation of those resources, cannot be held to be a measure of agrarian reform. There is no material on the record to indicate that the transfer of forests from the Janmi to the Government is linked in any way with a scheme of agrarian reform or betterment of village economy.

25. In the case of Kannan Devan Hills Produce Co. Ltd. v. State of Kerala ((1973) 1 SCR 356 : (1972) 2 SCC 218) this Court dealt with the provisions of Kannan Devan Hills (Resumption of Lands) Act. One of the questions which arose for determination in that case was whether the three purposes mentioned in Section 9 of the Act, namely :

(1) reservation of lands for promotion of agriculture;

(2) reservation of land for the welfare of agricultural population;

(3) assignment of remaining lands to agriculturists and agricultural labourers;

were covered by the expression "agrarian reform" and as such the aforesaid provision was protected by Article 31A of the Constitution. Sikri, C.J. while holding that the above objects were covered by the expression "agrarian reform" observed : [SCC p. 238, paras 60-62]

It is urged that the wording of the first two purposes in Section 9 is too wide. But if we look at the definition of 'common purpose', which was sustained by this Court in Ranjit Singh's case (supra), it shows that the purposes sustained thereby would come under either the expression 'promotion of agriculture' or 'welfare of agricultural population' in Section 9. Indeed some would fall under both. For instance, reservation of lands for manure pits, waterworks or wells, village water courses or water channels and grazing grounds would promote agriculture; schools and playgrounds, dispensaries, public latrines etc. would be for the welfare of agriculturists.

If the State were to use lands for purposes which have no direct connection with the promotion of agriculture or welfare of agricultural population the State could be restrained from using the lands for those purposes. Any fanciful connection with these purposes would not be enough.

It seems to us that if we read these two purposes to mean that these include only 'common purposes', which were sustained by this Court and purposes similar thereto it would be difficult to say that they are not for agrarian reform. In a sense agrarian reform is wider than land reform. It includes besides land reform something more and that something more is illustrated by the definition of 'common purpose', which was sustained by this Court in Ranjit Singh's case (supra).

26. In the case of State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. ((1973) 2 SCC 713) this Court dealt with the provisions of the Kerala Private Forests (Vesting and Assignment) Act, under which private forest lands situated in the former Malabar district stood transferred to the State. The Act was held to be a measure of agrarian reform and as such protected by Article 31A. Palekar, J. speaking for the majority in that case observed : [p. 727-728, para 35]

The objectives of increasing the agricultural production and the promotion of the welfare of the agricultural population are clearly a predominant element in agrarian reform. How these objectives are to be implemented are generally stated in Section 10 and 11. All the private forests, after certain reservations, are to be assigned to agriculturists or agricultural labourers and to the poorer classes of the rural population desiring bona fide to take up agriculture as a means of their livelihood. The

reservation in respect of certain portions of the forests is also made in the interest of the agricultural population because the section says that the reservations will be such as may be necessary for purposes directed towards the promotion of agriculture of welfare of the agricultural population or for purposes ancillary thereto.

Krishna Iyer, J. speaking for himself and Bhagwati, J. agreed with the conclusions of the majority and observed : [p. 734, para 51]

Once we accept the thesis that development orientation and distributive justice are part of and inspire activist agrarian reform, its sweep and reach must extent to cover the needs of the village community as well. What programme of agrarian reform should be initiated to satisfy the requirement of rural uplift in a particular community under the prevailing circumstances is a matter for legislative judgment.

27. In Kh. Fida Ali v. State of J. & K. ((1974) 2 SCC 253) this Court held that the provisions of the Jammu and Kashmir Agrarian Reforms Act were protected by Article 31A. One of us (Goswami, J.) observed : [p. 258, para 13]

From a review of the foregoing provisions it is obvious that the Act contains a clear programme of agrarian reforms in taking stock of the land in the State which is not in personal cultivation (Section 3) and which though in personal cultivation is in excess of the ceiling area (Section 4). A ceiling area is fixed for land or orchards or both measuring 12 1/2 standard acres. After the land vests in the State, in accordance with the provisions of the Act, a provision is made for disposal of the surplus land in accordance with the rules.

28. The following principles can be inferred from the decided cases in order to find whether an impugned enactment for acquisition of land is protected by Article 31A :

(1) Acquisition of land by the State in order to enjoy the protection of Article 3A should be for the purpose of agrarian reform.

(2) Acquisition of land by taking it from a senior member of the family and giving it to a junior member is not a measure of agrarian reform.

(3) Acquisition of land for urban slum clearance or for a housing scheme in neighbourhood of a big city is not a measure of agrarian reform.

(4) Acquisition of land by the State without specifying the purpose for which land is to be used is not a measure of agrarian reform.

(5) Schemes of rural development envisage not only equitable distribution of land but also raising of economic standards and bettering of rural health and social conditions in the villages. Provision for the assignment of land to a Panchayat for the use of the general community or for hospitals, schools, manure pits, tanning grounds enure for the benefit of the rural population and as such constitute a measure of agrarian reform.

(6) Provision for reservation of land for promotion of agriculture and for the welfare of agricultural population constitutes a measure of agrarian reform. Agrarian reform is wider than land reform.

(7) If the dominant and general purpose of the scheme is agrarian reform, the scheme may provide for ancillary provisions to give full effect to the scheme.

(8) A provision fixing ceiling area and providing for the disposal of surplus land in accordance with the rules is a measure of agrarian reform.

29. Keeping in view the above principles, let us now examine the impugned provisions in the present case. Section 3 of the impugned Act imposes ceiling on holding of agricultural land. Section 4 provides that no person shall hold land in excess of the ceiling area. Enquiry is to be made under Section 14 of the Act by the Collector for determining as to what area should be declared to be in excess of the ceiling area. On completion of the enquiry if the Collector finds the holding of a person to be in excess of the ceiling area, he makes a declaration under Section 21 of the Act giving particulars of the area which is delimited as surplus land. Possession of the surplus land is then taken by the Collector. From the date of delivery of possession the land vests free from all encumbrances in the State Government. Section 27 provides for the distribution of surplus land and fixes priorities for the purpose. Section 28 made a special provision in respect of lands taken over from industrial undertakings to ensure efficient cultivation and continued supply of raw material for those undertakings. For the aforesaid purpose if the State Government considered it necessary to maintain the integrity of the land acquired from the industrial undertaking in one or more compact blocks, it might, subject to such terms and conditions, including in particular conditions which were calculated to ensure the full and continued supply of raw material to the undertaking at a fair price, grant the land or any part thereof to a joint farming society or a member thereof consisting as far as possible of the persons specified in that section. Provision was also made in that section for terminating the grant of the land for the reasons mentioned in sub-section (3) of that section and for making such other arrangement as the State Government thought fit for the proper cultivation of the land and the maintenance, production and supply of raw material to the undertaking.

30. It would appear from the preamble to amending Act 27 of 1970 and the affidavit of Shri I. G. Karandikar, Under Secretary to Government of Maharashtra that efforts to set up joint farming societies contemplated by Section 28 of the Act did not bear fruit inspite of the fact that the time for the setting up of those societies was extended. The State Government then found that short extensions of time for the setting up of those societies was hampering the full and efficient use of land for agriculture and the Maharashtra State Farming Corporation which had been cultivating that land for the interim period could not undertake any plans or schemes for the improvement of the land because of the short extensions. The State Government, therefore, decided that the cultivation of the land might be continued with the Maharashtra State Farming Corporation on a permanent basis. In arriving at this decision, the State Government was also influenced by the consideration that the implementation of the joint farming societies scheme would lead to fragmentation of the land and hamper its economic development. This led to the insertion of Section 28-1AA in the Act and the other amendments of the principal Act by Act 27 of 1970.

31. Conspectus of the different provisions of the impugned Act, in our opinion, goes to show that the main purpose of the Act was to prevent concentration of agricultural land in the hands of a few. A ceiling was consequently imposed regarding the extent of land which might be held by an individual. Surplus land was distributed in accordance with Section 27 of the Act. It cannot be disputed that the provisions of the impugned Act in so far as the above objects were concerned effectuated the object of agrarian reform. As regards lands which were held by the industrial undertakings for the purpose of producing and providing raw material for the manufacture of goods by those undertakings, the Legislature made special provision in order to ensure that the acquisition

of the aforesaid land did not effect adversely the production and supply of the raw material to the undertaking. The object was further to make full and efficient use of the land for agriculture and also if considered necessary to maintain the integrity of the area so acquired in one or more compact blocks. The Legislature for this purpose initially made provision for the grant of the aforesaid lands to joint farming societies but as the proposal to set up these societies did not bear fruit the Legislature made provision that the aforesaid lands be given for cultivation to the State Corporation. Section 28-1AA, in our opinion, was an integral part of a general scheme of the Act to bring about agrarian reform and, in our opinion, the impugned provisions of the Act, including Section 28-1AA, are protected by Article 31A of the Constitution.

32. It has been argued by Mr. Sen that distribution of acquired land among landless persons or poor peasants is an essential attribute of agrarian reform and that as the lands of the industrial undertakings are not to be distributed but have to be cultivated by the Farming Corporation owned by the State, the acquisition cannot be considered to be a measure of agrarian reform. We are not impressed by this argument. Acquisition of land held by industrial undertakings is not to be taken in isolation but as a part of the general scheme and object of the Act that there should be a ceiling on private holdings. While surplus lands of individuals are to be distributed, the Legislature has made special provision in respect of land held by an industrial undertaking which had been cultivated for supplying raw material to the industrial undertaking. It has been provided in the case of such land that it should be cultivated by the Farming Corporation in an efficient manner so that the supply of raw material to the industrial undertaking might not be affected. It is, no doubt, true that distribution of acquired land among landless persons and poor peasants in a vast majority of cases is a part of the scheme of agrarian reform; the fact that in the case of some huge tract of land which is used for a particular purpose, the statute in order to prevent its fragmentation and to subserve that purpose provides that it should be cultivated by a State-owned farming corporation would not justify the inference that the statutory requirement in this respect is not a part of a general scheme of agrarian reform. Section 28-1AA does not operate in a vacuum. The section has to be taken in its context and setting with the other provisions of the Act. If the provisions of the Act seek to remove economic imbalance by taking the surplus lands of holders in excess of a ceiling and if the provisions of the Act further contemplate that most of the lands after acquisition be distributed to poor peasants and landless persons, the fact that a few blocks of land because of their size and past use for cultivation of raw material for industrial undertakings are required under the provisions of the Act to be not fragmented, which would inevitably be the result if they were to be distributed like other lands acquired under the Act, but to be retained as compact blocks for being cultivated by the Farming Corporation so that the industrial undertakings are not starved of the raw material, the last mentioned provision cannot be detached from the rest of the Act and struck down as being not a measure of agrarian reform. It is no doubt true that acquisition simpliciter of the land by the State to augment its resources and without specifying the purpose for which it is to be used after acquisition would not get the protection of Article 31A. To decide the question of protection we must look at the general scheme of the statute containing provision for the acquisition, the object of the acquisition and the reasons which weigh for retaining the land with the State or its corporation and not distributing it among the landless persons and the poor peasants. The concept of agrarian reform, it needs to be emphasised, is not static and cannot always be put in a straitjacket. With the change of times under the impact of fresh ideas and in the context of fresh situations, the concept of agrarian reform is bound to acquire new dimensions. A measure which has the effect of improving the rural economy or promoting rural welfare would be a part of agrarian reform. Although in most of the cases, as already mentioned, the agrarian reform would require distribution of surplus land among the poor peasants and landless persons living in the villages, situations might well arise

where it would be in the interest of rural economy that any compact area of land instead of being fragmented by distribution should be preserved as one compact block and be cultivated by State-owned farming corporation. The fact that part of the acquired land would remain vested in the State Government or State-owned farming corporation would not militate against the object of agrarian reform if the continued vesting of the land in the Government or the Corporation is a part of a general scheme of agrarian reform and there is no oblique deviation from the avowed purpose. In the case of Ranjit Singh v. State of Punjab (supra), part of the acquired land was to vest in the State Government for schools, playgrounds, dispensaries, hospitals, waterworks, tubewells and as the above vesting was a part of a general scheme of rural welfare, the statute providing for that vesting was upheld and afforded the protection of Article 31A. Ancillary provisions to give full effect to a scheme of agrarian reform, it may be stressed, would also have the protection of Article 31A.

33. We may note that argument has also been advanced by the learned Attorney General regarding the locus standi of the appellants have no locus standi to file the petition in respect of land measuring 10,315 acres as unconditional possession thereof was delivered in May, 1968. In the alternative, it is submitted that clause (5) of Section 21 of the impugned Act which was introduced by amending Act 27 of 1970 is severable from the other provisions of the amending Act and is in any case constitutionally valid. As land measuring 10,315 acres in accordance with the above clause had already vested before the filing of the petition in the State Government, the appellants had no locus standi to file petition in respect of that area of land. It is, in our opinion, not necessary to express an opinion on the above submissions of the Attorney General in view of our finding that the impugned provisions are protected by Article 31A of the Constitution.

34. The appeal consequently fails and is dismissed. In the circumstances of the case, we make no order as to costs.

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