Pathumma and Others

Vs

State of Kerala and Others

Civil Appeal No. 420(N) of 1973

K. M. Kunhahammad and Others

Vs

State of Kerala and Others

Civil Appeals Nos. 442-445 of 1973

(CJI M. H. Beg, P. N. Bhagwati, V. D. Tulzapurkar, P. N. Singhal, Jaswant Singh, Syed Fazal Ali, V. R. Krishna Iyer JJ)

16.01.1978

JUDGMENT

FAZAL ALI, J. (for himself, Beg, C.J. and Krishna Iyer and Jaswant Singh, JJ.)-

1. These appeals by certificate granted by the High Court of Kerala involve a common question of law containing a challenge to the constitutionality of the Kerala Agriculturists' Debt Relief Act, 1970 (Act II of 1970) (hereinafter referred to in short as the Act). The appellants have assailed particularly Section 20 of the Act which entitles the debtors to recovers to recover the properties sold to purchasers in execution of a decree passed in liquidating the debt owed by the agriculturists.

2. As the five appeals involve common questions of law we propose to decide them by one common judgment.

3. Section 20 of the Act was assailed before the High Court on there grounds, namely,

> (1) That the Act was beyond the legislative competence of the State Legislature and did not fall within Entry 30 of the State List;
>
> (2) That the provisions of Section 20 and the sub-sections thereof were violative of Article 19(1)(f) of the Constitution of India inasmuch as they sought to deprive the appellants of their right to hold property;
>
> (3) That sub-sections 3 and 6 of Section 20 of the Act were violative of Article 14 of the Constitution of India inasmuch as the stranger decree-holder was selected for hostile discrimination whereas a bona fide alienee who stood on the same footing as the stranger decree-holder was exempted from the operation of the Act.

4. Mr. Krishnamoorthy Iyer, learned Counsel for the appellants has not pressed point 1 relating to the legislative competence of the Legislature and has fairly conceded that in view of the decision of

this Court in the case of Fatehchand Himmatlal v. State of Maharashtra ((1977) 2 SCR 828 : (1977) 2 SCC 670) the constitutionality of the Maharashtra Debt Relief Act, 1976 which contained similar or rather harsher provisions as the Act was upheld by this Court. In these circumstances, it will not be necessary for us to examine this question any further.

5. Before however taking up the other two points raised by Counsel for the appellants which a Court has to make and the principles by which it has to be guided in such matters. Courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom, through beneficial legislation, to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people. This Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental right and the larger and broader interests of society, so that when such a right clashes with the larger interest of the country it must yield to the latter. Emphasising the role of Courts in such matters this Court in the case of Jyoti Pershad v. The Administrator for the Union Territory of Delhi ((1962) 2 SCR 125, 148 : AIR 1961 SC 1602) observed as follows :

> Where the Legislature fulfils its purpose and enacts laws, which in its wisdom, is considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the Legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole.

6. It is obvious that the Legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weaker sections of the society and for the improvement of the lot of poor people. The Court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizens under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. It is for this reason that the Courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same. In the case of Mohd. Hanif Quareshi v. The State of Bihar (1959) SCR 629 : AIR 1958 SC 731) while adverting to this aspect Das, C.J. as he then was, speaking for the Court observed as follows :

> The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

It is the light of these principles that we have to approach the impact of the Act on the fundamental rights of the citizens conferred on him by Part III of the Constitution.

7. The first plank of argument by learned Counsel for the appellants is that the Act was violative of Article 19(1)(f) of the Constitution inasmuch as it takes away the right to hold property as guaranteed by Article 19(1)(f). Article 19(1)(f) may be extracted thus :

All citizens shall have the right

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

It was contended that in the present case the appellants had acquired valid title to the property after having purchased it at the auction sale in execution of a decree against the debtors. After the sale the properties vested in the appellants and the law which invaded their right to hold the property was clearly violative of Article 19(1)(f) of the Constitution. There can be no doubt that Article 19 guarantees all the seven freedoms to the citizen of the country including the right to hold, acquire and dispose of property. It must, however, be remembered that Article 19 confers an absolute and unconditional right which is subject only to reasonable restrictions to be placed by Parliament or the Legislature in public interest. Clause (5) of Article 19 runs thus :

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

8. A perusal of this clause manifestly reveals that the right conferred by Article 19(1)(f) is conditioned by the various factors mentioned in clause (5). The Constitution permits reasonable restrictions to be placed on the right in the interest of the general public or for the protection of the interest of any Scheduled Tribe. The State in the instant case claims protection under clause (5) by submitting that the provisions contained in the Act amount to reasonable restrictions for the general good of an important part of the community, namely, the poor agriculturist debtors. The object of the Act, according to the State, is to remove agricultural indebtedness and thereby to eradicate one of the important causes of poverty in this country. Such an object is undoubtedly in public interest, and, therefore, the restriction contained in the Act must be presumed to be a reasonable restriction. This Court has considered this question on several occasions during the last 2-1/2 decades and has laid down several tests and guidelines to indicate what in a particular circumstances can be regarded as a reasonable restriction. One of the tests laid down by this Court is that, in judging the reasonableness of the restrictions imposed by clause (5) of Article 19, the Court has to bear in mind the Directive Principles of State Policy. It will be seen that Article 38 contains a clear directive to the State to promote the welfare of the people by securing and protecting as effectively as possible a social order in which justice, social, economic and political shall inform all the institutions of national life. Article 39(b) contains a direction to secure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Indisputably, the object of the Act is to eradicate rural indebtedness and thereby to secure the common good of people living in abject poverty. The object, therefore, clearly fulfils the directive laid down in Articles 38 and 39(b) of the Constitution as referred to above.

9. In fact in the case of His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala 4

(1973 Supp SCR 1 : (1973) 4 SCC 225) all the Judges constituting the Bench have with one voice given the Directive Principles contained in the Constitution a place of honour. Hegde and Mukherjee JJ. as they then were have said that the fundamental rights and the Directive Principles constitute the "conscience" of our Constitution. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a nonviolent social revolution. Chandrachud, J. observed that our Constitution aims at bringing about a synthesis between 'Fundamental Rights' and the 'Directive Principles of State Policy' by giving to the former a place of pride and to the latter of permanence.

10. In a later case State of Kerala v. N. M. Thomas ((1977) 2 SCC 310 : 1976 SCC (L&S) 227) one of us (Fazal Ali, J) after analysing the judgment delivered by all the Judges in the Kesavananda Bharati's case (supra) on the importance of the Directive Principles observed as follows (SCC p. 379, para 164) :

> In view of the principles adumbrated by this Court it is clear that the Directive Principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles. So far as the Courts are concerned where there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III, which in fact supplement each other, there is no difficulty in putting a harmonious construction which advances the object of the Constitution. Once this basic fact is kept in mind, the interpretation of Articles 14 and 16 and their scope and ambit become as clear as day.

11. In the case of The State of Bombay v. R. M. D. Chamarbaugwala (1957 SCR 874, 921 : AIR 1957 SC 699) this Court while stressing the importance of directive principles contained in the Constitution observed as follows :

> The avowed purpose of our Constitution is to create a welfare State. The directive principles of State policy set forth in Part IV of our Constitution enjoin upon the State the duty to strive to promote the welfare of the people by securing and protecting, as it may effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

12. In the case of Fatehchand Himmatlal v. State of Maharashtra (supra) the Constitution Bench of this Court observed as follows (SCC p. 680, para 22) :

> Incorporation of Directive Principles of State policy casting the high duty upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice-social, economic and political - shall inform all the institutions of the national life, is not idle print but command to action. We can never forget, except at our peril, that the Constitution obligates the State to ensure an adequate means of livelihood to its citizens and to see that the health the strength of workers, men and women, are not abused, that exploitation, moral and material, shall be extradited. In short, State action defending the weaker sections from social injustice and all forms of exploitation and raising the standard of

> living of the people, necessarily imply that economic activities, attired as trade or business or commerce, can be de-recognized as trade or business.

13. In the instant case, therefore, we are not able to see any conflict between the directive principles contained in Articles 38 and 39(b) and the restrictions placed by the Act. In the case of The State of Bombay v. F. N. Balsara (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361) this Court observed as follows :

> In judging the reasonableness of the restrictions imposed by the Act, one has to bear in mind the directive principles of State policy set forth in Article 47 of the Constitution.

14. Another test which has been laid down by this Court is that restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public. In the case of Chintaman Rao v. The State of Madhya Pradesh (1950 SCR 759, 763 : AIR 1951 SC 118) this Court observed as follows :

> The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality.

What is required is that the Legislature takes intelligent care and deliberation in choosing a course which is dictated by reason and good conscience so as to strike a just balance between the freedom contained in Article 19(1) and the social control permitted by clauses (5) and (6) of Article 19. This view was reiterated in the case of Messrs. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh (1954 SCR 803, 811-2 : AIR 1954 SC 224).

15. It has also been pointed out by this Court that in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will have to vary from case to case and with regard to changing conditions, the values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances all of which must enter into the judicial verdict. In other words, the position is that the Court has to make not a rigid or dogmatic by an elastic and pragmatic approach to the facts of the case and to take an over-all view of all the circumstances, factors and issues facing the situation. In the case of State of Madras v. V. G. Row (1952 SCR 597 : AIR 1952 SC 196 : 1952 Cri LJ 966) the Court observed as follows :

> It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such

> elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part.

This view was endorsed in the case of Mohd. Hanif Quareshi v. The State of Bihar (1959 SCR 629, 660 : AIR 1958 SC 731) where this Court observed as follows :

> Quite obviously it is left to the Court, in case of dispute, to determine the reasonableness of the restrictions imposed by the law. In determining that question the Court, we conceive, cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed.

Similarly in the case of The Lord Krishna Sugar Mills Ltd. v. The Union of India ((1960) 1 SCR 39, 56 : AIR 1959 SC 1124) the Court observed that "the Court in judging the reasonableness of a law, will necessarily see, not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme".

16. To the same effect is another decision of this Court in the case of Kavalappara Kottarathil Kochuni v. The State of Madras ((1960) 3 SCR 887, 918 : AIR 1960 SC 1080) where this Court observed as follows :

> There must, therefore, be harmonious balancing between the fundamental rights declared by Article 19(1) and the social control permitted by Article 19(5). It is implicit in the nature of restrictions that no inflexible standard can be laid down : each case must be decided on its facts.

17. In the case of Jyoti Pershad v. The Administrator for the Union Territory of Delhi (supra) at p. 147 Ayyangar, J. speaking for the Court observed as follows :

> The criteria for determining the degree of restriction on the right to hold property which would be considered reasonable, are by no means fixed or static, but must obviously vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time.

18. The fourth test which has been laid down by this Court to judge the reasonableness of a restriction is to examine the nature and extent, the purport and content of the right, nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit to be conferred on the person or the community for whose benefit the legislation is passed, urgency of the evil and necessity to rectify the same. In short, a just balances has to be struck between the restriction imposed and the social control envisaged by clause (6) of Article 19. In the case of Narendra Kumar v. The Union of India ((1960) 2 SCR 375 : AIR 1960 SC 430) this Court observed as follows :

> In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was

necessary in the interests of the general public.

19. In the case of Bachan Singh v. State of Punjab ((1971) 1 SCC 712, 718) this Court Observed as follows : (SCC p. 718)

> The Court has in no uncertain terms laid down the test for ascertaining reasonableness of the restriction on the rights guaranteed under Article 19 to be determined by a reference to the nature of the right said to have been infringed, the purpose of the restrictions sought to be imposed, the urgency of the evil and the necessity to rectify or remedy it - all of which has to be balanced with the social welfare or social purpose sought to be achieved. The right of the individual has therefore to be sublimated to the larger interest of the general public.

20. The fifth test formulated by this Court is that there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is really fulfilled or frustrated. If there is a direct nexus between the restriction and the object of the Act then a strong presumption in favour of the constitutionality of the Act will naturally arise. In the case of K. K. Kochuni v. State of Madras (supra) this Court observed as follows :

> But the restrictions sought to be imposed shall not be arbitrary, but must have reasonable relation to the object sought to be achieved and shall be in the interests of the general public.

21. Same view was taken by this Court in the case of O. K. Ghosh v. E. X. Joseph (1963 Supp 1 SCR 789, 795 : AIR 1963 SC 812 : (1962) 2 Lab LJ 615) where Gajendragadkar, J. speaking for the Court observed as follows :

> A restriction can be said to be in the interests of public order only if the connection between the restriction and the public order is proximate and direct. Indirect or far-fetched or unreal connection between the restriction and public order would not fall within the purview of the expression 'in the interests of public order'.

22. Another test of reasonableness of restrictions is the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare.

In the case of The State of Uttar Pradesh v. Kaushaliya ((1964) 4 SCR 1002, 1013 : AIR 1964 SC 416 : (1964) 1 Cri LJ 304) this Court while relying on one of its earlier decisions in the case of State of Madras v. V. G. Row (supra) observed as follows :

> The reasonableness of a restriction depends upon the values of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar others.

23. We have deliberately not referred to the American cases because the conditions in our country are quite different and this Court need not rely on the American Constitution for the purpose of examining the seven freedoms contained in Article 19 because the social conditions and the habits of our people are different. In this connection, in the case of Jagmohan Singh v. The State of U. P. ((1973) 1 SCC 20, 27 : 1973 SCC (Cri) 169) this Court observed as follows : (SCC p. 27)

So far as we are concerned in this country, we do not have, in our Constitution any provision like the Eighth Amendment nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply 'the due process' clause.

24. Another important test which has been enunciated by this Court is that so far as the nature of reasonableness is concerned it has to be viewed not only from the point of view of the citizens but the problem before the Legislature and the object which is sought to be achieved by the statute. In other words, the Courts must see whether the social control envisaged in clause (6) of Article 19 is being effectuated by the restrictions imposed on the fundamental right. It is obvious that if the Courts look at the restrictions only from the point of view of the citizen who is affected it will not be a correct or safe approach inasmuch as the restriction is bound to be irksome and painful to the citizens even though it may be for the public good. Therefore, a just balance must be struck in relation to the restriction and the public good that is done to the people at large. It is obvious that, however important the right of a citizen or an individual may be, it has to yield to the larger interests of the country or the community. In the case of Jyoti Pershad v. The Administrator for the Union Territory of Delhi (supra) this Court observed as follows :

> Where the Legislature fulfils its purpose and enacts laws, which in its wisdom, is considered necessary for the solution of what after all is a very human problem the tests of 'reasonableness' have to be viewed in the context of the issues which faced the Legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concern and peaceful adjustment and thus furthering the moral and material progress of the community as a whole.

25. It has also been held by this Court that in judging reasonableness of restrictions of the Court is fully entitled to take into consideration matters of common report, history of the times and matters of common knowledge and the circumstances existing at the time of legislation. In this connection, in the case of Mohd. Quareshi v. The State of Bihar (supra) the Court observed as follows :

> It must be borne in mind that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest the finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assure every state of facts which can be conceived existing at the time of legislation.

26. We do not mean to suggest that the tests laid down above are completely exhaustive but they undoubtedly provide sufficient guidelines to the Court to determine the question of reasonableness of a restriction whenever it arises.

27. We should now like to examine the facts and circumstances of the present case in the light of the principles enunciated above in order to find whether or not restrictions imposed by the Act on the rights of the appellants are unreasonable. Before however going into this question, it may be necessary to give a brief survey of the facts of the facts of the present case and the history of the

period preceding the Act as also the economic position of the debtors prevailing at the time when the Act was passed. It appears that in Civil Appeal 420 of 1973 the appellant was a stranger auction-purchaser at a Court sale. The creditor had obtained a mortgage decree against the debtor which was to be paid by instalments but as the debtor was not able to pay the instalment, a decree for sale of the property was passed by the Court and the property was auctioned and purchased by the appellant who was not the decree-holder. The rest of the facts are not disputed and need not be mentioned in the judgment. In the other appeals also decrees were obtained by the creditors against the debtors and on failure of the debtors to pay the instalments the property was sold and purchased at the auction by the decree-holders themselves. It is also not disputed that after the purchase of the properties some of the appellants had built houses, planted trees and made other improvements in the property. When however the debtors launched proceedings under the Act for restoration of the possession of the property on payment of the decretal amount the appellants had challenged Act on the ground that it was unconstitutional as indicated above. The High Court has pointed out in its judgment that though the Act was preceded by Act 31 of 1958 under which benefits were conferred on the debtors for debts incurred by the agriculturists before July 14, 1958 but as this date was considered to be inadequate by an amendment in 1961 the date was extended to July 14, 1959. In spite of this concession all the debtors were not able to pay off their debts as a result of which they lost their property which was sold in execution of the decrees brought by the creditors against them. It was also found by the High Court that as many as 1,02,867 suits were filed in various Courts in the State after July 14, 1958 and in most of them no relief could be given to the debtors because of the expiry of the date. The very fact that most of the debtors were not able to pay debts and save valuable properties which were in their possession shows the pitiable condition and the abject poverty in which they live. The High Court has also given the facts, figures and statistics to prove the economic condition of the agriculturist debtors. In this connection, the High Court has pointed out that the All-India Rural Credit Committee's Report, 1954 shows that 51.7% of the Rural families in Kerala are indebted and out of this, the proportion between cultivators and non-cultivators is 58.6 and 38.6 respectively. The all India average borrowing per rural family was Rs. 160. The corresponding average for the cultivator and non-cultivator was Rs. 210 and Rs. 66 respectively. Of the average borrowing per family of Rs. 309 for rural households, that of the cultivators was Rs. 358 per family as against Rs. 171 for non-cultivators i.e. almost double of that of the cultivators. Family expenditure accounted for 49.8% in the case of medium cultivators, 49.2% for large cultivators and 17.2% for big cultivators. The rural credit survey of 1961-62 shows that 64% of the cultivators in Kerala are indebted, which is said to be the second biggest in India. The average of loan borrowed by the cultivators in Kerala was Rs. 318 per household as against Rs. 127 for the non-cultivator household. The main purpose for the borrowing was for household expenditure and the capital expenditure on cultivation was only 8.6%. The report also shows that aggregate of the borrowings of the agriculturist households in India have increased from Rs. 750 crores in 1951-52 to Rs. 1034 crore in 1961-62. In other words, there has been an increase of 38% in one decade. Although the level of debt per household, is comparatively low in Kerala and so is that cost of cultivation and yet the cultivator is living from hand to mouth and is not able to make both ends meet. Consumer's needs and distressed circumstances assume an important role in adding to total debt. The High Court has then referred to the report of Dr. C. B. Memorial and has quoted therefrom.

28. Apart from these facts of history the entire matter was considered exhaustively by a Constitution Bench of this Court in the case of Fatehchand Himmatlal v. State of Maharashtra (supra) where this Court referred to several reports and Krishna Iyer, J. speaking for the Court and quoting exhaustively from the various reports made the following observations : (SCC p. 682, para 25)

Quite recently the report published by the All India Rural Debt and Investment Survey relating to 1971-72 also depicts an increasing trend in rural indebtedness. It has been estimated that the aggregate borrowings of all rural households on June 30, 1971 was Rs. 3921 crore, while the average per rural household being Rs. 501. Forty-three per cent of the rural families had reported borrowings.

29. Quoting Professor Panikar, this Court observed as follows :

> perhaps, it may be that the need for borrowing is taken for granted.

But the undisguised fear that the oppressive burden of debt on Indian farmers is the main hindrance to progress is unanimous. There are many writers who depict indebtedness of Indian farmers as an unmixed evil. Thus, Alak Ghosh quotes with approbation the French proverb that 'Credit supports the farmer as the hangman's rope the hanged'. (SCC p. 683, para 25)

The economic literature, official and other, on agricultural and working class indebtedness is escalating and disturbing. Indeed, the 'moneylender' is an oppressive component of the scheme. (SCC p. 684, para 26)

The conditions of loan repayment are so designed that the debtor is forced to sell his produce to the Mahajan at low prices and purchase goods for consumption and production at high prices. In many other ways mahajans take advantage of the poverty and the helplessness of farmers and exploit them .... Unable to pay high interest and the principal, the farmers even lose their land or live from generation to generation under heavy debt. (SCC p. 684, para 26)

The harmful consequences of indebtedness are economic and affect efficient farming, social in that the 'relations between the loan-givers and loan-receivers take on the form of relations of hatred, poisoning the social life' (SCC p. 684, para 26)

30. Dr. C. B. Memoria in his book 'Agricultural Problems of India' has stressed that rural indebtedness had long been one of the most pressing problems of India and observed as follows : (SCC p. 684, para 27)

Rural people have been under heavy indebtedness of the average money-lenders and sahukars. The burden of this debt has been passed on from generation to generation inasmuch as the principal and interest went on increasing for most of them. According to Wold, 'The country has been in the grip of Mahajans. It is the bond of debt that has shackled agriculture'.

31. Quoting the reasonableness of the restrictions this Court observed as follows :

There was much argument about the reasonableness of the restriction on money-lenders, not the general category as such but the cruel species the Legislature had to confront - and we have at great length gone into the gruesome background of economic inequalities, since the test of reasonableness is not to be applied in vacuo but in the context of life's realities. (SCC p. 685, para 29)

Money-lending and trade-financing are indubitably 'trade' in the broad rubric, but our concern here is blinkered by a specific pattern of tragic operations with no heroes but only anti-heroes and victims. (SCC p. 685, para 29)

Eminent economists and their studies have been adverted to by the High Court and reliance has been

placed on a report of a Committee which went into the question of relief from rural and urban indebtedness which shows the dismal economic situation of the rural farmer and the labourer. It is not merely the problem of agricultural and kindred indebtedness, but the menacing proportions of the money-lenders' activities that have attracted the attention of the Committee. Giving facts and figures, which are alarming, bearing on the indebtedness amongst industrial workers and small holders, the Committee has highlighted the exploitative role of money-lenders and the high proportion of non-institutional borrowings. (SCC p. 687, para 34)

The subject-matter of the impugned legislation is indebtedness, the beneficiaries are petty farmers, manual workers and allied categories steeped in debt and bonded to the money-lending tribe. So, in passing on its constitutionality, the principles of Developmental Jurisprudence must come into play. (SCC p. 687, para 36)

A meaningful, yet minimal, analysis of the Debt Act, read in the light of the times and circumstances which compelled its enactment, will bring out the humane setting of the statute. The bulk of the beneficiaries are rural indigents and the rest urban workers. These are weaker sections for whom constitutional concern is shown because institutional credit instrumentalities have ignored them. Money-lending may be ancillary to commercial activity and benignant in its effects, but money-lending may also be ghastly when it facilitates no flow of trade, no movement of commerce, no promotion of intercourse, no servicing of business, but merely stagnates rural economy, strangulates the borrowing community and turns malignant in its repercussions. (SCC pp. 689-8, para 38)

Every cause claims its martyr and if the law, necessitated by practical considerations, makes generalisations which hurt a few, it cannot be helped by the Court. Otherwise, the enforcement of the Debt Relief Act will turn into scrupulous and unscrupulous creditors, frustrating, through endless litigation, the instant relief to the indebted which is the promise of the Legislature. (SCC p. 689, para 44)

32. Having regard to the history of economic legislation in Kerala, the sad plight of the agriculturist debtors in the State and the fact that the agriculturist debtors are living from hand to mouth and below subsistence level, the observations made by this Court as quoted above apply to the facts of the present case with full force because similar conditions had prevailed in Maharashtra which led to the passing of the Maharashtra Debt Relief Act.

33. We would now examine the particular provisions of the Act which have been assailed before us to find out whether the Legislature seeks to strike a just balance between the nature of the restrictions sought to be imposed on the appellants and social purpose sought to be achieved by the Act.

34. The relevant portions of Section 20 of the Act may be extracted thus :

> 20. Sales of immovable property to be set aside in certain cases -
>
> (1) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for recovery of a debt or sold under the provisions of the Revenue Recovery Act for the time being in force for the recovery of a debt due to a banking company in liquidation :
>
> (a) on or after the first day of November, 1956; or

(b) before the first day of November, 1956, but the possession of the said property has not actually passed before the twentieth day of November, 1957, from the judgment-debtor to the purchaser, and the decree-holder is the purchaser, then,

notwithstanding anything in the Limitation Act, 1961 or in the Code of Civil Procedure, 1908 or in the Revenue Recovery Act for the time being in force, and notwithstanding that the sale has been confirmed such judgment-debtor or the legal representative of such judgment-debtor may deposit one-half of the purchase money together with the costs of execution where such costs were not included in the purchase money, and apply to the Court within six months from the date of the commencement of the Act to set aside the sale of the property, and the Court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside, and the Court shall further order that the balance of the purchase money shall be paid in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding, till the date of payment of each instalment, at six per cent per annum, the first instalment being payable within a period of six months from the date of the order of the Court.

(2) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for arrears of rent or michavaram -

(a) during the period commencing on the first day of November, 1956 and ending with the thirtieth day of January, 1961 and the possession of the said property has actually passed on or before the first day of April, 1964, from the judgment debtor to the purchaser; or

(b) before the first day of November, 1956 and the possession of the said property has actually passed during the period commencing on the twentieth day of November, 1957 and ending with the first day of April, 1964 from the judgment-debtor to the purchaser,

then, notwithstanding anything contained in the Limitation Act, 1963 or in the Code of Civil Procedure, 1908 and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may deposit one-half of the purchase money together with the costs of execution, where such costs were not included in the purchase money and apply to the Court within six months from the date of the commencement of this Act to set aside the sale of the property, and the Court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside, and the Court shall further order that the balance of the purchase money shall be paid in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment, at six per cent per annum, the first instalment being payable within a period of six months from the date of the order of the Court.

(3) Where any immovable property in which an agriculturist had no interest has been sold in execution of any decree for the recovery of a debt or sold under the provisions of the Revenue Recovery Act for the time being in force for the recovery of a debt due to a banking company in liquidation on or after the fourteenth day of July, 1958 and the decree-holder is not the purchaser, then notwithstanding anything

in the Limitation Act, 1963 or in the Code of Civil Procedure, 1908 or in the Revenue Recovery Act for the time being in force, and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may, deposit the purchase money and apply to the Court within six months from the date of the commencement of this Act to set aside the sale of the property, and the Court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside.

(4) No order under sub-section (1) or sub-section (2) or sub-Section (3) shall be passed without notice to the decree-holder, the transferee of the decree, if any the auction-purchaser and any other person, who in the opinion of the Court would be affected by such order and without affording them an opportunity to be heard.

(5) Where improvements have been effected on the property sold after the date of the sale and before the notice under sub-section (4). The value of such improvement as determined by the Court shall be deposited by the applicant for payment to the auction-purchaser.

(6) An order under sub-section (1) or sub-section (2) or sub-section (3) shall not be deemed to affect the rights of bona-fide aliens of the auction-purchaser deriving rights before the date of publication of the Kerala Agriculturists' Debt Relief Bill, 1968, in the Gazette.

35. An analysis of this section shows that the statute seeks to create three different categories of creditors who were liable to restore property to the debtors under circumstances mentioned in the section. In the first place, where the decree-holder has purchased the property at an auction sale but has not been able to get possession of the same, the Court has been given power to set aside the sale (1) if the applicant is an agriculturist and is prepared to deposit half of the decretal amount immediately and pay the balance in 10 equal half yearly instalments; (2) where the purchaser who purchases the property at the auction sale is a stranger and not a decree-holder the sale can be set aside only on the judgment-debtor depositing the entire purchase money within six months from the date of the commencement of the Act. Sub-section (5) further provides that if any improvements have been made by the purchaser, the debtor will have to reimburse the purchaser for the same (3) a bona-fide alienee who has purchased the property from the auction purchaser before the date of the publication of the Act is completely exempted from the operation of the provisions of the Act. The Act lays down a self contained procedure for the mode in which the sale is to be set aside and the conditions on which this is to be done. Section 21 of the Act provides for an appeal to the Appellate Court against any order passed under Section 20 and where an order is passed by the Revenue Court an appeal lies to the District Court. Thus the important features of the Act may be summarised as follows :

(1) That even if the auction-purchaser was a stranger and may have purchased the property from a debtor at an auction sale, he is liable to restore property on payment of the decretal amount;

(2) That if the purchaser has made any improvement in the property the debtor has to deposit the cost of the improvements in court before the sale is set aside;

(3) That the debtor has to exercise his option of setting aside the sale within six

months from the date of the Act.

36. The avowed object of the Act seems to give substantial relief to the agriculturist in order to get back their property and earn their livelihood. This is undoubtedly a laudable object and the Act is a piece of social legislation. As the decree-holder who had purchased the property is fully compensated by being paid the amount for which he had purchased the property, it cannot be said that his right to hold the property at a distress sale and is fully aware of the pitiable conditions which is wedded to a social pattern of society the purchaser must be presumed to have the knowledge that any social legislation for the good of a particular community or the people in general can be brought forward by Parliament at any time. The Act, however, does not take away the property of the purchaser without paying him due compensation. It is true that Section 20(2)(b) provides for payment of the purchase money by instalments, but no exception can be taken to this fact as in view of the poverty of the debtor it is not possible for him to pay the debt in a lump sum and as the legislation is for a particular community the provision for payment by instalments cannot be said to work serious injustices to the decree-holder purchaser. A stranger auction purchaser has been treated differently because he had nothing to do with the decree and is enjoined to return the property to the agriculturist debtor on payment of entire amount in lump sum without insisting on instalments. Thus, in short, the position is that the object of the Act is to protect the poor distressed agriculturist debtors from the clutches of greedy creditors who have grabbed the properties of the debtors and deprived the debtors of their main source of sustenance.

37. Another object which is said to be fulfilled by the statute is to eradicate and remove agricultural indebtedness in the State by amelioration and improvement of the lot of debtors by bringing them to the subsistence level and reducing their borrowings. The Act does not provide for any drastic or arbitrary procedure as the property is restored to the debtor only on payment of the purchase money. The Maharashtra Debt Relief Act of 1976 contained much more drastic provisions and in spite of that it was upheld by this Court as the restrictions were held by us to be reasonable restrictions in the interest of the general public. To remove poverty by eradicating rural indebtedness is one of the very important social purposes sought to be achieved by our Constitution and it cannot be said that the invasion of the right of the appellants is so excessive as to be branded by the quality of unreasonableness. Having regard to the economic conditions prevailing in Kerala before the passing of the Act, it cannot be said that the restrictions are in any way arbitrary or excessive or beyond the requirements of the situation. Thus, all the tests laid down by this Court for determining reasonableness of a restriction have been amply fulfilled in this Court for determining reasonableness of a restriction have been amply fulfilled in this case and we are unable to find any constitutional infirmity in this case on the ground that the Act is violative of Article 19(1)(f). We are clearly of the opinion that the provisions of the Act are reasonable restrictions within the meaning of clause (6) of Article 19. It is true that Article 31 confers a guarantee on a citizen against deprivation of his property except by authority of law. In other words, under Article 31 the property of the citizen cannot be taken away without there being a valid law for that purpose. The law must not only be valid but it also must not contravene any of the provisions of Article 19(1)(f). In the instant case, in view of our findings that the Act is a valid piece of legislation and amounts to a reasonable restriction within the meaning of sub-clauses (5) and (6) of Article 19 the law passes the test of constitutionality. In these circumstances, therefore, Article 31 is not infringed or violated by the Act.

38. Before closing this part of the case we might mention an argument faintly submitted by learned Counsel for the appellants, that having regard to the statement of objects and reasons of the Act, the provisions of the Act appear to be in direct conflict with the same. The statement of objects and reasons as published in the Kerala Gazette dated December 13, 1968 may be extracted thus :

> The Kerala Agriculturists Debt Relief Act, 1958 (31 of 1958) provides for some relief to the indebted agriculturists in the State. But the benefits conferred by that Act are available only in respect of debts incurred by the agriculturists before July 14, 1958, on which date the Act came into force. Even after this date the agricultural indebtedness in the State, especially among the poor sections of the people continued to be on the increase due to various factors. Several suits have been filed in Courts for the recovery of debts accrued after July 14, 1958 from poor indebted agriculturists. It is also considered necessary to limit the benefit to any indebted agriculturist whose total amount of debts does not exceed twenty thousand rupees. It is, therefore, proposed to bring in a more comprehensive legislation on the subject repealing the existing enactment.

39. It was contended that the main object of the Act appears to give relief only to those debtors who had filed suits for recovery of debts after July 14, 1958. But the Act travels beyond the domain of the statement of objects and reasons by giving a blanket power to the Court to set aside the sales which have been completed even before the passing of the Act. We are, however, unable to agree with this argument because in view of the clear and unambiguous provisions of the Act, it is not necessary for us to delve into the statement of objects and reasons of the Act. Moreover, though the main purpose may have been to give relief to the agriculturist debtors after July 14, 1958 the object was to bring forward a comprehensive legislation on various aspects of the matter in order to give relief to the indebted agriculturists. This object is mentioned in the very first part of the statement of objects and reasons. The words clearly show that the Act was comprehensive in nature and was not confined to any particular situation. In these circumstances, therefore, the contention of learned Counsel for the appellants on this score is overruled.

40. This brings us to the second branch of the argument relating to the applicability of Article 14 the Constitution of India. In this connection, Mr. Krishnamoorthy Iyer submitted in the first place that the special treatment afforded to the debtors under Section 20 of the Act is wholly discriminatory and is violative of Article 14. Secondly, it was argued on behalf of the appellants in Civil Appeal 420 of 1973 that they being stranger auction purchasers were selected for hostile discrimination from the operation of the provisions of the Act. It is now well settled that what Article 14 forbids is hostile discrimination and not reasonable classification. Equality before law does not mean that the same set of law should apply to all persons under every circumstance ignoring differences and disparities between men and things. A reasonable classification is inherent in the very concept of equality, because all persons living on this earth are not alike and have different problems. Some may be wealthy; some may be poor; some may be educated; some may be uneducated; some may be highly advanced and others may be economically backward. It is for the State to make a reasonable classification which must fulfil two conditions : (1) The classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from other left out of the group. (2) The differentia must have a reasonable nexus to the object sought to be achieved by the statute. In the case of Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar (1959 SCR 279, 296-7 : AIR 1958 SC 538) the Court after considering a large number of its previous decisions observed as follows :

> It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the

> group; and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

This case has been relied upon in a large number of cases right from 1959 up to this date. In the case of State of Kerala v. N. M. Thomas (supra) one of us (Fazal Ali. J) while delivering the concurring judgment observed as follows regarding the various aspects of the concept of equality : (SCC p. 376, para 158)

It is also equally well-settled by several authorities of this Court that Article 16 is merely an incident of Article 14. Article 14 being the genus is of universal application whereas Article 16 is the species and seeks to obtain equality of opportunity in the services under the State. The theory of reasonable classification is implicit and inherent in the concept of equality for there can hardly be any country where all the citizens would be equal in all respects. Equality of opportunity would naturally mean a fair opportunity not only to one section or the other but to all sections by removing the handicaps if a particular section of the society suffers from the same. It has never been disputed in judicial pronouncements by this Court as also of the various High Courts that Article 14 permits reasonable classification is implicit in the concept of equality because equality means equality to all citizens of our country, every class of citizens must have a sense of equal participation in building up an egalitarian society, where there is peace and plenty, where there is complete economic freedom and there is no pestilence or poverty, no discrimination and oppression, where there is equal opportunity to education, to work, to earn their livelihood so that the goal of social justice is achieved.

41. In view of these authorities let us see whether the selection of the agriculturist debtors by the State for the purpose of improving and ameliorating their lot can be said to be a permissible classification. While dealing with the first argument we have already pointed out the economic conditions prevailing in the State and the abject poverty in which the agriculturist debtors were living. We have also referred to the Directive Principles of State Policy as contained in the Constitution and have held that it is the duty of the Legislature to implement these directives. Having regard, therefore, to the poverty and economic backwardness of the agriculturist debtors and their miserable conditions in which they live, it cannot be said that if they are treated as a separate category or class for preferential treatment in public interest then the said classification is unreasonable. It is also clear that in making the classification the Legislature cannot be expected to provide an abstract symmetry but the classes have to be set apart according to the necessities and exigencies of the society as dictated by experience and surrounding circumstances. All that is necessary is that the classification should not be arbitrary, artificial or illusory. Having regard to the circumstances mentioned above, we are unable to hold that the classification does not rest upon any real and substantial distinction bearings reasonable and just relation to the thing in respect of which the same is made. This view was taken in the case of State of West Bengal v. Anwar Ali Sarkar (1952 SCR 284, 321 : AIR 1952 SC 75 : 1952 Cri LJ 510). In our opinion, both the conditions of reasonable classification indicated above are fully satisfied in this case. For these reasons, we hold that Section 20 of the Act is not violative of Article 14 of the Constitution and reject the first branch of the argument on this point.

42. It was lastly contended that the appellant in Civil Appeal 420 of 1973 (who originally was the appellant and after his death his heirs have been brought on record as appellants 1-8) had been selected for hostile discrimination as against a bona-fide alienee who also being in the same position

has been exempted from the provisions of the Act. We have given our anxious consideration to this argument and we find that it is not tenable. It is well settled that before a person can claim to be discriminated against another he must show that all the other persons are similarly situate or equally circumstances. The pleading of the appellant does not at all contain any facts to show how the two are similarly situate. Unless the appellant is able to establish that he is equated with the bona-fide alienee in all and every respect, Article 14 can only take effect if there is discrimination between equals and not where unequals are being differently treated vide State of J & K v. T. N. Khosa ((1974) 1 SCR 771, 783 : (1974) 1 SCC 19 : 1974 SCC (L&S) 49).

43. In the case of Chiranjit Lal Chowdhuri v. The Union of India (1950 SCR 869, 911 : AIR 1951 SC 41) this Court observed as follows :

> It must be admitted that the guarantee against the denial of equal protection of the laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America, "equal protection of laws is a pledge of the protecting of equal laws", (Yick Wo v. Hopkins (118 US 369)) and this means "subjection to equal laws applying alike to all in the same situation". (Southern Railway Co. v. Greene (216 US 400, 412)). In other words, there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same.

A similar view was taken in the case of Southern Railway Co. v. Greene where the Supreme Court observed as follows :

> The Legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of must equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which the classification is made, and classification made without any substantial basis should be regarded as invalid.

44. To the same effect is another decision of this Court in the case of The State of West Bengal v. Anwar Ali Sarkar (supra) where this Court observed as follows :

> It can be taken to be well settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstances shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

45. Having regard to the nature of the rights acquired by the stranger auction-purchaser and the bona-fide alienee it cannot be said that they are similarly situate or happen to be in exactly the same position. So far as the stranger auction-purchaser like the appellant is concerned these facts stare in the face. First, the stranger auction purchaser participates in the proceedings in execution of the

decree passed against the debtor and which culminate in the auction sale which is knocked down in favour of the purchaser. Thus, such a purchaser has a clear notice of the circumstances under which the decree was passed as also the fact that the properties sold were the property of the debtor. If, therefore, the Legislature at a later stage for the amelioration of the lot of the debtors passes a law to restore the property to the debtor the stranger auction-purchaser cannot be heard to complain. In fact, his position is more or less the same as that of the decree-holder. Second, the stranger auction-purchaser cannot be heard to complain. In fact, his position is more or less the same as that of the decree-holder. Second, the stranger auction-purchaser knows that he has purchased the property at a distress sale and the element of innocence is completely eliminated. Third, under the provisions of the Act even if the property is restored to the stranger auction purchaser unlike the decree-holder the purchaser is entitled to get the entire purchase money in lump sum including the cost before parting with the possession of the property. This clearly distinguishes the case from that of that decree-holder purchaser and shows that he is not seriously prejudiced. On the other hand, a bona-fide alienee does not purchase the property under a distress sale but under sale which is negotiated with the vendor on the terms acceptable to the purchaser. Secondly a bona-fide alienee has absolutely no notice of the debt or the debtor or the circumstance under which the decree was passed and the property was purchased by the vendor.

46. A bona-fide alienee acquires a new title under a negotiated and completed sale and in case the sale is allowed to bore opened by the Act it will lead to complicated questions which may cloud the real issues, and frustrate the object of the Act. That apart even our common law as a matter of public policy protects the interests of a bona-fide transferee for value without notice against voidable transactions. For instance, transfer which could be set aside under Section 53 of the Transfer of Property Act or under Section 27(b) of the Specific Relief Act, cannot be set aside or enforced as against such transferees. The Act follows more or less the same policy and protects the bona-fide alienee because his purchase is absolutely innocent. While it is true that the provisions of the Act operate rather harshly on the stranger auction-purchaser but the rigours of the law have been softened by the fact that under the provisions of the Act the auction purchaser gets his full purchase money with costs for any improvement that he may have made. At any rate, any discomfort that he might have suffered as an individual has to be sublimated to the public good of the community at large, in the instant case, the poor agriculturist debtors. Indeed if the bona-fide alienee was also brought within the fold of the Act then the classification might have been arbitrary and unreasonable so as to smack of a draconian measure and might have exceeded the permissible limits of discrimination contemplated by Article 14.

47. For the reasons given above we are unable to accept the argument of Mr. Krishnamoorthy Iyer that the appellant has been selected for hostile discrimination under the provisions of Section 20 of the Act. The argument is overruled. The result is that the judgment of the High Court is upheld in all the cases and the appeals are dismissed. In the peculiar circumstances of these cases, we leave the parties to bear their own costs in this Court.

SHINGHAL, J. (for himself, Bhagwati and Tulzapurkar JJ) (concurring). -

These appeals against the judgment of the Kerala High Court dated August 17, 1972 are by certificate under Article 133(1)(c) of the Constitution as it stood before the Constitution (Thirtieth Amendment) Act, 1972. Appeals 442-445 (N) of 1973 arise out of the dismissal of some petitions on the basis of the judgment in the other petitions which is the subject-matter of appeal 420(N) of 1973. It will therefore be enough to refer to the facts which have given rise to that appeal.

49. Civil Appeal 420(N) of 1973 relates to the dismissal of O. Ps. 5516 and 6466 of 1970 and C.R.P. 124 of 1971 O.P. 5576 of 1970 was filed by Pathumma who had obtained a decree in 1958, on the basis of a registered deed of mortgage, and had brought about the sale of some immovable properties of the judgment debtors who were agriculturists, as they were not able to pay the instalments which were payable under the debt-relief legislation which was then in force. The properties were purchased by Pathumma "benami", in the name of his son. Possession of the properties was taken from the judgment-debtors during the period May 16, 1961 to March 15, 1967. Pathumma's son executed a deed of surrender in his father's favour on April 18, 1969 who built a house and effected valuable improvements on the lands. In the meantime, the Kerala Agriculturists Debt Relief Act, 1970, hereinafter referred to as the Act, came into force, and the judgment-debtors filed a petition for setting aside the sale and redelivery of properties under Section 20(7). Pathumma therefore challenged the constitutional validity of Section 20 of the Act by O.P. 5576 of 1970.

50. In O.P. 6466 of 1970 the judgment-debtors, who were agriculturists, committed defaults in the payment of the instalments for the discharge of the debt under the debt relief law which was then in force. The creditor purchased the properties under a Court sale on October 18, 1964, which was duly confirmed, and took delivery of the lands. The judgment-debtors applied for setting the sale aside and for redelivery of the lands, when the Act came into force. The auction purchaser, in his turn, filed the aforesaid writ petition to challenge the constitutional validity of Section 20 of the Act.

51. In C.R.P. 124 of 1971 the decree-holder purchased the land of the judgment-debtor, who was an agriculturist. The sale was confirmed on July 5, 1968. The delivery of the land was taken on August 19, 1968 and the decree-holder made substantial improvements. The judgment-debtor applied for redelivery of the land under the provisions of the Act and his petition was allowed. On appeal, the District Judge remanded the case for evaluating the cost of the improvements. While the matter was pending at that stage, the aforesaid petition (124 of 1971) was filed to challenge the constitutional validity of the relevant provisions of the Act.

52. As the High Court upheld the validity of Section 20 of the Act by the judgment dated August 17, 1972, and also dismissed the petitions which are the subject of the other appeals 442-445 the appellants have come up to this Court as aforesaid.

53. The controversy in these appeals thus relates to the constitutional validity of Section 20 of the Act which provides, inter alia, for the setting aside of the sale of immovable property in execution of any decree for the recovery of a debt.

54. The section reads as follows :

> 20. Sales of immovable property to be set aside in certain cases - (1) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for recovery of a debt or sold under the provisions of the Revenue Recovery Act for the time being in force for the recovery of a debt due to a banking company in liquidation -
>
> (a) on or after the first day of November, 1956; or
>
> (b) before the first day of November, 1956, but the possession of the said property has not actually passed before the twentieth day of November, 1957, from the judgment-debtor to the purchaser, and the decree-holder is the purchaser;

then notwithstanding anything in the Limitation Act, 1963, or in the Code of Civil Procedure, 1908, or in the Revenue Recovery Act for the time being in force, and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may deposit one-half of the purchase money together with the costs of execution where such costs were not included in the purchase money and apply to the court within six months from the date of the commencement of this Act to set aside the sale of the property, and the court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside, and the court shall further order that the balance of the purchase money shall be paid in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment, at six per cent per annum, the first instalment being payable within a period of six months from the date of the order of the court.

(2) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for arrears of rent or michavaram -

(a) during the period commencing on the first day of November, 1956 and ending with the thirtieth day of January, 1961 and the possession of the said property has actually passed on or before the first day of April, 1964, from the judgment-debtor to the purchaser; or

(b) before the first day of November, and the possession of the said property has actually passed during the period commencing on the twentieth day of November, 1957 and ending with the first day of April, 1964 from the judgment-debtor to the purchaser;

then, notwithstanding anything contained in the Limitation Act, 1963 or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may deposit one-half of the purchase money together with the costs of execution, where such costs were not included in the purchase money and apply to the court within six months from the date of the commencement of this Act to set aside the sale of the property, and the court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside, and the court shall further order that the balance of the purchase money shall be paid in ten equal half-yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalment, at six per cent annum, the first instalment being payable within a period of six months from the date of the order of the Court.

(3) Where any immovable property in which an agriculturist had an interest has been sold in execution of any decree for the recovery of a debt, or sold under the provisions of the Revenue Recovery Act for the time being in force for the recovery of a debt due to a banking company in liquidation, on or after the fourteenth day of July, 1958 and the decree holder is not the purchaser, then, notwithstanding anything in the Limitation Act, 1963 or in the Court of Civil Procedure, 1908 or in the Revenue Recovery Act for the time being in force, and notwithstanding that the sale has been confirmed, such judgment-debtor or the legal representative of such judgment-debtor may, deposit the purchase money and apply to the court within six

months from the date of the commencement of this Act to set aside the sale of the property, and the court shall, if satisfied that the applicant is an agriculturist, order the sale to be set aside.

(4) No order under sub-section (1) or sub-section (2) or sub-section (3) shall be passed without notice to the decree-holder, the transferee of the decree, if any, the auction purchaser and any other person who in the opinion of the court would be affected by such order and without affording them an opportunity to be heard.

(5) Where improvements have been effected on the property sold after the date of the sale and before the notice under sub-section (4) the value of such improvement as determined by the court shall be deposited by the applicant for payment to the auction-purchaser.

(6) An order under sub-section (1) or sub-section (2) or sub-section (3) shall not be deemed to affect the rights of bona-fide alienees of the auction-purchaser deriving rights before the date of publication of the Kerala Agriculturists' Debt Relief Bill, 1968, in the Gazette.

(7) Where a sale is set aside under sub-section (1) or sub-section (2) or sub-section (3) in case the applicant is out of possession of the property, the court shall order re-delivery of the property to him.

(8) In respect of any sale of immovable property which has not been confirmed, the judgment-debtor if he is an agriculturist shall be entitled to pay the decree debt in accordance with the provisions of Section 4 and 5 and on the deposit of the first instalment thereof, the sale shall be set aside.

(9) Where the judgment-debtor fails to deposit any of the subsequent instalments, the decree-holder shall be entitled to execute the decree and recover the defaulted instalment or instalments in accordance with the provisions of this Act.

Explanation I - For purposes of this section :

(a) the expression 'court' shall include a revenue court or authority exercising powers under the Revenue Recovery Act for the time being in force; and

(b) the expression "judgment-debtor" shall include -

(i) a debtor from whom money was due to a banking company in liquidation; and

(ii) a person from whom the entire amount due under a decree has been realised by sale of his immovable property.

Explanation II - For the purposes of this section, an applicant shall be deemed to be an agriculturist if he would have been such an agriculturist but for the sale of the immovable property in respect of which he has made the application.

55. It has been argued by Counsel for the appellants that Section 20 is invalid as the Legislature of the Kerala State was not competent to make the Act. It has been urged that Section 20 cannot be

said to fall within the purview of Entry 30 or List II of the Seventh Schedule to the Constitution inasmuch as it deals with a debt which had been paid off by sale of the property in execution of the decree against the agriculturist and was no longer in existence.

56. It is Article 246 of the Constitution which deals with the subject-matter of the laws to be made by the Parliament and the Legislatures of the States. Clause (3) of the Article provides that subject to clauses (1) and (2) of the Article with which we are not concerned the Legislature of the State has "exclusive power to make laws .... with respect to any of the matters enumerated in List II". Entry 30 of the List specifically states the following matters as being within the competence of the State Legislature, -

> 30. Money-lending and money-lenders; relief of agricultural indebtedness.
>
> It is therefore quite clear, and is beyond controversy, that the Act which provides for "the relief of indebted agriculturists in the State of Kerala" is within the competence of the State Legislature. Clause (1) of Section 2 of the Act defines an "agriculturist" clause (4) defines a "debt", clause (5) defines a "debtor" and the two Explanations to Section 20 define the expressions "court" and "judgment-debtor" and give an extended meaning to the expression "agriculturist" so as to include a person who would have been an agriculturist but for the sale of his immovable property. The other sections provide for the settlement of the liabilities and payment of the debt (along with the interest) of an agriculturist, including the setting aside of the sale in execution of a decree, and the bar of suits. The subject-matter of the Act is therefore clearly within the purview of Entry 30 and Counsel for the appellants have not been able to advance any argument which could justify a different view. Reference in this connection may be made to this Court's decision in Fatehchand Himmatlal v. State of Maharashtra ((1977) 2 SCR 828 : (1977) 2 SCC 670). It has however been argued that the entry would not permit the making of a law relating to the debt of an agriculturist which has already been paid by sale of his property in execution of a decree and is not a subsisting debt.

57. It is true that Section 20 of the Act provides for the setting aside of any sale of immovable property in which an agriculturist had an interest, if the property had been sold, inter alia, in execution of any decree for the recovery of a debt : (a) on or after November 1, 1956, or (b) before November 1, 1956, but possession whereof has not actually passed before November 20, 1957, from the judgment-debtor to the purchaser, and the decree-holder is the purchaser, on depositing one-half of the purchase money together with the cost of the execution etc. The section therefore deals with a liability which had ceased and did not subsist on the date when the Act came into force. But there is nothing in Entry 30 of List II to show that it will not be attracted and would not enable the State Legislature to make a law simply because the debt of the agriculturist had been paid off under a distress sale. The subject-matter of the entry is "relief of agricultural indebtedness" and there is no justification for the contention that it is confined only to subsisting indebtedness and would not cover the necessity of providing relief to those agriculturists who had lost their immovable property by court sales in execution of the decree against them and had been rendered destitute. Their problem was in fact more acute and serious, for they had lost the wherewithal of their livelihood and were reduced to a state of penury. An agriculturist does not cease to be an agriculturist merely because he has lost his immovable property, and it cannot be said that the State is not interested in providing him necessary relief merely because he has lost his immovable property. On the other hand his helpless condition calls for early solution and it is only natural that the State Legislature

should think of rehabilitating him by providing the necessary relief under an Act of the nature under consideration in these cases. There is in fact nothing in the wording of Entry 30 to show that the relief contemplated by it must necessarily relate to any subsisting indebtedness and would not cover the question of relief to those who have lost the means of their livelihood because of the delay in providing them legislative relief. It is well settled, having been decided by this Court in Navinchandra Mafatlal v. CIT ((1955) 1 SCR 829 : AIR 1955 SC 58 : (1954) 26 ITR 758), that "in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude". This has to be so lest a legislative measure may be lost for mere technicality.

58. The High Court has made a mention of the earlier legislation in the same field. It has also made a reference to Act 31 of 1958 which was quite similar to the Act and has pointed out how the Amending Act of 1961 became infructuous because of the unintended delay in amending it suitably. Great distress was therefore caused to the indebted agriculturists because of the sale of their immovable properties by Court auctions. Such agriculturists were rendered completely helpless and it was only proper that the State Legislature should have thought of coming to their rescue by enacting a law with the avowed intention of providing them some relief from the difficulties in which they were enmeshed as a result of their indebtedness, by devising the necessary means for the restoration of their immovable properties. The plight of those agriculturists was in fact worse than that of an agriculturist who, while he was groaning under the burden of his debt, had the satisfaction of having his immovable property with him as a possible means of redeeming the future some day. If the Legislature could provide relief to agriculturists against their subsisting debts by legislation under Entry 30, there is no reason why it should find itself disabled from doing so in the case of those agriculturists who had lost their immovable properties in the process of the liquidation of their debts by Court sales even though their case called for greater sympathy and speedier relief.

59. It has next been argued that Section 20 of the Act is unconstitutional as it impinges on the fundamental right of the decree-holder, or other auction-purchaser, under Article 19(1)(f) of the Constitution "hold" the property acquired by him at a Court sale and of which he had become the owner by the express provisions of Section 65 of the Code of Civil Procedure. It has thus been argued that by virtue of Article 13 of the Constitution, Section 20 is void as it is inconsistent with, or is in derogation of, a fundamental right.

60. As has been urged on behalf of the State, an answer to this argument is to be found in clause (5) of Article 19 which specifically provides, inter alia, that nothing in sub-clause (f) of clause (1) of Article 19 shall "prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights" conferred by the said sub-clause in the interest of the general public. It cannot be gainsaid that agriculturists, and even indebted agriculturists, form the bulk or, at any rate, a considerable part of the rural population, in an essentially rural economy like ours, and so if a restriction is reasonable in their interest, it would squarely fall within the purview of clause (5). Reference in this connection may be made to this Court's decision in Kavalappara Kottarathil Kochuni v. The State of Madras ((1960) 3 SCR 887 : AIR 1960 SC 1080) and State of Andhra Pradesh v. Kannapalli Chinna Venkata Chalamayya Sastri ((1963) 1 SCR 155 : AIR 1962 SC 1687) where it has been held that the redress of a real and genuine grievance of a section of the community is a measure in the interest of the general public.

61. As has been stated, the High Court has made a reference to the history of the debt relief legislation and the facts and circumstances which led to the passing of the Act. Thousands of suits were pending against indebted agriculturists in various Courts and immovable properties of a large

number of agriculturists had been sold rendering them completely helpless. So if the State Legislature passed the Act, in the interest of the general public, to provide relief of the nature mentioned in Section 20 in view of the rampant agricultural indebtedness in the State, and the urgency of the malady, it does not require much argument to hold that the restriction provided by that section was clearly "reasonable". Even so, the section makes provision for the repayment of the purchase money, the costs of the execution and the improvements made by the purchaser. The restriction provided under Section 20 is therefore reasonable in every sense and the High Court rightly rejected the argument to the contrary.

62. It has lastly argued that Section 20 of the Act is violative of Article 14 of the Constitution as it discriminates without reason between -

> (a) a decree-holder, auction purchaser and a stranger auction-purchaser [sub-section (1) (b) and sub-section (3)], and
>
> (b) an auction-purchaser at a Court sale and a bona-fide alienee of an auction-purchaser [sub-section (6)].

63. What Article 14 guarantees is the right to equality in directing that the State shall not deny to any person equality before the law or the equal protection the laws within the country. The prohibition is however not absolute inasmuch as this Court has taken the view that it incorporates the doctrine of "classification" (See Makhan Lal Malhotra v. The Union of India ((1961) 2 SCR 120 : AIR 1961 SC 392)). It is therefore equally well-settled that Article 14 will not prevent the making of a law which gives rise to a classification based on an intelligible differentia having a rational relation with the object to be achieved thereby.

64. Now sub-section (1) of Section 20 provides that if a decree-holder is the purchaser at a Court sale, the judgment-debtor (or his legal representative) may deposit one-half of the purchase money together with the costs of execution (where the costs were not included in the purchase money) and apply to the Court within six months from the date of commencement of the Act to set aside the sale, and the Court shall set aside the sale and make an order for the payment of the balance of the purchase money in ten equal half-yearly instalments together with accrued interest on the balance till the date of payment of each instalment at six per cent per annum. As against this, sub-section (3) provides that if the decree-holder is not the purchase, the judgment-debtor (or his legal representative) may deposit the purchase money and make an application for setting aside the sale and the Court shall set aside the sale. The treatment to a decree-holder purchaser is therefore different and is less advantageous than the treatment to a purchaser who is not a decree-holder. The decree-holder purchaser is treated as a different class, for it is well known that decree-holders very often exploit their debtors in many ways and sales to them are generally viewed with suspicion and disfavour so much so that, as has been expressly provided in Order XXI Rule 72 of the Code of Civil Procedure, it is not even permissible for a decree-holder to bid for or purchase the property without the express permission of the Court. The decree-holder purchaser has thus rightly been treated as a class by himself and that classification obviously has the object of benefiting the agriculturist judgment-debtor by permitting him to deposit only half the purchase money and paying the balance in instalment. It cannot therefore be said that the impugned provision violates Article 14 of the Constitution on that account. There is also justification for treating an auction-purchaser at a Court sale differently from a bona fide alience of the auction-purchaser who derived his right before the date of publication of the Kerala Agriculturists' Debt Relief Bill, 1968, in the State Gazette. Such an alienee of the auction-purchaser could not possibly have been aware of the hazards of

purchasing the property of an indebted agriculturist at the time of the purchase, and it is futile to contend that if the Legislature has protected his interest by an express provision in sub-section (6) of Section 20, it has thereby made a hostile discrimination against the auction-as a class

65. There is thus no force in the arguments which have been advanced on behalf of the appellants and the appeals are dismissed with costs.

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