

Sasanka Sekhar Maity and Others

Vs

Union of India and Others

Writ Petitions Nos. 111-114, 201, 208, 738, 885 and 944 of 1979

(CJI Y. V. Chanderachud, P. N. Bhagwati, V. R. Krishna, Iyer, V. D. Tulzapurkar JJ)

09.05.1980

JUDGMENT

SEN, J. –

1. In this batch of writ petitions, the main question that falls for determination, is whether the provisions of Chapter II-B of the West Bengal Land Reforms Act, 1955 (W.B. Act 10 of 1956) inserted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971), and replaced by the West Bengal Land Reforms (Amendment) Act, 1972 (W.B. Act 12 of 1972 with retrospective effect from February 15, 1971, which provide for a fixation of ceiling on agricultural holdings and for matters ancillary thereto, are violative of the second proviso to Article 31-A(1) of the Constitution.

2. The challenge in particular is to the validity of the definition of the term 'family' contained in Section 14-K(c), the fixation of ceiling limits of a raiyat under Section 14-M(1), the provision for lands held by the members of a family being clubbed under Section 14-M(2), the avoidance of transfers by Section 14-P, the fixation of a ceiling limit on orchards under Section 14-Q(2), the vesting of surplus land in the State under Section 14-S(1), the penal consequences for failure to file a return provided for in Section 14-T(4), the imposition of a restriction on transfers under Section 14-U and the absence of a provision for payment of compensation for acquisition of homestead under Section 14-V.

3. It would be convenient to refer, in the first place, to the legislative changes brought about in the State of West Bengal in furtherance of the directive principles enshrined in Article 39(b). Agrarian reform was undertaken in two stages. The first was the stage of abolition of the zamindari system. The West Bengal Estates Acquisition Act, 1953 (W.B. Act 1 of 1954) which received the assent of the President on February 12, 1954, and has been placed in the Ninth Schedule as Item 59, was an Act to provide for the acquisition of estates, of rights of intermediaries therein and of certain rights of raiyats and under-raiyats. By virtue of notification under Section 4 issued on April 14, 1955 declaring April 15, 1955 to be the date of vesting, the estates and the rights of intermediaries therein, vested in the State free from all encumbrances from that date. Section 5 provided that on and from the date of vesting, the estates and the rights of intermediaries in the estates shall vest in the State free from all encumbrances. Section 6(1) provided that notwithstanding anything contained in Sections 4 and 5, an intermediary shall, subject to certain conditions, be entitled to retain (a) land comprised in homesteads, (c) non-agricultural land in his khas possession not exceeding 15 acres in area, and excluding any land retained under clause (a), (d) agricultural land in his khas possession not exceeding twenty-five acres in area, as may be chosen by him, (e) tank fisheries, and (f) land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry

farming or dairy etc. Sub-section (2) thereof provided that, an intermediary who was entitled to retain possession of any land under sub-section (1), shall be deemed to hold such land directly under the State from the date of vesting as a tenant.

4. Chapter VI of the West Bengal Estates Acquisition Act, 1953, which provided for acquisition of interest of raiyats and under-raiyats, however, did not come into force on the publication of the notification under Section 4 for the acquisition of estates and the rights of the intermediaries therein with effect from April 15, 1955. That was because Section 49 provided that this Chapter was to come into force on such date as the government may be notification appoint. By Section 52 it was provided that on the issue of a notification under Section 49, the provisions of Chapters II, III, V and VII were to apply, with such modification as may be necessary, mutatis mutandis to raiyats and under-raiyats as if such raiyats under-raiyats were intermediaries and land held by them were estates. After the extinction of the feudal system of zamindari, the bid landlords became intermediaries, but by virtue of Section 6(1)(a), (c), (d), (e) and (f), they were entitled to retain land comprised in homesteads, non-agricultural land in their khas possession not exceeding 15 acres, agricultural lands in their khas possession not exceeding 25 acres, tank fisheries and land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy. Under Section 6(2), they became tenants of the State. The stage was thus set for the imposition of a ceiling on agricultural holdings.

5. The West Bengal Land Reforms Act, 1955 (W.B. Act 10 of 1956) came into force on March 31, 1956. The object and purpose of the Act, as reflected in the preamble, was to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein in the State. This was followed by a notification issued by the State Government under Section 49 of the West Bengal Estates Acquisition Act, 1953 on April 9, 1956. As a result of the notification under Section 49, the petitioners who are raiyats, were deemed to be 'intermediaries' and the lands owned and possessed by them as estates and all the lands and the petitioners' rights in such lands vested in the State with effect from April 10, 1956. But the petitioners as intermediaries were permitted to retain the lands as provided for in Section 6(1).

6. This state of affairs continued till February 12, 1971, when the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971) came into force. This was replaced in due course, by the West Bengal Land Reforms (Amendment) Act, 1972 (W.B. Act 12 of 1972) with retrospective effect from February 12, 1971. Those Acts brought about a drastic change by introducing Chapter II-B for the imposition of a ceiling on agricultural holdings. As a necessary consequence the Acts deleted Section 4(3) as well as Section 6. As a result of the deletion of Section 4(3), the right of retention of raiyats of agricultural lands to the extent of 25 acres was taken away and the deletion of Section 6(2) relieved the State of the obligation to pay market value for acquisition of the surplus land.

7. West Bengal Land Reforms Act, 1955 (W.B. Act 10 of 1956) and the West Bengal Land Reforms (Amendment) Act, 1972 (W.B. Act 12 of 1972), which introduced Chapter II-B therein with retrospective effect from February 15, 1971, have both been placed in the Ninth Schedule by the Constitution (Thirty-fourth Amendment) Act, 1974 being Items 60 and 81 thereof. They have thus the immunity of Article 31-B, besides being fully protected under Articles 31-A and 31-C.

8. Learned counsel for the petitioners, however, seeks to achieve a breakthrough in three ways. In the first place, he contends that Article 31-A is not attracted because of the breach of the second proviso to Article 31-A(1) inasmuch as Chapter II-B provides for acquisition of land within the

ceiling limits applicable to the petitioners without making provision for payment of compensation at the market value. In the second place, he argues in the alternative, that the Parliament cannot in exercise of its constituent power under Article 368 validate a State law. Thirdly, he tries to get over Articles 31-B and 31-C on the ground that insofar as the provisions of Chapter II-B are inconsistent with or take away or abridge the fundamental right to acquire, hold and dispose of property they affect the 'basic structure' of the Constitution. Even if the right to property does not form a basic structure of the Constitution, he contends that Chapter II-B is bad as it offends Articles 14 and 31.

9. It is urged that the lowering of the ceiling area of agricultural holdings by Section 14-M from 25 acres, which the petitioners as raiyats were entitled to retain under Section 4(3) of the Act, since deleted by the President's Act 3 of 1971 and W.B. Act 12 of 1972, to seven standard hectares, in the case of a raiyat having a family consisting of more than five members infringes Articles 14, 19(1)(f) and 31(2) of the Constitution. The submission is that such lowering of the ceiling area, in the case of a raiyat, is tantamount to acquisition of land, within the ceiling limits applicable to him and, therefore, Section 14-V of the Act which provides for payments of compensation according to the provisions contained in Chapter III of the West Bengal Estates Acquisition Act, 1953, and not for payment of compensation at a rate equivalent to the market value thereof, offends against the second proviso to Article 31-A(1).

10. Various other questions are also raised viz., the artificial definition of family contained in Section 14-K(c) bears no reasonable nexus with the traditional concept of a family in West Bengal. The acquisition of orchards as defined in Section 14-K(e), for which a ceiling area is fixed at 2.0 standard hectares by Section 14-Q(2) is ultra vires the State Legislature as orchards cannot be treated as land as defined in Section 2(7). The taking away of homesteads, which the petitioners were entitled to retain under Section 6(1) of the West Bengal Estates Acquisition Act without making any provision for payment of market value thereof deprives them of property without payment of compensation in violation of Article 31(2). The provisions of Section 14-P which provide that in determining the ceiling area any transfer effected by sale, gift or otherwise or by a partition by a raiyat after August 7, 1969, but before the date of publication in the official Gazette of President's Act 3 of 1971, i.e., February 8, 1971 shall be taken into account as if such land had not been transferred or partitioned, as the case may be, in effect, virtually amounts to taking away of land within the ceiling area prescribed for him by Section 14-M and is thus bad.

11. It is further urged that the restriction on transfer of land by a raiyat imposed by Section 14-U is an unreasonable restriction and therefore, offends against Article 19(1)(f). The validity of Section 14-M(5) by which property belonging to a private trust or endowment, is treated to be property belonging to the beneficiaries, i.e., shebait, and each such shebait to be a raiyat to the extent of the share of his beneficial interest in the said trust or endowment, is assailed on the ground that it abridges the fundamental rights guaranteed by Article 26. Lastly, it is said, the fixation of a ceiling area by Section 14-M, at a flat rate, irrespective of the nature and quality of the soil at 2.50 standard hectares in the case of a raiyat, who is an adult, unmarried person, or the sole surviving member of a family; 5.0 standard hectares in the case of a raiyat having a family consisting of two or more members, but not more than five members, and 7.0 standards hectares in the case of a raiyat having a family consisting of more than five members, is wholly arbitrary, unreasonable and void.

12. Chapter II-B consists of Sections 14-J to 14-Y and bears the heading 'Ceiling on Holdings'. The scheme of this Chapter is as follows : Section 14-J give to the provisions of this Chapter an overriding effect by a non-obstante clause. Section 14-K deals with the definition of the terms used in various sections. The expression 'ceiling area' as defined in clause (a) means the extent of land

which a raiyat shall be entitled to own. The definition of 'charitable purpose' in clause (b) is an inclusive one and it includes relief of the poor, medical relief or the advancement of education or of any other object of general public utility. The term 'family' is defined in clause (c), and the expression 'irrigated area' in clause (d). The term 'orchard' is defined in clause (e) and the expression 'standard hectare' in clause (f). Section 14-L provides that, on and from the date of the commencement of the provisions of Chapter II-B of the Act, no raiyat shall be entitled to own, in the aggregate, any land in excess of the ceiling area applicable to him under Section 14-M.

13. The provisions of Section 14-M lay down the ceiling area with respect to different clauses of raiyats and it varies from 2.50 standard hectares depending on whether he is an adult unmarried person, to 7.0 standard hectares, if he has a family consisting of more than five members. This again varies depending upon the nature of the land as the expression 'standard hectare' as defined in Section 14-K(f) means, in relation to an agricultural land, an extent of land equivalent to 1.00 hectare in an irrigated area and 1.40 hectares in any other area. Section 14-N provides for the determination of irrigated area and Section 14-O provides for an appeal against such determination. Section 14-P provides that in determining the ceiling area, any land which was transferred by sale, gift or otherwise or partitioned, by a raiyat after August 7, 1969, but before the date of publication in the official Gazette, of the West Bengal Land Reforms (Amendment) Act, 1971, i.e., February 8, 1971, shall be taken into account as if such land had not been transferred or partitioned, as the case may be.

14. The ceiling area for a cooperative society, company, cooperative farming society, Hindu undivided family or a firm, is provided for by sub-section (1) of Section 14-Q. Sub-section (2) thereof prescribes the ceiling area of an orchard at 2.0 standard hectares or the actual area comprised in such orchard, whichever is the lesser. Sub-section (2-A) provides that in determining a ceiling area of a trust or institution of a public nature, established exclusively for a charitable or religious purpose or both, the number of its centres or branches in the State established before August 7, 1969 which do not hold any land as a raiyat shall be taken into account and each such centre or branch shall be deemed to be a raiyat for the purpose of clause (a) of sub-section (1) of Section 14-M but the ceiling area of such a trust or institution shall not exceed the sum total of the ceiling area of each such centre or branch and of itself. Sub-section (3) provides that, if the State Government after having regard to all the circumstances of the case, is satisfied that a corporation or institution established exclusively for a charitable or religious purpose, or both, or a person holding any land in trust, or in pursuance of any other endowment, creating a legal obligation exclusively for a purpose which is charitable or religious, or both, requires land, as distinct from the income derived from such land, for the due performance of its obligations, it may, by notification in the official Gazette, increase the ceiling area of such corporation or institution or person to such extent as it may think fit.

15. Section 14-R confers exemption from the provisions of Section 14-M to certain classes of raiyats like a local authority or any body or authority constituted or established by or under any law for the time being in force. The vesting of land in excess of ceiling area is provided for by Section 14-S, the duty of raiyat to furnish a return is enjoined by Section 14-T. Section 14-U interdicts that, except where he is permitted, a raiyat owning land in excess of the ceiling area applicable to him under Section 14-M, shall not, after the publication in the official Gazette, of the Act, i.e., after February 8, 1971, transfer by sale, gift or otherwise or make a partition of land owned by him, or any part thereof, until the excess land, which is to vest in the State under Section 14-S, has been determined and taken possession of by and on behalf of the State.

16. Section 14-V lays down the mode of computation of compensation payable for the vesting of the surplus land in the State. Section 14-W provides for payment of damages for use and occupation of land in excess of the ceiling area by a raiyat if he continues to possess such land after the commencement of Chapter II-B. Section 14-X bars the jurisdiction of the civil Courts to decide or deal with any question or determine any matter which is by or under this Chapter required to be decided or dealt with or to be determined by Revenue Officer or other authority specified therein and no orders passed or proceedings commenced under the provisions of this Chapter shall be called in question in any civil Court. Section 14-Y provides that if after the commencement of this Chapter, any raiyat acquires any land, whether by transfer, inheritance or otherwise, and such land, together with the land owned by him, exceeds the ceiling area applicable to him under Section 14-M, the area of land which is in excess of such ceiling area shall vest in the State and all the provisions of this Chapter relating to ceiling on holding shall apply to such land.

17. The principal question for consideration in these writ petitions is, whether in view of Article 31-A of the Constitution, any of the provisions of Chapter II-B can successfully be impugned for the reason that they violate the fundamental rights of the petitioners under Articles 14, 19(1)(f) and 31(2).

18. Both Articles 31-A and 31-B were introduced by the Constitution (First Amendment) Act, 1951 with retrospective effect with a view to validate zamindari abolition Acts, and confer immunity from challenge in courts. It must be remembered that the First Amendment was by the First Parliament, i.e., by the Founding Fathers who were the members of the Constituent Assembly. They having given to the citizen the rights guaranteed by Part III of the Constitution, felt that 'primacy' must be given to certain legislations, particularly the laws relating to agrarian reform, over the enjoyment by the citizen of his fundamental rights. It was with that object that Article 31-A was designed i.e., in order to facilitate agrarian reform as well as social control of the means of production.

19. By 1955, when the Fourth Amendment was adopted, the abolition of zamindari had been in large part accomplished throughout the country except in the State of West Bengal. There remained, and were to remain for many years, the next stage of agrarian change - the imposition of ceiling to prevent large holdings the consolidation of fragmented holdings, and the development of village panchayats for effective village planning and management. The Statement of Objects and Reasons clearly brought out the intention of the government, to immunize State legislations relating to imposition of ceiling on agricultural holdings from the usual compensation required or other requirements of the fundamental rights guaranteed under Part III, which were most likely to be invoked - Articles 14, 19 and 31. The new Article 31-A, as revised by the Fourth Amendment in 1955 was in a sense less sweeping than the provision introduced by the First Amendment, exempting laws from the effect of only three of the fundamental rights - Articles 14, 19 and 31 - instead of the entire Part III, which contains all the rights.

20. The Constitution (Seventeenth Amendment) Act, 1964 made important changes in the definition of 'estates' in Article 31-A(2) in order expressly to include ryotwari interests and measures affecting all kinds of land held or let for purposes of agricultural or for purposes ancillary thereto.

21. Article 31-A(1), as it stands, provides that no law providing for acquisition of any estate or any rights therein or the modification or extinguishment of any such rights in an estate shall be deemed to be void on the ground that it violates the fundamental rights under Articles 14, 19 and 31. Undoubtedly, Article 31-A is attracted when the law in question is one for agrarian reform.

22. By adding a proviso to Article 31-A(1), which, it will be recalled, states that no law providing for the acquisition, modification or extinguishment of property rights of specified kinds (including acquisition of estates or modification of rights therein) shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14, 19 or 31, a change was brought about. It reads :

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

23. The Act is a piece of social legislation for agrarian reform. The object of the legislation is to break up the concentration of ownership and control of the material resources of the community and to so distribute the same as best to subserve the common good, as enjoined by Article 39(b) of the Constitution. Having regard to the quantity of land available in the State of West Bengal, which has the highest per capita density in the whole of the country, the ceiling limits appear to be reasonable and fair. For equitable distribution of the natural resources, it was essential to design the Act as it is so that the surplus and is available for distribution to the landless peasantry. The Act makes available to each person of the community living below the poverty line, to some extent the minimum means of subsistence. In order, therefore, to reconcile the fundamental rights of the community as a whole with the individual rights of the more fortunate section of the community, it was fundamentally necessary to make the impugned legislation to secure to a certain extent the rights of that part of the community which is denied its legitimate share in the means of livelihood.

24. The broad objectives of any legislation relating to agrarian reforms are materially four viz., (1) to maximise the agricultural output and productivity, (2) a fair and equitable distribution of agricultural income, (3) increase in employment opportunities, and (4) a social or ethical order. Though the abolition of the zamindari system in the State of West Bengal was an important step forward, the feudal structure remained so far as the peasants were concerned. These objectives have been achieved through progressive legislation.

25. It is argued that sub-section (1) of Section 6 of the West Bengal Estates Acquisition Act, 1953 imposed a ceiling on holdings, as it allowed all intermediaries to retain 25 acres of agricultural land in their khas possession, which became applicable to raiyats and under-raiyats who were deemed to be such intermediaries upon the issue of a notification under Section 49 on April 14, 1956. The ceiling limit thus imposed was continued by sub-section (3) of Section 4 of the West Bengal Land Reforms Act, 1955. One has to see, it is urged, whether there was a law in force, i.e., a law imposing a ceiling when the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971) was brought into force on February 12, 1971 or the West Bengal Land Reforms (Amendment) Act, 1972 (W.B. Act 12 of 1972) which replaced it with retrospective effect from that date. Once that test is fulfilled it is said, the second proviso to Article 31-A(1) is clearly attracted. It is, further urged that if the ceiling limit of a raiyat in respect of agricultural land under his personal cultivation is curtailed by any subsequent Act prescribing a new ceiling limit, it becomes obligatory for the State to give market value with regard to the land acquired under the new Act.

26. The submission rests on the assumption that the expression 'any law for the time being in force', appearing in the second proviso to Article 31-A(1) must mean here in this case the West Bengal Estates Acquisition Act, 1953. Our attention is drawn to Section 52 which provides that upon the issue of a notification under Section 49, the provisions of Chapters II, III, V and VII shall, with such modifications as may be necessary, apply mutatis mutandis to raiyats and under-raiyats as if such raiyats and under-raiyats were intermediaries and the land held by them were estates. We are afraid, we cannot accept this line of reasoning. There is an apparent fallacy in the argument.

27. Such a construction, if we may say so, would create a serious impediment to any kind of agrarian reform. The ceiling on agricultural holdings once fixed cannot be static, unalterable for all times. The expression 'any law for the time being in force' obviously refers to the law imposing a ceiling. Here it is the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971) and now the West Bengal Land Reforms (Amendment) Act, 1971 (W.B. Act 12 of 1972) which introduced Chapter II-B imposing a new ceiling on agricultural holdings of raiyats. That is the law for the time being in force, and no land is being acquired by the State under Section 14-L within the ceiling limits prescribed therein.

28. It will be noticed that the second proviso to Article 31-A(1) refers to the 'ceiling limit applicable to him', which evidently refers to the law in question and not earlier law, that is Section 6(1) of the West Bengal Estates Acquisition Act, 1953. It will be noticed that both Section 4(3) and Section 6(2) of the West Bengal Land Reforms Act, 1955 stood deleted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971) and thereafter by the West Bengal Land Reforms (Amendment) Act, 1972 with retrospective effect from February 12, 1971.

29. The point in controversy is no longer res integra. The question directly came up for consideration in *Kunjukutty v. State of Kerala* ((1973) 1 SCR 326 : (1972) 2 SCC 364, 376) and *Malankara Rubber and Produce Co. v. State of Kerala* (*Malankara Rubber and Produce Co. v. State of Kerala*, (1973) 1 SCR 399 : (1972) 2 SCC 492, 505). In *Kunjukutty* case ((1973) 1 SCR 326 : (1972) 2 SCC 364, 376) the court disposed of a contention similar to that raised before us. It was urged that when the Kerala Land Reforms Act, 1963, as amended by the Kerala Land Reforms (Amendment) Act, 1969, by Section 82 reduced the ceiling limit and required surrender of the land held in excess of the limit fixed by the Amendment Act, without payment of compensation at market value, it violated the constitutional inhibition contained in the second proviso to Article 31-A(1). In repelling the contention, it was observed : (SCC p. 376, para 19)

It was not disputed that the ceiling limit fixed by the amended Act was within the competence of the legislature to fix; nor was it contended that the ceiling fixed by the original unamended Act by itself debarred the legislature from further reducing the ceiling limit so fixed. Prior to the amendment undoubtedly no land within the personal cultivation of the holder under the unamended Act within the ceiling limit fixed thereby could be acquired without payment of compensation according to the market value, but once ceiling limit was changed by the amended Act, the second proviso to Article 31-A(1) must be held to refer only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed, ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates only within the ceiling limit fixed under the existing law at the given time.

30. In *Malankara Rubber and Produce Co. case* (*Malankara Rubber and Produce Co. v. State of Kerala*, (1973) 1 SCR 399 : (1972) 2 SCC 492, 505) the court rejected a similar contention based upon the second proviso to Article 31-A(1) observing : (SCC p. 505, para 39)

'Ceiling area' is covered by Section 82. Such area with regard to unmarried persons and families fixed by the 1964 Act was cut down considerably by the Amending Act of 1969. It was . . . that this was hit by the second proviso to Article 31-A(1) inasmuch as the ceiling having once been fixed by the 1964 Act any diminution in the extent thereof would only be justified if compensation at a rate not less than the market value thereof was provided which undoubtedly is not the case here . . . . The contention that reduction in the ceiling area fixed by the 1964 Act had to be compensated for by payment of market value of the difference between the ceiling areas fixed by the two Acts cannot be accepted inasmuch as the 'ceiling limit applicable to him under any law for the time being in force' in Article 31-A can refer only to the limit imposed by the law which fixed it and not any earlier law which is amended or repealed.

31. This furnishes a complete answer to the contention raised on the second proviso to Article 31-A(1). The ceiling limit introduced by Section 14-M of the impugned Act which came into force on February 15, 1971, is the ceiling limit "under the law for the time being in force" within the meaning of the second proviso to Article 31-A(1). That being so, the provisions of Chapter II-B have the constitutional immunity of Article 31-A and cannot be challenged on the ground that they are inconsistent with, take away or abridge the fundamental rights guaranteed by Articles 14, 19(1)(f) or 31(2). Even if it were not so, they would be under the protective umbrella of Article 31-B. Indubitably, the provisions of Chapter II-B are a law related to agrarian reform and thus protected.

32. It is necessary here to mention that in *Kunjukutty case* ((1973) 1 SCR 326 : (1972) 2 SCC 364, 376) explanation to Section 85(1) of the Kerala Land Reforms Act, 1963 was challenged as offending the second proviso to Article 31-A(1). Under the explanation, subject to certain exceptions, any land transferred by a person holding in excess of the ceiling area between certain dates, was to be regarded as held by the person for the purpose of fixing the extent of the land to be surrendered by him and such surrender was to be out of the land still held by him. The Kerala High Court struck down the said provision as offending the second proviso to Article 31-A(1) observing :

If a fiction by which land not held by a person could be taken into account for the determination of the excess land to be surrendered by him, and he could be forced to surrender land actually held by him although it is within the ceiling limit without payment of the market value thereof, were permitted, the proviso in question could easily be rendered nugatory.

This Court upheld the decision of the High Court and observed : (SCC p. 376, para 17)

It is clear that by virtue of the second proviso to Article 31-A(1) land within the ceiling limit is expressly protected against acquisition by the State unless the law relating to such acquisition provides for compensation which is not less than its market value. No attempt was made to take the impugned explanation out of this constitutional inhibition. We, therefore, do not find any reason to differ from the conclusions of the High Court.

33. After the judgment of the High Court, the Kerala Land Reforms (Amendment) Act, 1971 was enacted. When this Court in *Kunjukutty case* ((1973) 1 SCR 326 : (1972) 2 SCC 364, 376) upheld the judgment of the High Court striking down the explanation to Section 85(1) of the Kerala Land Reforms Act, 1963, Parliament by the Constitution (Twenty-ninth Amendment) Act, which was assented to by the President on June 9, 1972, inserted both the Kerala Land Reforms (Amendment) Act, 1969 and the Kerala Land Reforms (Amendment) Act, 1971 in the Ninth Schedule to the Constitution. The challenge to the validity of the Constitution (Twenty-ninth Amendment) Act was

allowed to be raised as an additional ground in *Kesavananda Bharati v. State of Kerala* (1973 Supp SCR 1 : (1973) 4 SCC 225) and the court by majority of 7 : 6 upheld the validity of the Twenty-ninth Amendment.

34. By parity of reasoning, it must follow as a necessary corollary that the West Bengal Land Reforms Act, 1955 (W.B. Act 10 of 1956) and the West Bengal Land Reforms (Amendment) Act, 1972 (W.B. Act 12 of 1972) which introduced Chapter II-B therein with retrospective effect, from February 15, 1971, having been placed in the Ninth Schedule by the Constitution (Thirty-fourth Amendment) Act, 1974, as Items 60 and 81 thereof, their validity cannot be questioned under Article 31-B. The challenge to the constitutional validity of Article 31-B as well as the Constitution amending Act, whereby the concerned enactments were put in the Ninth Schedule on the ground that these violate the basic structure or features of the Constitution has been separately dealt with and hence the same need not be discussed here.

35. As regards the submission that Parliament cannot in exercise of its constituent power under Article 368 validate a State law, it seems to us that the entire submission proceeds on a misconception arising from failure to distinguish between a law made in exercise of legislative power and the law made in exercise of the constituent power. When Article 31-B was introduced in the Constitution by the Constitution (First Amendment) Act, 1951, it validated retrospectively 13 Acts specified in the Ninth Schedule, which, but for this provision, were liable to be impugned under the Article 13(2). Article 31-B conferred constitutional immunity to such laws (all being enactments of State legislatures) and Parliament alone could have done so by inserting the said Article in the Constitution in exercise of its constituent power under Article 368. In substance and reality it was a constitutional device employed to protect State laws from becoming void under Article 13(2). It will appear clear that the language in Article 31-B is virtually lifted from Articles 13(1) and (2). While Article 13(2) invalidates legislation, which takes away or abridges the rights conferred by Part III, Article 31-B 'extends protective umbrella' to such legislation if it is included in Ninth Schedule and, therefore, the courts will have no power to go into the constitutionality of the enactments as included in the Ninth Schedule except on the ground of want of legislative competence.

36. The challenge to the definition of 'family' in Section 14-K(c) is based on the submission that it is an artificial definition and does not take into account the concept of a family as it exists in West Bengal. The word 'family' as defined in Section 14-K(c) is in these terms :

- (c) 'family', in relation to a raiyat, shall be deemed to consist of -
  - (i) himself and his wife, minor sons, unmarried daughters, if any,
  - (ii) his unmarried adult son, if any, who does not hold any land as a raiyat,
  - (iii) his married adult son, if any, where neither such adult son nor the wife nor any minor son or unmarried daughter of such adult son holds any land as a raiyat,
  - (iv) widow of his predeceased son, if any, where neither such widow nor any minor son or unmarried daughter of such widow holds any land as a raiyat,
  - (v) minor son or unmarried daughter, if any, of his predeceased son, where the widow of such predeceased son is dead and any minor son or unmarried daughter of such predeceased son does not hold any land as a raiyat,

but shall not include any other person.

Explanation I. - For the purposes of this Chapter, an adult unmarried person shall include a man or woman who has been divorced and who has not remarried thereafter :

Provided that where such divorced man or woman is the guardian of any minor son, or unmarried daughter, or both, he or she, together with such minor son or unmarried daughter, or both, shall be deemed to be a separate family.

Explanation II. - References in this clause to wife, son or daughter shall in relation to a raiyat who is a woman, be construed as references to the husband, son or daughter, respectively, of such woman.

37. It is argued that the definition of 'family' does not take into consideration the aged parents of a raiyat or his unmarried sisters. It is further argued that the Act suffers from the vice that, the existence of a married son is taken into consideration where neither he nor his wife or any minor son or unmarried daughter of such adult son holds land as a raiyat for the purpose of augmenting the holding of a raiyat, but where in the family of a raiyat there is a married adult son holding any land, even a fraction, the family is denied the benefit of his existence. In such a case the effect is the same because under Section 14-M(2) the ceiling area of the raiyat is still 7.0 standard hectares. To our mind, these submissions are wholly unfounded.

38. The definition of 'family' as contained in Section 14-K(c) of the Act, is more realistic than the definitions of this term in similar laws for imposition of ceiling on agricultural holdings enacted in other States. The definition is much wider, and far more generous and humane because it takes into consideration the existence of a widowed and divorced daughter, which is absent in other Acts. The meaning given by Explanation I to an adult unmarried person is an inclusive one and it includes a daughter who has been divorced. This necessarily also includes a widowed daughter. By the proviso added to Explanation I, where such widowed daughter is the guardian of any minor son or unmarried daughter, or both, she, together with such minor son or unmarried daughter, or both, shall be deemed to be a separate family. She, therefore, is treated to be a raiyat in her own right in relation to her family and her holding is not clubbed with that of her father under Section 14-M(2). The benefit provided to a divorced daughter would obviously also extend to a widowed daughter. Explanation II deals with the spouse as in relation to a raiyat who is a woman, reference in clause (c) to wife's son or daughter, shall be construed as reference to the husband's son or daughter, respectively of such woman. The legislature on a correct perspective has enlarged the definition of a family to the maximum possible extent, and provides for as many as nine members. We fail to appreciate the submission that normally in the family of a raiyat he has his parents to maintain. Such marginal cases would be very few. Normally, the father of a raiyat would have his separate holding and would be entitled to a separate ceiling area of his own determined under Section 14-M. The legislature had to draw a line somewhere. By Section 14-M(2)(b) it provided for augmenting of the holding of a raiyat to the extent of 7.0 standard hectares by taking into account five plus four i.e., nine members.

39. The creation of an artificial concept of family and making provision for the clubbing together of landholding of each member of the family are not violative of the second proviso to Article 31-A(1), and even if they were, they were protected by Article 31-B. This had necessarily to be done for the purpose and object of the legislation i.e., imposition of a ceiling on agricultural holdings. One is apt to forget that the provisions of Chapter II-B in the Act are a law for imposition of a ceiling on agricultural holdings of raiyats and are not a law for enlargement of such holdings, i.e.,

those put a limit on the maximum limit of a holding of a raiyat. The Act adopts the individual as the unit and not the family and allows for augmentation of his holding depending upon the normal concept of a family.

40. It is, however, urged that according to the definition of family given in Section 14-K(c) of a raiyat, his wife, his minor son and the unmarried daughter are included, but the adult son is not because he owns land and can form a unit by himself. According to the provisions of Section 14-M(1)(a) the adult unmarried son will be entitled to retain 2.50 standard hectares, and if married, he with his wife and children, may retain 5.0 standard hectares; but the minor son and unmarried daughter, as they are included in the father's family will not be entitled to retain any land. We are afraid, this cannot be helped. There is no question of conferral of any new rights on minor son or unmarried daughter, as they would be included in the father's family, who would get a much larger ceiling of 5.0 to 7.0 standard hectares, depending upon the number of children that he has. Nothing prevents a minor son or the unmarried daughter of a raiyat, like his parents from acquiring property of their own subsequently by inheritance or transfer.

41. Learned counsel for the petitioners tried to highlight certain imperfections in the definition of family which he seems to imagine. To illustrate, he speaks of a family of a raiyat having his wife, three married adult sons (having no land of their own), having wives and three minor sons each and one unmarried daughter. The instance of the family given by him consists of 18 members. According to Section 14-M(2)(b), the raiyat would be entitled to retain no more than 7.0 standard hectares i.e., 5.0 standard hectares for his family up to five members and 0.50 standard hectare per head for four other members. Therefore, we are told that in this case, nine members of the family including minor sons who have to be brought up, would be entirely deprived of the right to hold property or any land. Further, the counsel urges that if the three adult sons died, the raiyat will have to maintain the minor sons of his predeceased sons, besides the unmarried daughters, of his own. The legislature cannot be expected to provide for all these exigencies. It is difficult to envisage a family consisting of 18 members in present times. Even if there are any, they would not be better off even if Chapter II-B had not been enacted.

42. Section 14-M of the Act, so far as relevant, reads :

14-M. Ceiling area. - (1) The ceiling area shall be, -

(a) in the case of a raiyat, who is an adult unmarried person, 2.50 standard hectares;

(b) in the case of a raiyat, who is the sole surviving member of a family, 2.50 standard hectares;

(c) in the case of a raiyat having a family consisting of two or more, but not more than five members, 5.00 standard hectares;

(d) in the case of a raiyat having a family consisting of more than five members, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so, however, that the aggregate of the ceiling area for such raiyat shall not, in any case, exceed 7.00 standard hectares;

(e) in the cases of any other raiyat, 7.00 standard hectares.

(2) Notwithstanding anything contained in sub-section (1), where, in the family of a

raiyat, there are more raiyats than one, the ceiling area for the raiyat, together with the ceiling area of all the other raiyats in the family shall not, in any case, exceed, -

(a) where the number of members of such family does not exceed five, 5.00 standard hectares;

(b) where such number exceeds five, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so, however, that the aggregate of the ceiling area shall not in any case, exceed 7.00 standard hectares.

(3) For the purpose of sub-section (2), all the lands owned individually by the members of a family or jointly by some or all the members of such family shall be deemed to be owned by the raiyats in the family.

43. The expression 'standard hectare' is defined in Section 14-K(f) as follows :

(f) 'Standard hectare' means, -

(i) in relation to an agricultural land, an extent of land equivalent to -

(a) 1.00 hectare in an irrigated area,

(b) 1.40 hectares in any other area,

(ii) in relation to any land comprised in an orchard, an extent of land equivalent to 1.40 hectare.

44. The fixation of ceiling in case of a raiyat who is an adult unmarried or the sole surviving member of family at 2.50 standard hectares and in case of a raiyat having a family consisting of the two or more but not more than five members at 5.0 standard hectares and in the case of a raiyat having a family consisting of more than five members at 5.0 to 7.0 hectares is objected to as being wholly arbitrary and unreasonable. As already stated, the extent of the holdings on which ceiling is fixed varies depending upon whether it is an irrigated area or any other area. We fail to see any arbitrariness and indeed there is no substantial decrease in the limit. One standard hectare is equivalent to 2.47 acres. The ceiling limits, therefore, work out to 6.18 acres in the case of an individual, and 12.35 to 17.29 acres of irrigated land, in the case of a family, which, in the Gangetic plains of West Bengal, is not small by any standard. In other areas, the ceiling limit varies from 8.64 to 24.2 acres. According to agro-economists, an economic holding is of 5 to 7 acres.

45. It is not possible to lay down a ceiling standard or prescribe one limit in terms of fixed acreage for general application throughout the country. The productivity of land is not the same in all areas, due allowance has to be made for varying local conditions. The First Five-Year Plan suggested a ceiling limit to be fixed in terms of a multiple of a family holding. Following the recommendations of the Congress Agrarian Reforms Committee, it recommended that the ceiling limit of an individual holding should be fixed at three times the family holding (First Five-Year Plan, Paras 15, 16, Ch. XII). The second Five-Year Plan endorsed this recommendation. Each State was to specify according to conditions of different regions, class of soil, irrigation and the area of land which was to constitute a family holding (Second Five-Year Plan, Para 40). In implementation of the policy, the different States adopted different levels of ceiling and different basis for its application. Some States put a ceiling limit on the holding of an individual owner while the others imposed a ceiling

on family holding. In the States where a ceiling was imposed on individual holding there was greater scope for mala fide transfers than where the ceiling was imposed on the aggregate area held by all the members of the family. In the latter case there was no inducement to effect transfers between the members of the family, as their share had already been given due recognition. But when the comparative advantages and disadvantages of the two alternatives became apparent it was too late to change the stand once taken (Third Five-Year Plan, Para 26). In the Third Five-Year Plan, the Planning Commission, therefore, recommended that the ceiling should invariably be on the aggregate area held by a family, rather than the individual (as may of the transfers were effected between the members of the family). Since legislation had already been passed, in many States, imposing ceilings on individual holdings it recommended that amendments should aim primarily at eliminating deficiencies and facilitate implementation rather than at introducing fundamental changes in the principles underlying the legislation. Accordingly, the amendments provided that transfer after a prescribed date should be disregarded. The dates so prescribed were invariably a date anterior to the enactment of law. In some cases it was the date of publication of the Bill, while in others an earlier date was prescribed in view of the special local conditions. The first draft of the Fourth Five-Year Plan, while endorsing the earlier view that the amendments should remove the deficiencies, rather than basically change the law, again suggested as follows :

As transfers take place generally between the members of a family, the States might consider the suggestion earlier made by the Panel on Land Reform (and this has already been provided in some laws), namely, to apply ceilings to the aggregate area held by all the members of a family, rather than to individual holdings, the family being defined to include husband and wife, their dependent children and grandchildren.

46. We may then take up the contention regarding the alleged invalidity of Sections 14-P and 14-U. The fixation of a backdate is a usual legislative device to prevent avoidance of change brought about by law. There is no warrant for the submission that the date mentioned in Section 14-P bears no reasonable nexus with the object or purpose of the legislation. The West Bengal Land Reforms (Amendment) Act, 1971, while inserting Chapter II-B enacted Section 14-P providing that in determining the ceiling area of a raiyat any transfer effected by sale, gift or otherwise or by a partition by him after August 7, 1969 and before February 8, 1971, i.e., the date of publication of the Act in the official Gazette shall not be taken into account and the land shall be deemed to form part of the holding of the raiyat. By a legal fiction, such transfers were presumed to be mala fide, as they were calculated to defeat the ceiling law.

47. Learned counsel appearing for the State Government of West Bengal has filed a note explaining the reason why the date specified in Section 14-P was August 7, 1969. It appears that the West Bengal Land Reforms (Second Amendment) Bill, 1969 was published in the official Gazette on that date. Though the amendment primarily related to reassessment of revenue, the concept of 'family' was first sought to be introduced in the West Bengal Land Reforms Act by that amendment. The landholders, therefore, had a forewarning that the concept of 'family' may also come into play in the determination of ceiling area of land. Prior to the said amendment, the proposed legislation in ceiling adopted individual as a unit and not the family. It needs no mention that unless a date-line is fixed in the matter of ceiling or similar agrarian reform, the very purpose of the legislation would be frustrated. The scope and effect of Section 14-P are that all agricultural lands transferred after August 7, 1969 shall be taken into account in computing the ceiling of the raiyat. The effect was that the ceiling virtually imposed treating the family as the unit in Section 14-M(2) was given a retrospective effect by Section 14-P with effect from August 7, 1969.

48. Section 14-U provides that except where he is permitted, in writing, by the Revenue Officer so to do, a raiyat owning land in excess of the ceiling area applicable to him under Section 14-M, shall not, after the publication of the Act in the official Gazette, i.e., February 8, 1971, transfer, by sale, gift or otherwise or make any partition of any land owned by him or any part thereof until the excess land, which is to vest in the State under Section 14-S, has been determined and taken possession of by or on behalf of the State. Such provisions are to be found in all the Acts passed by different States relating to imposition of ceiling on agricultural land and indeed they are essential for implementing the scheme of the Act.

49. It will be noticed that in actual implementation, the provisions of these Acts were circumvented to a large extent by the making of fraudulent transfers. Transfers of rights in land could be effected by one of several ways such as sale, mortgage, gift and exchange. The Act by Section 14-P provides that transfers effected before the date of publication of the Act and after August 7, 1969 shall not be taken into consideration. The legislature fixed August 7, 1969 as the date from which all such transfers or partitions shall be deemed to have been effected with the intention of defeating the law. Such transfers were presumed to be mala fide as they had taken place in anticipation of the enactment and, therefore, liable to be ignored. As the ceiling was fixed for each individual raiyat and not the family, as a unit, there was practically no limit to the amount of land that could be held by a family in this way, and therefore, the legislature had to insert Section 14-M(2) for their shares to be clubbed together. There were plenty of reasons to believe that splitting of big holdings between members of the family had taken place on considerable scale in anticipation of the legislation.

50. As regards Section 14-U, there is no absolute bar against transfers till the determination of the ceiling area under Section 14-M. The fundamental right to acquire, hold and dispose of property guaranteed under Article 19(1)(f) was subject to the right of the State to impose reasonable restrictions under Article 19(6). The legislature was fully competent to lay down the maximum limit of an agricultural holding and make ancillary provisions to make the law effective by avoidance of transfers. These provisions contained in Section 14-P and Section 14-U thus appear to be reasonable without which the whole object of enacting Chapter II-B for the imposition of a ceiling on agricultural holdings would have been completely frustrated.

51. It is argued that an 'orchard' as defined in Section 14-K(e) does not fall within the definition of 'land' in Section 2(7), and, therefore, it could not be treated as agricultural land and hence the legislature could not have prescribed a ceiling for an orchard under Section 14-Q(2) by two standard hectares. Now Section 14-Q(2) provides that where a raiyat owns land, comprised in orchard, whether or not in addition to other land, the ceiling area in relation to such raiyat shall be increased by 2.00 standard hectares or the actual area of the land comprised in orchards, whichever is the lesser. The term 'orchard' as defined in Section 14-K(e) reads :

(e) 'orchard' means a compact area of land having fruit-bearing trees grown thereon in such number that they preclude, or when fully grown would preclude, a substantial part of such land from being used for any agricultural purpose;

The word 'land' is defined in Section 2(7) as :

(7) 'land' means agricultural land other than land comprised in a tea-garden which is retained under sub-section (3) of Section 6 of the West Bengal Estates Acquisition Act, 1953, and includes homesteads but does not include tank.

Some meaning has to be given to the words 'land comprised in orchards' appearing in Section 14-Q(2). For the word 'land' we have to read 'agricultural land' and that brings out the legislative intent.

52. It is not right to suggest that land comprised in an orchard cannot be treated as an agricultural land. The meaning of the expression 'agricultural land' as given in 'WORDS AND PHRASES LEGALLY DEFINED', Vol. I, p. 61, runs thus :

The expression 'agricultural land' includes arable and meadow land and ground used for pastoral purposes or for market or nursery gardens, and plantations and woods and orchards . . .

Thus the expression 'agricultural land' is wide enough to include an orchard. It is, therefore, futile to contend that an orchard as defined in Section 14-Q(2) does not come within the definition of land in Section 2(7). If such a construction were to be adopted, it would imply that there would be no ceiling on agricultural holdings in large tracts of land in the district of Malda which is famous for its mango orchards. The legislature by enacting Section 14-Q(2) treats the land comprised in orchards, as falling within the purview of Section 14-M, but having regard to the fact that there is a sufficient cluster of fruit-bearing trees in an orchard, which precludes the utilisation of the land comprised therein, or substantial portion thereof, for effective cultivation, allows an additional area of two standard hectares for each raiyat. We find nothing wrong in the provision contained in Section 14-Q(2). On the contrary, it appears to be a very reasonable provision.

53. It is argued that the provision with regard to imposition of a ceiling on orchards contained in Section 14-Q(2) is not protected by Article 31-A as the land comprised in orchards cannot be said to be agricultural land, nor can acquisition of land comprised in orchards be a part of agricultural reform as it is not held or let out for the purpose of agriculture and, therefore, cannot be a part of a scheme of agrarian reform. The validity of Section 14-Q(2) putting a ceiling on lands comprised in orchards is assailed on the ground that the Act makes no provision for payment of compensation in respect of orchards.

54. Section 14-V provides that compensation for vesting of any land in the State under the provisions of Chapter II-B shall be determined on the principles and in the manner, as specified in Chapter III of the West Bengal Estates Acquisition Act, 1953. It is pointed out that the West Bengal Estates Acquisition Act, 1953 provided by Section 6(1)(f) that, notwithstanding anything contained in Sections 4 and 5 of the Act, for the vesting of estates and of rights of intermediaries therein, and of some rights of raiyats and under-raiyats, an intermediary shall be entitled to retain, subject to the provisions of sub-section (3) land comprised in tea-gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy. Since land comprised in orchards did not vest in the State it is urged that no provision was made in Chapter III of the Act for payment of compensation for orchards. From the absence of such a provision, the learned counsel assumes that there is no provision for payment of compensation for acquisition of land comprised in orchards, fixing the ceiling limit of two standard hectares, under Section 14-Q(2).

55. The absence of a provision for payment of compensation in respect of orchards in Chapter III of the West Bengal Estates Acquisition Act, 1953 does not mean that no compensation is to be determined or is not payable under Section 14-V. In such a case, the general provisions relating to payment of compensation in respect of acquisition of land will apply. The principle on which, and the manner in which, compensation is to be determined and given are set out in Sections 16 and 17. Section 16 provides for computation the net annual income of land. Section 17 provides that the amount of compensation shall be a multiple of the net annual income, the multiple depending upon

the extent of income. The multiple ranges from two to twenty times. The compensation has to be calculated according to the graded scale in the table given in Section 17. Where the legislature has laid down the principles for computation, the amount of compensation is not justiciable after the Fourth Amendment. It cannot be asserted that compensation payable for acquisition of land comprised in orchards in excess of the ceiling limit in Section 14-Q(2), according to the provisions of Section 14-V is illusory. Where the law provides for payment of compensation as much as twenty times the annual income, it is virtually the capitalized value. The petitioners who own orchards would, therefore, get much more as the income derived by them would be greater than the raiyats holding land in excess of the ceiling limit in Section 14-M(2).

56. There remains the question as to whether the provisions of Chapter II-B must be struck down on the ground that it permits the taking away of the homestead of a raiyat without payment of compensation. The definition of land as contained in Section 2(7) is an inclusive one and it means agricultural land other than land comprised in a tea-garden and includes homesteads but does not include tank. There can, therefore, be no doubt that the provisions of Chapter II-B shall apply where the homestead is included in the record of rights as forming part of an agricultural holding. Agricultural holding of a raiyat includes his homestead and the raiyat can retain land including homestead under Section 14-M(1) up to 7.0 standard hectares in irrigated area and 8.9 standard hectares in unirrigated area. For the vested land a raiyat would be entitled to get compensation under Section 14-V, according to the principles specified in Chapter III of the West Bengal Estate Acquisition Act, 1953. It is, however, pointed out that an intermediary was entitled under Section 6(1)(f) of that Act to retain his homestead and, therefore, there is no provision made in Section 16 or Section 17 for payment of any compensation in respect of homestead.

57. We are informed by learned counsel appearing for the State of West Bengal that the government are not interested in depriving the raiyats of their homestead, and they are entitled to retain it. Normally, raiyats would not be affected as they would be allowed to retain their homesteads, as falling within the ceiling limit allowed under Section 14-M.

58. Visualizing that there may be some exceptional cases of large land-holders having extensive lands spread over different villages, and consequently a number of homesteads, learned counsel for the State of West Bengal has pointed out that in such an event the provisions of Section 16(1)(a)(ii) of the West Bengal Estates Acquisition Act would be attracted, which reads :

16. (1) For the purpose of the preparation of the Compensation Assessment Roll -

(a) the gross income of an intermediary shall be taken to consist of -

(ii) in respect of the khas land which the intermediary does not retain under sub-section (1) of Section 6, the annual income of such land determined in the prescribed manner.

59. In this connection Rule 15(b) and (d) of the West Bengal Estates Acquisition Rules, 1954, provide the procedure for arriving at the compensation for any homestead if such homestead falls within the category of agricultural land i.e., where it entered in the record of rights as part of agricultural holding of a raiyat.

60. If a homestead is entered in the record of rights as non-agricultural land or as a part of a non-agricultural holding, it does not come within the purview of the Act, and, therefore, the question of

vesting of such homestead does not arise.

61. As already adumbrated, the State of West Bengal has no intention to oust any raiyat from his homestead, or not to pay any compensation under the existing provisions for any homestead which is vested in the State under the provisions of the Act. A raiyat is within his rights to retain land up to the ceiling limit applicable to him in accordance with Sections 14-M and 14-T. Thus a raiyat is at liberty to retain his homestead and not to allow it to be vested in or acquired by the State under the Act. It is expected that normally raiyats would retain their homesteads and, therefore, the question of ousting them from their homesteads does not arise at all. In other cases, where raiyats willingly give up their homestead to be vested in the State, i.e. to be acquired by the State, without desiring to retain the same within the ceiling area applicable to him the question of payment of compensation will arise and in such cases, compensation would be computed in accordance with Section 16(1)(a)(ii) of the West Bengal Estates Acquisition Act read with Rule 15(b) and (d) of the West Bengal Estates Acquisition Rules.

62. The last contention as to the constitutional validity of Section 14-M(5) on the ground that it is violative of Article 26 appears to be misconceived. The submission is that since the fundamental right to own property under clause (c) of Article 26 is subject only to the law relating to public order, morality and health, it cannot be made subject to a law for agrarian reform, as that has nothing to do with public order, morality or health. In *State of Bihar v. Kameshwar Singh* (1952 SCR 889 : AIR 1952 SC 252) the Court repelled the argument and said that a charity created by a private individual is not immune from sovereign's power of compulsory acquisition for public purposes, and that the vesting of the property in the State under the provisions of the Act in question there, would not in any way affect the charity adversely because the net income that the institutions are deriving from properties has been made the basis of compensation awarded to them. The power of eminent domain which is inherent in every sovereign State, must be capable of being exercised against every property held by any person in the State. Being a fundamental attribute of sovereignty of State one cannot imagine that the framers of the Constitution intended to divest the State of that attribute by implication in the case of property owned by a private trust. Just as the property of a private trust is held subject to a law imposing a tax upon it, so also is that property subject to the eminent domain of the State.

63. All that Section 14-M(5) provides is that land owned by a trust or endowment other than of a public nature, shall be deemed to be land owned by the beneficiary of the trust or endowment, and each such beneficiary shall be deemed to be a raiyat under the Act to the extent of the share of his beneficial interest in the said trust or endowment. What is of essence is the capacity in which the land is held. If a raiyat is a beneficiary of a private trust, his beneficial interest consists in the offerings or income. The provision in effect prescribes that the land should be clubbed for the computation of the ceiling area under Section 14-M(1). The imposition of such a ceiling would no doubt reduce the holding of the trust, but the government has the power under Section 14-Q(3) to increase the ceiling area in certain cases. Where the government is satisfied that a corporation or institution established exclusively for a charitable or religious purpose or both, for which a ceiling limit is prescribed under Section 14-Q(1), or a person holding any land in trust or in pursuance of any other endowment, creating a legal obligation exclusively for a purpose which is charitable or religious, or both, requires land, as distinct from the income of such land, for the due performance of its obligation, it may having regard to all the circumstances of the case, increase the ceiling area for such corporation or institution or person to such extent as it may deem fit. The legislature has, therefore, provided adequate safeguards under Section 14-Q(3) to soften the rigour of the Act in relation to religious and charitable trusts.

64. The challenge to the validity of Chapter II-B of the West Bengal Land Reforms Act, 1955 introduced by the West Bengal Land Reforms (Amendment) Act, 1971 must, therefore, fail.

65. In the result, the petitions must fail and are dismissed with costs, quantified at Rs. 5,000 in one set.

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