Begulla Bapi Raju and Others

Vs

State of Andhra Pradesh

Chinnam Nagabhushnam and Others

Vs

State of Andhra Pradesh

Chinnam Sivaramprasad

Vs

Land Reforms Tribunal, Kovvur and Others

Kaza Seetharamchandra Rao

Vs

State of Andhra Pradesh and Another

Special Leave Petitions (Civil) Nos. 1671, 2631, 3322-23, etc. of 1979; 6639-40, 6794, 5121-22 of 1978; and 3797 of 1980

(E. S. Vankataramiah, A. N. Sen, R. B. Mirsa JJ)

23.08.1983

JUDGMENT

R. B. MISRA, J. -

1. This batch of special leave petitions and writ petitions arising out of proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as the 'Andhra Pradesh Act') is directed against the judgments of the High Court of Andhra Pradesh and raise common questions of law. They are, therefore, being disposed of by a common judgment. It will suffice to refer to the facts of Special Leave Petition No. 6794 of 1978, Chinnam Nagabhushnam v. State Andhra Pradesh to bring out the points of controversy in these cases.

2. Chinnam Jaganmohanrao and Chinnam Sivaramprasad, petitioners Nos. 2 and 3 are the sons of the first petitioner, Chinnam Nagabhushnam. Petition No. 2 is still a minor but petitioner No. 3 has become major recently. The first petitioner and the third petitioner partitioned their property by metes and bounds by virtue of a registered partition deed dated April 12, 1960 and since then they are in separate possession of the land falling in their respective shares. By a second petitioner further petitioner the properties that fell to the share of the first petitioner in the first partition between themselves. On January 10, 1970 the third petitioner sold an area of 12 acres of Pangidigudem village to P. Pattabhi. On April 10, 1970 he sold an area of 10.22 acres and 10 acres

of village Pangidigudem under sale agreement Ex. A-9, for Rs. 80,000 to G. Veeraju and the vendee was put in possession. On June 12, 1970 the first petitioner sold an area of 22.63 acres of Pangidigudem village to one B. Appa Rao under sale agreement Ex. A-12. Again on June 16, 1970 the third petitioner sold an area of 8 acres of Pangidigudem village to B. Balaram Singh under sale agreement Ex. A-10.

3. The Andhra Pradesh Act came into force on January 1, 1975 by virtue of a notification issued by the State Government. By April 1, 1975 all the three petitioners filed separate declarations in accordance with Section 8 of the Act on the footing that the separated minor sons did not constitute a 'family unit' and their holdings cannot be tagged with the holding of the father and that land transferred to outsiders either under agreements of sale or under gift deed should not be included in the holding of the petitioners. The Land Reforms Tribunal, Kovvur, however, treated the holding in question as the holding of the 'family unit' on the finding that divided minor sons also constituted a 'family unit', and the part of holding transferred to various persons a either under agreements of sale or under gift deed formed a part and parcel of the holding of the 'family unit'. Accordingly, on September 27, 1976 the Tribunal declared that the 'family unit was in possession of excess land over the ceiling limit. the petitioners filed an appeal before the Land reforms Appellate Tribunal. The Appellate Tribunal, in its turn, allowed the appeal in part. The petitioners still felling aggrieved filed a revision to the High Court of Andhra Pradesh. The High Court dismissed the same on July 7, 1978. The petitioners have now filed the special leave petition to challenge the order of the High Court.

4. Shri. M. N. Phadke appearing for the petitioners has raised the following contentions :

(1) A separated minor son is not a member of the 'family unit' and, therefore, his property cannot be tagged with that of his father.

(2) Some of the plots fall in drought-prone area and, therefore, the petitioner should have got an advantage of twelve and a half per cent.

(3) The definition of family unit under Section 3(f) as interpreted by the High Court is also violative of Article 14 of the Constitution.

(4) Land transferred by the petitioners under various transfer deeds to outsiders and who came in possession also could not be included in the holding of the petitioners.

(5)(a) Section 3(f) of the Andhra Pradesh Act coupled with explanation thereto being destructive of Article 21 of the Constitution is violative of the basic structure of the Constitution.

(b) Life and livelihood go together and, therefore, deprivation of the minors of the land is hit by Article 21 of the Constitution which contemplates not only a mere existence but living with dignity.

5. The argument by the counsel for the parties was over on March 23, 1983 when the judgment was reserved. Two weeks, were, however, allowed to Shri Phadke to file written submissions and three weeks time to file the notification with respect to drought-prone areas in the above matter. Time for filing written submissions was extended up to April 14, 1983. The petitioners, however, were notable to get the exact notification in respect of the drought-prone area. They have, therefore, in their written arguments sought permission to withdraw the said contention for the present with

liberty to raise the same before the appropriate authority whenever the said notification is available.

6. Before dealing with the points raised by the learned counsel for the petitioners it may be pointed out that the Andhra Pradesh Act was enacted by the Andhra Pradesh Legislature on January 1, 1973. Soon after, its constitutional validity was challenged before the Andhra Pradesh High Court on various grounds but a Full Bench of the High Court negatived the challenge and held the Act to be constitutionally valid on April 11, 1973. Effective steps for implementation of the Act could not, however, be taken till January 1, 1975.

7. The Andhra Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1977 was enacted with retrospective effect from January 1, 1975 which introduced Section 4-A among other provisions. As soon as the amending Act was passed another round of litigation was started by the landholders by filing writ petitions in this Court challenging again the constitutional validity of the Andhra Pradesh Act. One of the grounds taken was that by reason of enactment of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Central Act')) the Andhra Pradesh Act had become void and inoperative. The other ground taken in those cases was that the definition of 'family unit' was violative of Article 14 of the Constitution. The ground of discrimination under Article 14 was, however, negatived by the Court. Certain other questions involving the interpretation of the provisions of the Andhra Pradesh Act were also raised in some of the writ petitions. But this Court in Thumati Venkaiah v. State of Andhra Pradesh ((1980) 3 SCR 1143 : (1980) 4 SCC 295 : AIR 1980 SC 1568) observed that the other questions could be agitated by the landholders in the appeals filed by them against the orders determining surplus land. This Court did not invalidate the whole of the Andhra Pradesh Act but only in respect of the provisions which were found repugnant to the provisions of the Central Act.

8. This is the third attempt on the part of the landholders to challenge the constitutional validity of some of the provisions of the Andhra Pradesh Act.

9. All the points raised by Shri Phadke are covered by some decision or the other of the Supreme Court, Shri Phadke, however, tried to distinguish those cases on the ground that the specific pleas sought to be raised by him in the present petition were not actually considered in those decisions, and, therefore, he cannot be precluded from raising the contentions which were conspicuous by their absence in those decisions. We take up the first ground first.

10. In Thumati Venkaiah case ((1980) 3 SCR 1143 : (1980) 4 SCC 295 : AIR 1980 SC 1568) this Court made it clear, as stated earlier, that it would examine only the constitutional validity of the Andhra Pradesh Act and other questions could be agitated by the landholders in the petitions filed by them against the orders determining the surplus land. In spite of the aforesaid observations the Court did consider the question whether a separated minor son will or will not be construed as a member of the family unit, as will be evident from the following observations made by the Court : (SCC p. 305, para 6)

The next contention urged on behalf of the landholders was that on a proper construction of the relevant provisions of the Andhra Pradesh Act, a divided minor son was not liable to be included in "family unit" as defined in Section 3(f) of that Act.

and eventually the Court held : (SCC p. 306, para 6)

We do not therefore see how a divided minor son can be excluded from the 'family unit'. That would

be flying in the face of Sections 3(f) and 4 of the Andhra Pradesh Act.

11. It will be relevant at this stage to refer to certain material provisions of the Act in order to appreciate the arguments :

> 3. In this Act, unless the context otherwise requires -
>
> (f) 'family unit' means -
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> (i) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and their unmarried minor daughters, if any;
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> (ii) in the case of an individual who has no spouse such individual and his or her minor sons and unmarried minor daughter;
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> (iii) in the case of an individual who is a divorced husband and who has not remarried, such individual and his minor sons and unmarried minor daughters, whether in his custody or not; and
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> (iv) where an individual and his or her spouse are both dead, their minor sons and unmarried minor daughters.

Explanation. - Where a minor son is married, his wife and their offspring, if any, shall also be deemed to be members of the family unit of which the minor son is a member.

12. Section 3(o) defined 'person' as including inter alia an individual and a family unit. Section 10 is a key section which imposed ceiling on the holding of land by providing that if the extent of the holding of a person is in excess of the ceiling area, the person shall be liable to surrender the land held in excess. If, therefore, an individual or family unit holds land in excess of the ceiling area, the excess land would have to be surrendered to the State Government. The extent of the ceiling area has been provided by Section 4(1) of the Andhra Pradesh Act, which reads :

> 4. (1) The ceiling area in the case of a family consisting of not more than five members shall be an extend of land equal to one standard holding.
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> (2) The ceiling area in the case of a family unit consisting of more than five members shall be an extent of land equal to one standard holding plus an additional extent of one-fifth of one standard holding for every such member in excess of five, so however, that the ceiling area shall not exceed two standard holdings.
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> (3) The ceiling area in the case of every individual who is not a member of a family unit, and in the case of any other person shall be an extent of land equal to one standard holding.

Explanation. - In the case of a family unit, the ceiling area shall be applied to the aggregate of the lands held by all the members of the family unit.

13. It will thus be clear that the ceiling area in case of an individual who is not a member of the family unit is equivalent to one standard holding and so also in the case of a family unit with not more than five members the ceiling area is the same. But if the family unit consisted of more than

five members the ceiling area would stand increased by one-fifth of one standard holding for every additional member of the family unit, subject, however, to the maximum limit of two standard holdings. In view of the explanation added to Section 4 the land held by all the members of the family unit shall be aggregated for the purpose of computing the holding of the family unit. Obviously, therefore, where a family unit consisted of father, mother, and minor sons or daughter the land held by all these persons would have to be clubbed together and then ceiling area limit applied to the aggregate holding. No distinction has been made in the definition of family unit between a divided minor son and an undivided minor son. Both stand on the same footing and a divided minor son is as much a member of the family unit as an undivided minor son. Family unit is not to be confused with joint family.

14. The contention of Shri Phadke is that the definition of various terms as given in Section 3 of the Andhra Pradesh Act opens with the words : "In this Act, unless the context otherwise requires". According to the learned counsel the context 'otherwise requires' that the word 'minor' in section 3(f) cannot include a divided minor son. Section 4(2), argued the learned counsel, deals with the ceiling area of a family unit and Section 4(3) deals with the ceiling area of an individual who is not a member of a family unit. A divided minor son, submits the counsel, is an individual and is no longer a member of a the family unit inasmuch as partition has not only the effect of division of the property but a complete severance from membership of the joint family. Thus a minor who is separated under a partition deed cannot be a member of the family unit but becomes an individual.

15. The counsel supported his argument by reference to clauses (3) and (4) of Section 5 of the Andhra Pradesh Act. Clause (3) deals with the holding of an individual who is not a member of a family unit but is a member of a joint family, and reads :

> (3) In computing the holding of an individual who is not a member of a family unit, but is a member of a joint family, the share of such an individual in the lands held by the joint family shall be taken into account and aggregated with the lands, if any, held by him separately and for this purpose, such share shall be deemed to be the extent of land which would be allotted to such individual had there been a partition of the lands held by the joint family.
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> Clause (4) deals with the member of a family unit who is also a member of a joint family, and reads :
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> (4) In computing the holding of the member of a family unit who is also a member of a joint family, the share of such member in the lands held by the joint family, the share of such member in the lands held by the joint family shall be taken into account and aggregated with the lands, if any, held by him separately and for this purpose, such share shall be deemed to be the extent of land which would be allotted to such member, head there been a partition of the lands held by the joint family.

On the strength of these clauses it is sought to be argued for the petitioners that joint family is recognised as a legal entity in the computation of holding. Reference was also made to Section 3(f), clauses (iv) which provides that where an individual and his or her spouse are both dead, their minor sons and unmarried daughters will be a constituent of 'family unit'. The contention of Shri Phadke is that in view of clause (iv) of Section 3(f) an orphan constitutes a family unit and is a member thereof, and in the light of these provisions is one looks at Section 8, Explanation I regarding declaration holding it will be clear that it speaks of "where the land is held or is deemed to be held

by a minor not being a member of a family unit, the declaration shall be furnished by his guardian". Explanation II deals with the land held by the family unit and the declaration on behalf of the family unit is to be made by a person in the management of the property of such family unit. Such a minor not being a member of the family unit, says the counsel, can only be a separated member of the joint family.

16. Shri Ram Reddy, learned counsel for the respondent State relied on Kanuru Venkatakrishna Rao. V. Authorised Officer, Land Reforms, Bandar ((1978) II APLJ 114) in support of his contention that a separated minor son is as much a member of the family unit as a non-separated minor son. The precise argument of the learned counsel in that case was that since no provision is made in the Act to indicate the holding of a 'family unit' the other provisions of the Act cannot have any application with regard to a family unit. The High Court held :

> According to the definition of the term 'person' a family unit a also a person. All the provisions of the act are intended by the Legislature to apply to the family unit like the other categories of the term 'person' as per its definition. Therefore, the Legislature intended the family unit also to have a holding for the purpose of applying the provisions of the Act relating to determination of the ceiling limit and excess land, if any, over it. It is true the provision is not specific that such and such land constituted the holding of a family unit. But from what was said in the explanation to Section 4, it is clear what is meant by the Legislature to be the holding of a family unit. The implication is very clear that the holding of a family unit is the aggregate of all the lands held by all the members of the family unit ..... By means of the Explanation itself the Legislature intended to make that provision.

17. A similar question arose in a recent case before this Court in State of Maharashtra v. Vyasendra ((1983) 3 SCC 70). Section 4 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 dealt with 'family unit' and the land held by it. Dealing with the question Hon'ble the Chief Justice speaking for the Court observed : (SCC pp 72-73, para 6)

The circumstances that the land held by a constituent member of the family unit is separate property or stridhan property is a matter of no consequence whatsoever for the purpose of determining the ceiling area which the family unit can retain. The respondent, his wife and their minor sons and minor unmarried daughters, if any, are all constituent members of the family unit and all the lands held by them have to be pooled together for the purpose of determining the ceiling are which is permissible to the family unit. The nature or character of their interest in the land held by them is irrelevant for computing the ceiling area which the family unit may retain.

In our opinion, therefore, the definition of family unit along with the explanation does not leave the slightest doubt that a separated minor son is as much a member of the family unit as a joint son with his father.

18. This leads us to the second ground relating to drought-prone area. It may be pointed out at the very outset that no such plea had been taken before the High Court. The petitioners seek to get an advantage of 12, per cent on account of the land lying in drought-prone area in view of Section 5(iv) of the Andhra Pradesh Act. Section 5(iv) provides :

> 5. (iv) In the case of any land situated in any area declared by the government by notification to be a drought-prone area, the extent of standard holding shall be

increased, -

(a) by twelve and a half per centum, in the case of any dry land falling under Class G or Class H of the said Table below;

(b) by twenty per centum, in the case of any dry land falling under Class I, Class J or Class K of the said Table.

In order to attract the provision of clause (iv) of Section 5 the petitioner have to establish that the Government by notification has declared a particular area to be a drought-prone area. The petitioner were given an opportunity to produce the notification which they have failed to do and now the petitioners seek that they should be given an opportunity to produce the specific notification as an when they are able to procure the same. We are not inclined to give such a blank cheque to the petitioners to produce the required notification as and when they like. Indeed they should have raised a contention to that effect before the High Court and should have product the necessary notification but that they did not do. Even before this Court they have not been able to produce the specific notification issued by the Government. Under the circumstances they cannot be allowed to urge this point for want of necessary foundation for the argument, We also decline to accede to their request that they may be allowed to produce the required Government notification according to their sweet will and as and when they are able to produce the same.

19. We now take up the third ground that the definition of family unit under Section 3(f), as interpreted by the High Court is violative of Article 14 of the Constitution. This point is also covered by a decision of this Court in Seth Nand Lal v. State of Haryana ((1980) 3 SCR 1181 : 1980 Supp SCC 574 : AIR 1980 SC 2097) and the Court repelled the argument firstly on the ground that it was saved by the protective umbrella under Article 31-A and Article 31-B of the Constitution and also on other considerations as will be evident from the following observation : (SCC p. 584, para 14)

It has been pointed out that adopting 'family' as a unit as against 'an individual' was considered necessary as that would reduce the scope for evasion of law by effecting mala fide partitions and transfer since such transactions are usually made in favour of family members, that normally in rural agricultural set up in our country the family is the operative unit and all the lands of a family constitute a single operational holding and that therefore ceiling should be related to the capacity of a family to cultivate the lands personally. it has been pointed out that keeping all these aspects in view the concept of family was artificially defined and double standard for fixing ceiling, one for the primary unit and other for the adult son living with the family was adopted. In fact, a provision like Section 4(3) which makes for the augmentation of the permissible area for a family when the adult sons do not own or hold lands of their own but are living with the family has one virtue that it ensures such augmentation in the case of every family irrespective of by what personal law it is governed and no discrimination is made between major sons governed by different systems of personal law. So far as an adult son living separately from the family is concerned, he is rightly regarded as a separate unit who will have to file a separate declaration in respect of his holding under Section 9 of the Act and since he is living separately and would no be contributing his capacity to the family to cultivate the family lands personally there is no justification for increasing the permissible area of the primary unit of the family. The case of an unmarried daughter or daughters living with the family, counsel pointed out, was probably considered to be a rare case and it was presumed that daughters would in normal course get married and would become members of their husband's units, and that is why no separate provision was made for giving additional land for

every unmarried major daughter living with the family. On the material placed and the initial presumption of constitutionality, we find considerable force in this submission. It is, therefore, not possible to strike down an enactment particularly the enactment dealing with agrarian reform which has been put on the Statute Book with the avowed purpose of bringing about equality or rather reducing the inequality between the haves and the have nots, as being violative of Article 14 of the Constitution simply because it has failed to make a provision for what was regarded as an exceptional case or a rate contingency. In out view, the material furnished on behalf of the State Government by way of justification for adopting an artificial definition of family and a double standard for fixing ceiling is sufficient to repel the attack on these provision sunder Article 14.

We fully concur with the view of the Court.

20. We now take up the fourth ground. The learned counsel of the petitioners contends that the land transferred by the petitioner in favour of outsiders under various deeds could no be included in their holdings, especially when those transfers were not hit by Section 7 of the Andhra Pradesh Act inasmuch as the transfers were made much before January 24, 1971. This point is again covered by a uddin (AIR 1982 SC 913 : (1982) 2 SCC 1 : AIR 1982 SC 913) to which one of us was a party. In that case the Court had to construe the expression 'held' as defined in Section 3(i) of the Andhra Pradesh Act. It reads :

> 3. (i) 'holding' means the entire land held by a person, -
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> (i) as an owner;
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> (ii) as a limited owner;
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> (iii) as a usufructuary mortgagee;
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> (iv) as a tenant;
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> (v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise, or in one or more of such capacities;
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> and the expression 'to hold land' shall be construed accordingly.

Explanation. - Where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons. Dealing with the expression 'held' the Court observed : (SCC p. 4, para 8)

The word 'held' is not defined in the Act. We have, therefore, to go by the dictionary meaning of the term. According to Oxford Dictionary 'held' means : to possess; to be the owner or holder or tenant of; keep possession of; occupy. thus, 'held' connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession. For example, if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale, the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not in actual possession will also be taken to be a holder or the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of the term 'holding'. The explanation clearly contemplates that the same land can be the holding of two different person holding the land in two different

capacities. The respondent in view of the definition certainly is holding as an owner, although he is not in possession.

21. Shri Phadke, however, contends that Section 3(i) of the Andhra Pradesh Act being unreasonable is ultra vires because the same land cannot be the land of the transfer as well as of the transfer and that Mohd. Ashrafuddin case (AIR 1982 SC 913 : (1982) 2 SCC 1 : AIR 1982 SC 913) required reconsideration. That case has taken into consideration the various relevant provisions of the Act and the Court came to the conclusion that the same land can be the land of the transferor as well as the transfer in view of the definition of the term 'holding' in Section 3(i) of the Andhra Pradesh Act and in out opinion the view taken in that case is fully warranted by the provisions of the Act. We are not persuaded to accept the contention that the case requires reconsideration.

22. This leads us to the last point but not the least in importance, in that the petitioners have been deprived of a substantial portion of their holding in the form of surplus land and thereby they have been deprived of their livelihood affecting their right to live, which is violative of Article 21 of the Constitution. In support of this contention strong reliance was placed on the case of Maneka Gandhi v. Union of India ((1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597) which has given a new dimension to Article 21 of the Constitution. It was held in that case that right to live is not merely confined to physical existence, but it includes within its ambit the right to live with basic human dignity and the State cannot deprive anyone of this valuable right. It was further submitted that Section 3(f) of the Andhra Pradesh Act with the explanation added to it is destructive of Article 21 and, therefore, violative of the basic structure of the Constitution. This point is also covered by two decisions of this Court. In In re Sant Ram ((1960) 3 SCR 499 : AIR 1960 SC 932 : (1961) 1 SCJ 98)dealing with Article 21 of the Constitution a Bench of five Judges of this Court held :

The argument that the word 'life' in Article 21 of the Constitution includes 'livelihood' has only to be stated to be rejected.

The same view was reiterated by a Bench of three Judges in A. V. Nachane v. Union of India ((1982) 1 SCC 205 : 1982 SCC (L&S) 53 : (1982) 2 SCR 246 : AIR 1982 SC 1126 : (1982) 1 LLJ 110 : (1982) 60 FJR 99 : 1982 Lab IC 161). In that case the validity of the Life Insurance Corporation (Amendment) Act, 1981 (I of 1981) and the Life Insurance Corporation of India Class III and Class IV employees (Bonus and Dearness Allowance) rules, 1981, were challenged on several grounds including Article 21 of the Constitution and the Court dealing with this aspect of the matter quoted with approval the case of Sant Ram ((1960) 3 SCR 499 : AIR 1960 SC 932 : (1961) 1 SCJ 98) in the following words : (SCC para 7, p. 214 : SCC (L & S) p. 60)

As regards Article 21, the first premise of the argument that the word 'life' in that Article includes livelihood was considered and rejected in In re Sant Ram ((1960) 3 SCR 499 : AIR 1960 SC 932 : (1961) 1 SCJ 98).

Shri Phadke, however, brushed these cases aside on the simple ground that they are, not relevant for the decision of the question whether the right to live includes the right to live with human dignity, and the decision on Maneka Gandhi case ((1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597) must be deemed to be the correct exposition of the law on the subject. The contention that life includes livelihood within the meaning of Article 21 of the Constitution was repelled in these two cases and Maneka Gandhi case ((1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597) did not take into consideration the case of Sant Ram ((1960) 3 SCR 499 : AIR 1960 SC 932 : (1961) 1 SCJ 98). These cases, therefore, still hold the field.

23. Besides, the petitioners have been deprived of their holding in the form of surplus land but it was only for the purpose of giving relief to the downtrodden and the poor agricultural labourers. The surplus land would vest in the State and the State in its turn would give it to the poor and the downtrodden and thus such a deprivation will be protected under Article 39 of the Directive Principles. The case of Maneka Gandhi ((1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597), in out opinion, is not relevant for the decision of the point under consideration.

24. The counsel for the petitioners in other cases adopted the same argument of Shri Phadke.

25. Having given our best consideration to the questions involved in the cases we find no infirmity in any of the provisions of the Andhra Pradesh Act.

26. For the foregoing discussion all the special leave petitions and the writ petitions must fail. They are accordingly dismissed.

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