SUPREME COURT OF INDIA

K.T.Plantation Pvt. Ltd. & Anr.

Vs.

State of Karnataka

C.A.No.6520 of 2003

(S.H.Kapadia,J., Mukundakam Sharma and K.S.Radhakrishnan,JJ., Swatanter Kumar and Anil R.Dave,JJ.,)

09.08.2011

JUDGMENT

K.S.Radhakrishnan,J.,

1. The constitutional validity of Roerich and Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996 (in short the "Acquisition Act"), the legal validity of Section 110 of the Karnataka Land Reforms Act, 1961 (in short "Land Reforms Act"), the Notification No. RD 217 LRA 93 dated 8th March, 1994 issued by the State Government thereunder and the scope and content of Article 300A of the Constitution of India, are the issues that have come up for consideration in these civil appeals.

2. We propose to deal with the above issues in three parts. In Part-I, we will deal with the validity of Section 110 of the Land Reforms Act and the validity of the notification dated 8.3.1994 and in Part-II, we will deal with the constitutional validity of the Acquisition Act and in Part-III, we will deal with the claim for enhanced compensation and the scope of Article 300A of the Constitution. PREFACE

3. Dr. Svetoslav Roerich, a Russian born, was an internationally acclaimed painter, artist and recipient of many national and international awards including Padma Bhushan from the President of India in the year 1961. Smt. Devika Rani Roerich, grand niece of Rabindranath Tagore had made valuable contributions and outstanding services to the Indian Motion Pictures and Film Industry, was known to be the "First Lady of the Indian Screen". She was awarded Padmashri by the President of India in the year 1958 and was the recipient of the first Dada Saheb Phalke Award and the Soviet Land Nehru Award in the year 1989.

4. Dr. Roerich and Mrs. Devika Rani Roerich had owned an Estate called Tatgunni Estate covering 470.19 acres at B.M. Kaval Village of Kengeri Hobli and Manvarthe Kaval Village of Uttarhalli Hobli, Bangalore South Taluk, out of which 100 acres were granted to them by the State Government in the year 1954 for Linaloe cultivation vide G.O. dated 16.3.1954 read with Decree dated 19.4.1954. When the Land Reforms Act came into force, they filed

declarations under Section 66 of the Act before the Land Tribunal, Bangalore South Taluk-II stating that they had no surplus lands to surrender to the State since the entire area held by them had been used for the cultivation of Linaloe which was exempted under Section 107(1)(vi) of the Land Reforms Act. The Land Tribunal, Bangalore vide order dated 15.3.82 dropped the proceedings instituted under the Act against them holding that the land used for cultivation of Linaloe did not attract the provisions of the Land Reforms Act.

5. Dr. Roerich, it was stated, had sold 141.25 acres (which included 100 acres granted by the Government for Linaloe cultivation) to M/s K.T. Plantations Pvt. Ltd. (the first appellant herein, in short `the Company') by way of a registered Sale Deed dated 23.3.91 for a sale consideration of Rs.56,65,000/-. It was stated that Mrs. Devika Rani Roerich had also sold an extent of 223 acres 30 guntas to the Company on 16.2.1992 for a sale consideration of Rs.89,25,000/- by way of an unregistered sale deed, a transaction disputed by Mrs. Devika Rani. The Company, however, preferred a suit OS 122/92 for a declaration of title and injunction in respect of that land before the District and Civil Judge, Bangalore which is pending consideration.

6. The Company sought registration of the sale deed dated 16.02.92 before the Sub Registrar, Kingeri, who refused to register the sale deed. The Company then preferred an appeal before the District Registrar, but when the appeal was about to be taken up for hearing, one Mary Joyce Poonacha who claimed rights over the property on the strength of an alleged will preferred a Writ Petition No.2267 of 1993 before the Karnataka High Court and a learned Single Judge of the High Court dismissed the writ petition. On appeal, the Division Bench confirmed the order, against which she had approached this Court vide C.A.No.3094 of 1995 and this Court vide its judgment dated 18th April, 1995 directed the District Registrar not to proceed with the matter till the suit is disposed of by the Civil Court. The judgment is reported in (1995) Suppl. 2 SCC 459.

7. Dr. Roerich and Mrs. Devika Rani had no issue and due to old age and other ailments it was reported that they were staying at Hotel Ashok, Bangalore for a couple of years before their death. It was alleged that some of the persons who were associated with the couple, had an eye on their properties, including the land used for linaloe cultivation, valuable paintings, jewellery, artefacts etc., and began to create documents to grab those properties.

8. The Chief Secretary of the State of Karnataka noticing the above facts and circumstances convened a meeting on 1.4.92 in the presence of the Director of Archaeology to take effective and proper steps to preserve the paintings, artefacts and other valuables. For that purpose, they met Smt. Devika Rani and Dr. Roerich on 03.04.92 and a letter was handed over to Dr. Roerich on behalf of the State Government expressing the Government's willingness to purchase the paintings and other valuables so as to set up a Roerich Gallery. The State Cabinet in its meeting held on 09.04.92 also discussed about the desirability of acquiring the landed properties of Roerichs and also for setting up an Art Gallery- cum-Museum, in public interest. Following that meeting, the Roerich and Devika Rani Roerich Estate (Acquisition and Transfer) Ordinance, 1992 was drafted, but could not be issued.

9. The Deputy Commissioner, Bangalore Rural District had reported on 26.6.1993 that though Roerichs had owned 470.19 acres of land including the land used for Linaloe cultivation they had filed declarations only to the extent of 429.26 acres. Out of the extent of 470.19 acres of land owned by them, they had raised Linaloe cultivation to the extent of 356.15 acres and the remaining extent of 114.04 acres was agricultural land. As per the ceiling provisions of the Land Reforms Act they were entitled to hold an extent of 54 acres of agricultural land. As such, the excess of 60.04 acres ought to have been surrendered by them to the Government. The view of the Law Department was sought for in that respect and the Law Department on 18.11.93 stated that the earlier order dated 15.03.82 of the Land Tribunal, Bangalore be re- opened and the action under Section 67(1) be initiated for resumption of the excess land. The Deputy Commissioner was requested to issue suitable instructions to the Tahsildar, Bangalore South Taluk to place the matter before the Land Tribunal, for review of the earlier order dated 15.03.82 by invoking the provisions of Section 122A of the Land Reforms Act.

10. The Deputy Commissioner reported that Dr. Roerich had sold an extent of 137.33 acres of land comprising of survey nos. 124, 126 of B.M. Kaval and survey No. 12 of Manavarth Kaval of Bangalore South Taluk on 23.3.1991 to M/s K.T. Plantations Private Limited and it was reported that the request for mutation in respect of those lands was declined by the local officers and the lands stood in the name of late Dr. Roerich in the Record of Rights.

11. The Commissioner and Secretary to the Government, Revenue Department taking note of the above mentioned facts sought the legal opinion of the Department of Law and Parliamentary Affairs as to whether valuable lands held by the late Roerichs could be resumed by the State before lands changed hands, by withdrawing the exemption given to the lands used for Linaloe cultivation. The Department of Law and Parliamentary Affairs in their note No.108:/L/11/94 dated 1.3.1994 opined that the exemption given under Section 107 of the Land Reforms Act, 1961 can be withdrawn by the Government by issuing a notification as per Section 110 of the Land Reforms Act. Consequently the Commissioner and Secretary to the government proposed to issue a notification to that effect for which approval of the Cabinet was sought for. The Cabinet accorded sanction in its meeting held on 04.03.1994 and the Government issued a notification dated 08.03.1994 in exercise of powers conferred by Section 110 of the Land Reforms Act, withdrawing the exemption granted for the lands used for cultivation of Linaloe under clause (vi) of Sub-section 1 of Section 107 of the Act. Notification was published in the Government Gazette on 11.03.1994.

12. The Assistant Commissioner, Bangalore sub- division later issued a notice no.LRF:CR 17:93-94 dated 28.03.94 to the company to show cause why 137.33 acres of land be not forfeited to the Government, since it had purchased the above mentioned lands in violation of Section 80 and 107 of the Land Reforms (Amendment) Act, 1973. An enquiry under Section 83 of the Land Reforms Act was ordered for violation of the provisions of the Act. The Company, aggrieved by the above mentioned notice, filed Writ Petition No.12806/94 before the High Court of Karnataka, which was allowed to be withdrawn giving liberty to the petitioner to take recourse to the remedies under law. Due to the status quo order passed, by

this Court in these appeals the proceedings pending before the Asst. Commissioner, Bangalore following the show-cause notice dated 28.03.1994 was kept in abeyance.

13. Mary Joyce Poonacha, the appellant in Civil Appeal No. 6538 of 2003 had, in the meanwhile, filed W.P. No. 11149 of 1994 before the Karnataka High Court claiming rights over some of the articles belonging to Roerichs' couple on the strength of a will dated 4.3.1994. The writ petition was dismissed by the High Court holding that the articles claimed by the appellant stood vested in the State in view of the Acquisition Act. Against that judgment, Mary Joyce Poonacha has approached this Court and filed Civil Appeal No. 6538 of 2003.

14. The Company, through its Managing Director, filed Writ Petition No. 32560 of 1996 before the Karnataka High Court challenging the constitutional validity of the Acquisition Act, Section 110 of the Land Reforms Act, the notification dated 08.03.1994 issued thereunder and also sought other consequential reliefs. The writ petition was dismissed by the High Court upholding the validity of the Acquisition Act as well as Section 110 of the Land Reforms Act and the notification issued thereunder except in relation to the inclusion of certain members in the Board of Directors constituted under the Acquisition Act. Aggrieved by the same the Company has come up before this Court in Civil Appeal No.6520 of 2003.

15. Mary Joyce Poonacha and others had also challenged the constitutional validity of the Acquisition Act by filing Writ Petition Nos. 32630- 32646 of 1996 before the Karnataka High Court, which were also dismissed in view of the judgment in Writ Petition No. 32560 of 1996. Aggrieved by the same, they have preferred Civil Appeal Nos. 6521-6537 of 2003.

16. When the Civil Appeals came up before a bench of this Court on 28.07.04 and this Court passed an order framing the following substantive questions of law:-

> "1. Whether Section 110 of the Karnataka Land Reforms Act, 1961, as amended by the Karnataka Land Reforms amendment Act, 1973, (Act 1 of 1974), which came into effect from 01.03.1974, read with Section 79 B of the said Act, introduced by amending Act 1 of 1974, violates the basic structure of the Constitution, in so far as it confers power on the Executive Government, a delegatee of the Legislature, of withdrawal of exemption of Linaloe plantation, without hearing and without reasons?
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> 2. Whether the Roerich and Devika Rani Roerich (Acquisition and Transfer) Act, 1996, (the Acquisition Act), is protected by Article 31C of the Constitution?
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> 3. Whether the true interpretation of Article 300A of the Constitution, the said Act is violative of the said Article in so far as no specific compensation prescribed for the acquisition of 468 acres of Linaloe plantation, and, after deduction of liabilities and payment of compensation for the artefacts, no balance may and/or is likely to exist for

payment of such compensation, as a result of which, whether the Act really is expropriatory in nature?

4. Whether on true interpretation of Article 300A of the Constitution, the said Act is violative of Article 300A as the said Article is not, by itself, a source of Legislative power, but such power of the State Legislature being traceable only to Entry 42 of List III of Schedule VII to the Constitution viz., "Acquisition and Requisition of Property", which topic excludes expropriation and confiscation of property?

5. If Article 300A of the Constitution is construed as providing for deprivation of property without any compensation at all, or illusory compensation, and hence providing for expropriation and confiscation of property, whether the said Article would violate the rule of law and would be an arbitrary and unconscionable violation of Article 14 of the Constitution, thus violating the basic structure of the Constitution? Part-I We will first examine the validity of Section 110 of the Land Reforms Act and the notification dated 08.03.94, issued thereunder.

17. Mr. T.R. Andhyarujina, Senior Advocate appearing for the Company submitted that it had purchased the lands from Roerich couple when those lands stood exempted from the provisions of the Land Reforms Act by virtue of Section 107(1)(vi) of the Act. Learned senior counsel submitted that the State Government cannot, in exercise of its powers under Section 110 of the Act, issue notification dated 08.03.94 to withdraw the exemption granted by the Legislature which is essentially a legislative policy. Learned senior counsel also submitted that Section 110 gave unfettered and unguided power to the Executive to take away the exemption granted by the Legislature and hence that Section is void for excessive delegation of legislative powers on the State Government. In support of his contention, reliance was placed on the judgments of this court In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950 (1951) 2 SCR 747, Rajnarain Singh v. The Chairman, Patna Admnistration Committee, Patna& Another, AIR 1954 SC 569, Vasantlal Maganbhai Sanjanwala v. State of Bombay and Ors. AIR 1961 SC 4, Hamdard Dawakhana (Wakf) Lal Kuan, Delhi & Another v. Union of India & Others (1960) 2 SCR 671.

18. Learned senior counsel also submitted that the State Government cannot take away retrospectively the vested rights of persons to hold lands used for Linaloe cultivation from 01.03.1974 onwards, without assigning any reasons. Further, it was also submitted that the exemption under Section 107(1)(vi) was granted with respect to the lands used for the cultivation of Linaloe, and not for any specific individual, and there is no bar in alienating the land to third parties. In support of the above contention, learned counsel placed reliance on the decisions of this Court in Bakul Cashew Co. and Ors. v. Sales Tax Officer, Quilon and Anr. (1986) 2 SCC 365, Income Tax Officer, Alleppy v. M.C. Ponnoose and Ors. (1969) 2 SCC 351, Regional Transport Officer, Chittoor and Ors. v. Associated Transport Madras (P) Ltd. and Ors. (1980) 4 SCC 597, Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin and Ors. (1969) 3 SCC 112, Hukam Chand etc. v. Union of India (UOI) and Ors. (1972) 2 SCC 601.

19. Shri Andhyarujina also submitted that the show cause notice dated 28.03.1994 was ex facie illegal and that the prohibition of transfer of land under Section 80 of the Act cannot act retrospectively in respect of lands already stood exempted under Section 107(1)(vi) of the Act.

20. Learned senior counsel also refuted the contention of the State that, under Section 107(2) of the Land Reforms Act, there can be only 10 units of land used for Linaloe cultivation exempted under Section 107(1)(vii) of the Act. Learned senior counsel submitted that it would be anomalous for the Legislature, by amending the Act, on the one hand, to exempt the lands for cultivation of Linaloe from operation of the Land Reforms Act, without any limit of holding and, at the same time, deprive the existing cultivators of Linaloe, except to the extent of 10 units on 1.3.74. Learned counsel submitted that Section 107(1)(vi) does not put a limit of 10 units of Linaloe lands.

21. Learned senior counsel also submitted that the State Government has also not followed the procedure laid down in Section 140 of the Land Reforms Act and, in any view, the mere laying of the notification before the State Legislature would not cure the infirmity of excessive delegation. Learned counsel also submitted that though the Land Reforms Act was placed in the 9th Schedule which saves its provisions from the challenge of Articles 14, 19 and 31, a challenge to a provision of the Act for excessive delegation of legislative power is still available and the Land Reforms Act cannot be protected by Article 31B. Shri Andhyarujina also submitted that the State Govt. was led to deprive the appellants of their property even by-passing the Act when it resorted to withdrawing the exemption available under Section 107(1)(vi) of the Land Reforms Act, by issuing its notification dated 08.03.1994 by withdrawing the exemption and making the Company ineligible to hold the agricultural land under Section 79B of the Land Reforms Act which also provided inadequate compensation.

22. Mr. Basavaprabhu S. Patil, senior counsel for the State of Karnataka submitted that the validity of Section 110 of the Act was never questioned before the High Court on the ground of excessive delegation and hence, the appellants are precluded from raising that contention before this Court. Learned senior counsel submitted that the validity of Section 110 was challenged on the ground of violation of the fundamental rights which was rightly negatived by the High Court since the Land Reforms Act was placed in the IXth Schedule. Learned senior counsel also submitted that the Land Reforms Amendment Act (Act 1 of 1974) was also placed in the IXth Schedule and, hence immune from attack on the ground of violation of Articles 14 or 19 of the Constitution and, hence, the notification dated 8.03.1994 issued under Section 110 of the Act is also immune from challenge. Learned senior counsel submitted that the constitutional validity of the amended Act was also upheld by this Court in H.S. Srinivasa Raghavachar and Ors. v. State of Karnataka and Ors. (1987) 2 SCC 692.

23. Learned senior counsel also submitted that the appellants have no locus standi to maintain these writ petitions since they have not perfected their title over the properties in question. Further, Mrs. Devika Rani Roerich had also disputed the execution of the sale deed

dated 16.02.92 and a suit disputing title is pending consideration before the Civil Court. Learned senior counsel also submitted that the company had illegally acquired 141 acres 25 guntas of land in excess of the ceiling prescribed under Section 107(2) of the Land Reforms Act and the Act mandates that no person shall, which includes a Company also, after the date of commencement of the Land Reforms Act, i.e., 01.03.74, acquire land in any manner for cultivation of Linaloe to an extent which together with the land cultivated by Linaloe, if any, already held by him exceed 10 units notwithstanding anything contained in sub-section (1) of Section 107.

24. Learned senior counsel further submitted that the provisions of Sections 66 to 76 also shall apply mutatis mutandis, in respect of every acquisition contrary to Section 107(2). Learned senior counsel also submitted that in any view Section 110 of the Land Reforms Act does not suffer from the vice of excessive delegation of legislative powers. Learned senior counsel submitted that Section 110 of the Land Reforms Act is guided by the policy laid down by the state legislature which is discernible from the scheme of the Land Reforms Act, its objective, provisions in Chapter-VIII, history of the amendment substituting Section 107 (1)(vi) etc. Learned counsel also submitted that exemption under Section 107(1)(vi) was granted to Roerichs' for cultivation of Linaloe, while the Company is statutorily disentitled to hold the land and, hence, the claim for exemption from the provisions of Land Reforms Act is opposed to the policy of the Act. Further nobody can claim the exemption from the provisions of the Land Reforms Act, as a matter of right, much less a Company which is statutorily barred from holding excess agricultural land. By withdrawing the exemption the State Govt. was only giving effect to the underlying legislative policy.

25. Learned senior counsel submitted, but for the exemption granted, Roerichs' would not have held the land used for the cultivation of Linaloe. Exemption was granted to Roerichs subject to Section 110 of the Land Reforms Act and it was with that statutory limitation the Company had purchased the land. Learned senior counsel cited the following judgments of this Court in Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Another AIR 1968 SC 1232; Delhi Cloth & General Mills Ltd. v. Union of India & Others. (1983) 4 SCC 166; Premium Granites and Anr. v. State of Tamilnadu and Ors. (1994) 2 SCC 691; Registrar of Co-operative Societies, Trivandrum and Anr. v. Kunjabmu and Ors. (1980) 1 SCC 340.

26. Learned senior counsel also submitted that there is no provision for providing hearing or recording reasons before issuing the notification dated 08.03.1994, while exercising powers under Section 110 of the Act. Learned senior counsel submitted that exercise of powers under Section 110 of the Act is in the nature of subordinate legislation and no opportunity of hearing or recording of reasons are warranted. In support of his contention learned counsel placed reliance on the decisions of this Court in Shri Sitaram Sugar Co. Ltd. and Another v. Union of India and Others (1990) 3 SCC 223; Union of India and Another v. Cynamide India Ltd. and Another Etc. (1987) 2 SCC 720; H.S.S.K. Niyami & Another v. Union of India & Another (1990) 4 SCC 516; Laxmi Khandsari and Ors. v. State of U.P. and Ors. (1981) 2 SCC 600; J. K. Industries & Another v. Union of India & Others (2007) 13 SCC 673.

27. Learned senior counsel also submitted that requirement of placing the notification dated 08.03.94 before the State Assembly is not a mandatory requirement once the State Government publishes the notification in the official gazette. Reference was made to the judgment in Jan Mohammad Noor Mohammad Bagban v. State of Gujarat and Anr., AIR 1966 SC 385. Learned senior counsel submitted that in any view of the matter, as per the order of this Court dated 24.2.2011 the State Govt. have already taken steps for placing the notification before both the Houses of the State Legislature. Consequently, the defect, if any, of non-laying the notification, has been cured.

28. The Land Reforms Act was enacted by the Karnataka State Legislature to have a uniform law relating to land reforms in the State of Karnataka, relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings etc. Chapter II of the Act deals with general provisions relating to tenancies, Chapter III deals with conferment of ownership on tenants. Ceiling on land holdings is dealt with in Chapters IV and Chapter V deals with restrictions on holding or transfer of agricultural lands. Chapter VIII of the Act deals with exemptions and Chapter XI deals with the miscellaneous provisions.

29. Appellants in these appeals have challenged the validity of Section 110 of the Act primarily on the ground of excessive delegation of legislative powers on the State Government. To examine that contention it is necessary to refer to certain provisions contained in various Chapters referred to above, the scheme of the Act, its object and purpose, legislative policy underlying in the provisions of the statute etc.

30. Chapter V of the Act, as we have already indicated, imposes certain restrictions on holding or transfer of agricultural lands. Section 79B(1) of the Act prohibits holding of agricultural land by certain persons which says that with effect on and from the date of commencement of the Amendment Act (Act 1/74) w.e.f. 1.3.1974, no person other than a person cultivating land personally shall be entitled to hold land; and that it shall not be lawful for, a company inter alia to hold `any land'. Further sub- section (2) of Section 79B states that the company which holds lands on the date of the commencement of the Amendment Act and which is disentitled to hold lands under sub-section (1), shall within ninety days from the said date furnish to the Tahsildar within whose jurisdiction the greater part of such land is situated a declaration containing the particulars of such land and such other particulars as may be prescribed; and which acquires such land after the said date shall also furnish a similar declaration within the prescribed period. Sub- section (3) of Section 79B states that the Tahsildar shall, on receipt of the declaration under sub- section (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification, declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner. Sub- section (4) of Section 79B states that in respect of the land vesting in the State Government under that section an amount as specified in Section 72 shall be paid. Explanation to Section 79B states that for the purpose of that section it shall be presumed that a land is held by an institution, trust, company, association or body where it is held by an individual on its behalf. Section 80 bars transfer of any land to non-agriculturists, which says that no sale, gift or exchange or lease of any land or interest therein etc. shall be

lawful in favour of a person who is disentitled under Section 79A or 79B to acquire or hold any land.

31. The first appellant being a company was, therefore, prohibited from holding any agricultural land after the commencement of the Act. If the company was holding any land with Linaloe cultivation on the date of the commencement of the Act, the same would have vested in the State Government under Section 79B(3) of the Act and an amount as specified in Section 72 would have been paid. Section 104, however, states that the provisions of Section 38, Section 63 other than sub- section (9), thereof, Sections 64, 79-A, 79-B and 80 shall not apply to plantations and is not made subject to the provisions of Section 110.

32. Section 107 states that the provisions of the Act would not apply to certain lands mentioned therein, but made subject to the provisions of Section 110. Section 107, to the extent it is relevant for the purpose, is extracted below for easy reference:

> "107. Act not to apply to certain lands.- (1) Subject to the provisions of Section 110, nothing in this Act, except Section 8, shall apply to lands,-
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> xxx xxx xxx
> xxx xxx xxx
>
> (vi) used for the cultivation of linaloe;
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> xxx xxx xxx
> xxx xxx xxx
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> (2) Notwithstanding anything in sub- section (1), no person shall, after the date of commencement of the Amendment Act acquire in any manner for the cultivation of linaloe, land of an extent which together with the land cultivated by linaloe, if any, already held by him exceeds ten units.
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> (3) In respect of every acquisition contrary to sub-section (2), the provisions of Section 66 to 76 shall mutatis mutandis apply."

Section 107, we have already indicated, is made subject to Section 110, which reads as follows:

> "110. Certain lands to be not exempt from certain provisions.- The State Government may, by notification direct that any land referred to in [Section 107 and 108] shall not be exempt from such of the provisions of this Act from which they have been exempted under the said sections."

33. The question that is canvassed before us is whether Section 110 is invalid due to excessive delegation of legislative powers on the State Government. Before we examine the scope and ambit of the above quoted provision, reference may be made to few of the decided cases of this Court on the power of delegation of legislative functions.

34. In re: The Delhi Laws Act, 1912 (supra), this Court held that legislatures in India have been held to possess wide powers of delegation but subject to one limitation that a legislature cannot delegate essential legislative functions which consists in the determination of the legislative policy and of formally enacting that policy into a binding rule of conduct. In Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Others (1984) 4 SCC 27, this Court declared that while examining whether a particular piece of delegated legislation - whether in the form of a rule or regulation or any other type of statutory instrument - was in excess of the power of subordinate legislation conferred on the delegate, has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation etc. and the object and purpose of the Act as can be gathered from the various provisions of the enactment. It was held that the Court cannot substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purpose of the Act or sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation making body and declare a regulation to be ultra vires merely on the ground that, in the opinion of the Court, the impugned provisions will not help to serve the object and purpose of the Act. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provision of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.

35. Law is settled that the Court shall not invalidate a legislation on the ground of delegation of essential legislative functions or on the ground of conferring unguided, uncontrolled and vague powers upon the delegate without taking into account the preamble of the Act as also other provisions of the statute in the event they provide good means of finding out the meaning of the offending statute. The question whether any particular legislation suffered from excessive delegation, has to be determined by the court having regard to the subject-matter, the scheme, the provisions of the statute including its preamble and the facts and circumstances and the background on which the statute is enacted. See Bhatnagars & Co. Ltd. v. Union of India AIR 1957 SC 478; Mohmedalli and Ors. v. Union of India and Ors., AIR 1964 SC 980.

36. Further, if the legislative policy is formulated by the legislature, the function of supplying details may be delegated to the executive for giving effect to the policy. Sometimes, the legislature passes an act and makes it applicable, in the first instance, to some areas and classes of persons, but empowers the government to extend the provisions thereof to different

territories, persons or commodities, etc. So also there are some statutes which empower the government to exempt from their operation certain persons, commodities, etc. Some statutes authorise the government to suspend or relax the provisions contained therein. So also some statutes confer the power on the executive to adopt and apply statutes existing in other states without modifications to a new area.

37. In Brij Sunder Kapoor v. I Additional District Judge and Ors. (1989) 1 SCC 561 this Court held that the Parliament decided as a matter of policy that the cantonment areas in a State should be subject to the same legislation relating to control of rent and regulation of housing accommodation as in force in other areas of the State and this policy was given effect to by empowering the Central Government to extend to a cantonment area in a State the tenancy legislation as in force as in other areas of the State including future amendments and that there was no abdication of legislative functions by Parliament.

38. Chapter VIII of the Land Reforms Act deals with exemption provisions. Section 104 of the Act deals with plantations, which says, that the provisions of Section 38, Section 63, other than sub-section (9), thereof, Sections 64, 79-A, 79-B and 80 shall not apply to plantations, but the power to withdraw the exemption in respect of the plantations, has not been conferred on the State Government, but evidently retained by the Legislature. Legislative policy is therefore clearly discernible from the provision of the Statute itself, that, whenever the Legislature wanted to confer the power to withdraw the exemption to the State Government it has done so, otherwise it has retained the power to itself.

39. Section 110 of the Land Reforms Act empowers the State Government to withdraw the exemption granted to any land referred to in Sections 107 and

> "108. Section 107 itself has been made "subject to" Section 110 of the Act. The words `subject to' conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. In Black Law Dictionary, 5th Edn. At p.1278, the expression "subject to" has been defined as under:
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> "Liable, subordinate, subservient, inferior, obedient to; governed or effected by; provided that; provided; answerable for." Since Section 107 is made subject to Section 110, the former section conveys the idea of yielding to the provision to which it is made subject that is Section 110 which is the will of legislature. Reference may be made to the decisions of this Court in Punjab Sikh Regular Motor Service, Moudhapara, Raipur v. Regional Transport Authority & Another AIR 1966 SC 1318, Joginder Singh & Others v. Deputy Custodian-General of Evacuee Property & Others AIR 1967 SC 145 and Bharat Hari Singhania & Others v. Commissioner of Wealth Tax (Central) & Others (1994) Supp. 3 SCC 46, Ashok Leyland Ltd. v. State of T.N. & Another (2004) 3 SCC 1, Printers (Mysore) Ltd. v. M. A. Rasheed & Others (2004) 4 SCC 460, South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivendrum & Another AIR 1964 SC 207, Commissioner of Wealth Tax, Andhra

Pradesh, Hyderabad v. Trustees of H.E.H. Nizam's Family (Remainder Wealth Trust), Hyderabad (1977) 3 SCC 362
and Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (1986) 4 SCC 447.

40. The Legislature's apathy in granting exemption for lands used for cultivation of Linaloe is discernible from the language used in sub-section (2) of Section 107, which says that no person shall after the commencement of the Amendment Act acquire in any manner for the cultivation of Linaloe, land of an extent which together with the land cultivated by Linaloe, if any, already held by him exceeds ten units. Legislature, therefore, as matter of policy, wanted to give only a conditional exemption for lands used for Linaloe cultivation and the policy was to empower the State Government to withdraw the same especially when the law is that no person can claim exemption as a matter of right. The legislative will was to make Section 107 subject to Section 110 and not the will of the delegate, hence, overriding effect has to be given to Section 110. Further, the Land Reforms Act including Section 110 was placed in IXth Schedule in the year 1965 and, hence, immune from challenge in a court of law.

41. Dr. Roerich and Mrs. Devika had got only the conditional exemption from the provisions of the Land Reforms Act for the lands used for Linaloe cultivation and, hence, they also would have lost ownership and possession of the lands once the exemption had been withdrawn and the land would have vested in the State. The land was purchased by the Company with that statutory condition from Roerichs and, hence, was bound by that condition. We, therefore, reject the contention that Section 110 is void due to excessive delegation of legislative powers.

42. The State Government issued the notification dated 8.3.1994 in exercise of the powers conferred by Section 110 of the Land Reforms Act which was published in the official gazette on 11.3.94. Section 2(22) of the Act defines `Notification' to mean a notification published in the official gazette. Section 23 of the General Clauses Act 1897 also states that the publication in the official gazette of a rule or by-law purported to have been made in exercise of power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

43. This Court in B.K. Srinivasan and Ors. v. State of Karnataka and Ors. (1987) 1 SCC 658 held as follows:-

> "Unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a minister, a secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation."

44. So far as this case is concerned, the State Government has already followed the legal requirement of publication of the notification dated 08.03.1994 which came into effect on 11.03.94.

45. Mr. T.R.Andhyarujina, learned counsel appearing for the appellants submitted that the respondent State has not followed the procedure laid down in Section 140 of the Act and that the approval of the notification by the State Legislature is an important circumstance to be taken into account in determining its validity. Learned counsel submitted that laying of notification under Section 140 is not a mere laying but is coupled with a negative/affirmative resolution of the Legislature; the failure to lay the notification is an illegality which cannot be cured.

46. Following is the procedure generally followed when an order or notification is laid before the Legislature:-

> "1) Laying which requires no further procedure;
>
> 2) Laying allied with the affirmative procedure; and
>
> 3) Laying allied with negative procedure."

The object of requirement of laying provided in enabling Acts is to subject the subordinate law making authority to the vigilance and control of the Legislature. The degree of control the Legislature wants can be noticed on the language used in such laying clause.

47. We have in this case already found that there has not been any excessive delegation of legislative powers on the State Government and we may now examine whether the failure to follow the procedure laid down under Section 140 of the Act has affected the legal validity of the notification. Facts would indicate that, in the instant case, the notification has not been laid before the Legislature, but looking at the language of Section 140, it has not affected the validity or the effect of the notification. For easy reference Section 140 is extracted hereunder:

> "Section 140. Rules and notifications to be laid before the State Legislature.- Every rule made under this Act and every notification issued under Sections 109, 110 and 139 shall be laid as soon as may be after it is made or issued before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and, if, before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so

however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."

(Emphasis supplied)

48. The Constitution Bench of this Court in Jan Mohammad Noor's case (supra) examined the effect of sub-section 5 of Section 26 which provides that the rules shall be laid before each House of the provisional Legislature, for giving effect. Interpreting that provision the Court held that Section 26(5) of Bombay Act 29 of 1939 does not prescribe that the Rules acquired validity only from the date on which they have been placed before the House of Legislature. The Court held that the Rules are valid from the date on which they are made under Section 26(1). The Court noted that the Legislature has prescribed that the Rules shall be placed before the House of the Legislature, but held that the failure to place the rules before the House of Legislature does not effect the validity of the rules and merely because they have not been placed before the House of the Legislature, the provision cannot be regarded as mandatory.

49. This Court in Atlas Cycle Industries Ltd. & Others v. State of Haryana (1979) 2 SCC 196 examined the question relating to the non-compliance with sub-section (6) of Section 3 of the Essential Commodities Act, 1955 which provides that every order made under the section shall be laid before both Houses of Parliament as soon as may be, after it is made. The Court held that non-compliance with the Laying Clause did not affect the validity of the order and make it void. In Quarry Owners' Association v. State of Bihar & Others (2000) 8 SCC 655, this court while examining the scope of Section 28(3) of the Mines and Minerals (Regulation and Development) Act 1957, stated that when a statue required the placement of a notification before the State Legislature it is the obligation of the state to place the same with the specific note before each House of State Legislature. Even if it had not been done, the State could place the same before the House at the earliest and the omission to comply with it would not affect the validity of the notifications and their coming into force. Direction was issued to the State Government to lay notifications at the earliest.

50. Section 140 does not require the State Legislature to give its approval for bringing into effect the notification, but a positive act by the Legislature has been contemplated in Section 140 to make the notification effective, that does not mean that failure to lay the notification has affected the legal validity, its effect or the action taken precedent to that notification. We, therefore, hold that non-laying of the notification dated 08.03.1994 before the State Legislature has not affected its validity or the action taken precedent to that notification. We have now, vide our order dated 24.02.2011, directed the State Government to place the notification before both the Houses of the State Legislature following the judgment in Quarry Owners' case (supra). Therefore, the defect, if any, of not placing the notification has been cured.

51. We may also consider the effect of Section 80 of the Land Reforms Act on Section 79-B. Section 80 prohibits transfer of any land to non- agriculturalist. Section 80(1)(iv), states that it shall not be lawful to sell, gift, exchange or lease of any land, in favour of a person, who is

disentitled under Section 79-B, to acquire or hold any land. The expression "land" has been defined under Section 2(18) which is all comprehensive and takes in agricultural lands, that is land which is used or capable of being used for agriculture, but for the exemption granted under Section 107(1)(vi) lands used for the cultivation of linaloe would have fallen under Section 2(18). But, so far the company is concerned, the prohibition was total and complete since Section 79-B states that it would not be lawful for a company to hold "any land", with effect and from the date of the commencement of the amending Act. The Company, therefore, could not have held the land used for the cultivation of Linaloe on the date of the commencement of the Act. Further on withdrawal of exemption vide notification dated 08.03.94 the Company was disentitled to hold the land belonging to Roerichs' since the same would be governed by the provisions of the Land Reforms Act.

52. We also find no force in the contention that opportunity of hearing is a pre-condition for exercising powers under Section 110 of the Act. No such requirement has been provided under Section 107 or Section 110. When the exemption was granted to Roerichs' no hearing was afforded so also when the exemption was withdrawn by the delegate. It is trite law that exemption cannot be claimed as a matter of right so also its withdrawal, especially when the same is done through a legislative action. Delegated legislation which is a legislation in character, cannot be questioned on the ground of violation of the principles of natural justice, especially in the absence any such statutory requirement. Legislature or its delegate is also not legally obliged to give any reasons for its action while discharging its legislative function. See - State of Punjab v. Tehal Singh and Ors. (2002) 2 SCC 7; West Bengal Electricity Regulatory Commission v. CESC Ltd. etc. etc. (2002) 8 SCC 715; Pune Municipal Corporation and Anr. v. Promoters and Builders Association and Anr. (2004) 10 SCC 796; Bihar State Electricity Board v. Pulak Enterprises and Ors. (2009) 5 SCC 641.

53. We, therefore, repel the challenge on the validity of Section 110 of the Karnataka Land Reforms Act as well as the notification dt.8.3.1994 and we hold that the land used for linaloe cultivation would be governed by the provisions of the Land Reforms Act which is protected under Article 31B of the Constitution having been included in the IXth Schedule.

PART-II Constitutional Validity of the Acquisition Act

54. The State Government after withdrawing the exemption granted to the lands used for Linaloe cultivation, felt the necessity to take effective and proper steps to manage the estate, its tree growth, preserve paintings, artefact and other valuables of Roerichs' and their transferees and to establish an Art Gallery-cum-Museum. For the said purpose initially the State issued an ordinance, namely, the Roerich and Devika Rani Roerich Estate (Acquisition and Transfer) Ordinance 1992, which was sent for the approval of the President of India. In the meanwhile Roerich couple passed away and the ordinance was returned to make sufficient amendments. After necessary amendments ordinance of 1995 was issued. However, the ordinance was returned by the Government of India informing that it had no objection to introduce legislation as a bill and hence the same with requisite amendments was placed before the Legislative Assembly and the Legislative Council. The Acquisition Act

was then passed and subsequently got the assent of the President on 15.11.96 and was brought into force on 21.11.1996.

55. The Act was questioned by filing a writ petition before the High Court of Karnataka on the ground that enactment providing for compulsory acquisition of Titgunni Estate was not for public purpose and the compensation provided thereunder was illusory. During the pendency of the writ petition the Act was amended by the Amendment Act 2001, w.e.f. 01.11.96 by inserting a new Section 19A to provide clarity for payment of amount to the owners/interested persons. The challenge against the validity of the Act and its provisions were repelled by the High Court except in relation to certain provisions, providing for the inclusion of certain members in the board of directors constituted under the Act.

56. Shri Andhyarujina, submitted that the impugned Act does not contain any provision for protection of agrarian reforms and hence not protected by the provisions of Article 31A and hence not saved from challenges on the ground of violation of Articles 14 and 19 of the Constitution. Learned counsel also pointed out that the management and protection of land used for linaloe cultivation and the preservation of artefacts, paintings etc. are not part of agrarian reforms. Learned senior counsel submitted that concept of agrarian reforms is a dynamic one and this Court in various decisions examined its meaning and content. Reference was made to the judgments of this Court in State of Kerala v. Gwalior Rayon Silk Manufacturing (Wvg.) Co. Limited (1993) 2 SCC 713, Kavalappara Kottarathil Kochuni & Others v. State of Madras & Others (1960) 3 SCR 887, P. Vajravelu Mudaliar v. Special Deputy Collector, Madras and Another (1965) 1 SCR 614, Balmadies Plantations Ltd. & Others v. State of Tamil Nadu (1972) 2 SCC 133.

57. Shri Andhyarujina, also submitted that the impugned Act is ex-facie repugnant to the provisions of Land Acquisition Act, 1894 and hence void under Article 254(1) due to want of Presidential assent on repugnancy. Learned Counsel elaborately referred to the various provisions of the impugned Act and the Land Acquisition Act to bring home his point on repugnancy between both the Legislations, the former being a State Legislation and the latter being a Central Legislation. Learned Counsel specifically pointed out that the procedure and the principle for the acquisition of land as well as determination of compensation, etc., under both the Acts are contrary to each other and hence the impugned Act can be saved only if Presidential assent is obtained under Article 254(2) of the constitution. Learned Counsel submitted that the Acquisition Act is in pith and substance a law on acquisition and presidential assent under Article 254(2), was warranted to save that Legislation.

58. Shri K.N. Bhat, learned senior counsel appearing for the appellants in CA No.6521-6537 of 2003 submitted that Article 300A is almost a replica of Article 31(1), hence, all the judicial pronouncements rendered by this Court on Article 31(1) would equally apply when we interpret Article 300A. Learned counsel also referred to the view expressed by Justice Subba Rao in P. Vajravelu Mudaliar's case (supra) and also referred to Subodh Gopal Bose v. Bejoy Kumar Addya and Others (1973) 2 SCC 105 and few other decisions. Learned counsel submitted that the concept of eminent domain has to be read into Article 300A, which is an over-arching principle. Learned counsel also submitted that the concept of reasonableness,

could be the touchstone while interpreting a statute enacted to deprive a person of his property under Article 300A. Learned counsel also referred to the Judgment of this Court in Kavalappara Kottarathil Kochuni's case (supra) and submitted that a person can be deprived of his property only by a valid law which can be tested in the light of Articles 14 and 21.

59. Shri Dushyant R. Dave, learned senior counsel appearing for the appellants in CA No.6520 of 2003 also supported the arguments of Shri Andhyarujina and submitted that the concept of eminent domain be read into Article 300A of the Constitution and the impugned Act is unconstitutional for not providing adequate compensation to the transferors. Reference was made to several decisions of this Court including the decisions in P. Vajravelu Mudaliar v. Special Deputy Collector, Madras & Anr. (1965) 1 SCR 614; Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India (1970) 1 SCC 248; Deputy Commissioner and Collector, Kamrup & Ors. v. Durga Nath Sharma (1968) 1 SCR 561 and Reliance Energy Limited & Anr. v. Maharashtra State Road Development Corporation Ltd. & Ors. (2007) 8 SCC 1 etc.

60. Shri Andhyarujina, referring to the letter dated 20.09.1996 submitted that the State of Karnataka had sought the assent of the President only for the specific purpose of Clause(a) of Clause (1) of Article 31-A of the Constitution and not for any other purpose and the assent was given only in response to the said proposal of the State Government and there had never been any proposal pointing out the repugnancy between the impugned Act and the Land Acquisition Act and hence the impugned Act is void of ex-facie repugnancy between provisions of the existing Land Acquisition Act 1894 and the impugned Act. In support of his contentions learned counsel placed reliance on judgments of this Court in Gram Panchayat of Village Jamalpur v. Malwinder Singh & Others (1985) 3 SCC 661; Kaiser-I-Hind Pvt. Ltd. & Another v. National Textile Corporation (Maharashtra North) Ltd. & Others (2002) 8 SCC 182.

61. Shri Patil, learned senior counsel appearing for the Respondent-State submitted that Acquisition Act is not open to challenge on the ground of violation of Article 14 or 19 since the same is protected under Article 31A and the assent of the President was obtained. Learned counsel submitted that the impugned Act was enacted in public interest to provide for acquisition of Roerich's Estate, to secure its proper management and to preserve the valuable tree growth, paintings, art objects, carvings and for the establishment of an art gallery-cum-museum. Learned counsel submitted that general scheme of the Acquisition Act is for the preservation of Linaloe cultivation and other tree growth hence constitutes a measure of agrarian reforms and in any view Act does not violate Article 14 or 19 of the Constitution of India.

62. Learned senior counsel also submitted that Acquisition Act was never challenged by the appellants before the High Court on the ground of repugnancy or on the ground of absence of Presidential assent under Article 254(2) of the Constitution. Learned counsel submitted that such a plea cannot be raised for the first time before this Court since the same raises questions of facts. Reference was made to the decisions of this Court in Engineering Kamgar

Union v. Electro Steels Castings Ltd. and Another (2004) 6 SCC 36; Bhuwalka Steel Industries Ltd. v. Bombay Iron and Steel Labour Board and Another (2010) 2 SCC 273. Learned counsel submitted that in any view assent of the President was sought for and obtained which satisfies the requirements of Article 254(2) as well as the proviso to Article 31A of the Constitution.

63. Learned counsel submitted that the Bill was referred for the assent of the President with a specific note that subject matter of the bill falls under Entry 18 of List II and Entry 42 of List III of the VIIth Schedule of the Constitution of India. Learned counsel submitted that the main object of the Acquisition Act is not being "Acquisition and Requisition of Property" and the Legislation in pith and substance is in respect of "land" under Entry 18 of List II of the Constitution and there is no repugnancy between State and Central Legislation and hence no assent of the President under Article 254(2) was warranted. In support of his contention learned counsel also relied on the judgments of this Court in P.N. Krishnan Lal & others vs. Govt. of Kerala & Another (1995) Suppl. (2) SCC 187 and Offshore Holdings Pvt. Ltd. vs. Bangalore Development Authority and Ors. (2011) 3 SCC 139.

64. After passing the Roerich and Devika Rani Roerich Estate (Acquisition and Transfer) Bill 1996 by the Legislative Assembly and Legislative Council, on 10.09.1996, a request was put up in file No. Law 28 LGN 92 stating that subject matter of the Bill would fall under Entry 18 of List II and Entry 42 of List III of the VIIth Schedule of the Constitution pointing out that the State Legislative would be competent to enact such a legislation. Note also indicated that the provisions of draft bill would attract sub-clause (a) of Clause (1) of Article 31A of the Constitution inasmuch as rights of the land owners were proposed to be extinguished, and hence required the assent of the President in accordance with the proviso to Article 31A of the Constitution to make it free from attack and to protect it from being declared as void on the ground of inconsistency or violation of Articles 14 and 19 of the Constitution of India. Further, it was also proposed to place the Bill before the Governor as provided under Article 200 of the Constitution of India for consideration of the President under Clause 2 of Article 254 of the Constitution. Later, a letter dated 20.09.1996 was addressed by the State of Karnataka to the Secretary to the Government of India, Ministry of Home Affairs requesting to obtain the assent of the President. No reference to Article 254(2) was, however, made in that letter but the operative portion of the letter reads as follows :-

> "The subject matter of the Bill falls under Entry 18 of List II and Entry 42 of List III of the 7th Schedule to the Constitution of India. Therefore, the State Legislature is competent to enact the measure. Since the provisions of the Bill would attract sub-clause (a) of Clause (1) of Article 31A of the Constitution, the Bill has to be reserved for the assent of the President in accordance with the proviso to Clause (1) thereof in order to get the protection of that Article. Accordingly, the Governor has reserved the Bill under Article 200 of the Constitution of India for the consideration of the President."

Later, the assent of the President was obtained on 15.11.96.

65. The plea of repugnancy can be urged only if both the legislations fall under the Concurrent List. Under Article 254 of the Constitution, a State law passed in respect of a subject matter comprised in List III would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only if both the laws cannot exist together. The question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are fully inconsistent or are absolutely irreconcilable and it is impossible without disturbing the other, or conflicting results are produced, when both the statutes covering the same field are applied to a given set of facts. Repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by the Parliament and the law made by the State Legislature occupies the same filed. Reference may be made to the decisions of this Court in Deep Chand v. State of U.P. & Others AIR 1959 SC 648; Prem Nath Kaul v. State of Jammu & Kashmir, AIR 1959 SC 749; (1959) Supp. (2) SCR 270, Ukha Kolhe v. State of Maharashtra AIR 1963 SC 1531; Bar Council of Uttar Pradesh v. State of U.P & Another (1973) 1 SCC 261; T. Barai v. Henry Ah Hoe & Another (1983) 1 SCC 177; Hoechst Pharmaceuticals v. State of Bihar (1983) 4 SCC 45; Lingappa Pochanna Appelwar v. State of Maharashtra & Another (1985) 1 SCC 479; and Vijay Kumar Sharma & Others v. State of Karnataka & Others (1990) 2 SCC 562.

66. When the repugnancy between the Central and State Legislations is pleaded we have to first examine whether the two legislations cover or relate to the same subject matter. The test for determining the same is to find out the dominant intention of the two legislations and if the dominant intention of the two legislations is different, they cover different subject matter then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same field. A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). In other words, both the legislations must be substantially on the same subject to attract Article 254. In this connection, reference may be made to the decisions of this Court in Municipal Council Palai v. T. J. Joseph (1964) 2 SCR 87; Ch. Tika Ramji v. State of U.P. 1956 SCR 393; State of Karnataka v. Shri Ranganatha Reddy (1977) 4 SCC 471; M. Karunanidhi v. Union of India & Another (1979) 3 SCC 431; and Vijay Kumar Sharma& Others v. State of Karnataka & Others (1990) 2 SCC 562.

67. We are of the considered view that the Acquisition Act, in this case, as rightly contended by the State, primarily falls under Entry 18 List II, since the dominant intention of the legislature was to preserve and protect Roerichs' Estate covered by the provisions of the Land Reforms Act, on the State Government withdrawing the exemption in respect of the land used for linaloe cultivation. The Acquisition Act, though primarily falls under Entry 18 List II incidentally also deals with the acquisition of paintings, artefacts and other valuable belongings of Roerichs' and, hence, the Act partly falls under Entry 42 List III as well. Since the dominant purpose of the Act was to preserve and protect Roerichs' Estate as part of agrarian reforms, the inclusion of ancillary measures would not throw the law out of the protection of Article 31A(1)(a). On the other hand, the Land Acquisition Act, 1894 is an act which fell exclusively under Entry 42 List III and enacted for the purpose of acquisition of

land needed for public purposes for companies and for determining the amount of compensation to be made on account of such acquisition, which is substantially and materially different from the impugned Act whose dominant purpose is to preserve and protect "estate" governed by Art.31A(a) read with Art.31A(2)(a)(iii) of the Constitution.

68. We are, therefore, of the considered view that no assent of the President was required under Article 254(2) of the Constitution to sustain the impugned Act, which falls under Article 31A(1)(a) of the Constitution, for which the assent of the President was obtained. The contention of the counsel that the Acquisition Act was invalid due to repugnancy is, therefore, rejected.

69. We may also state that the Constitution (17th Amendment) Act, 1964 extended the scope of the expression "estate" in Art.31A(a) as to protect all legislations on agrarian reforms and the expression "estate" was given a wider meaning so as to bring within its scope lands in respect of which provisions are normally made in land reforms enactments. Art.31A(2)(a)(iii) brings in any land held or let for the purpose of agriculture or for purpose ancillary thereto, including waste or vacant land, forest land, land for pasture or sites of buildings and other structure occupied by the cultivators of land etc.

70. In Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd's case (supra), this Court held that the concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganisation of the land system or distribution of land, which is intended to realise the social function of the land and includes various other proposals of agrarian reforms. To test whether the law was intended for agrarian reforms, the court is required to look to the substance of the Act and not its mere outward form. In Kunjukutty Sahib v. State of Kerala & Another (1972) 2 SCC 364, this Court held that any provision for promotion of agriculture or agricultural population is an agrarian reform, which term is wider than land reforms. In Mahant Sankarshan Ramanuja Das Goswami etc., etc. v. State of Orissa & Another (1962) 3 SCR 250, this Court held that a law for the acquisition of an estate etc. does not lose the protection of Article 31A(1) merely because ancillary provisions are included in such law.

71. The Acquisition Act was enacted in public interest, to preserve and protect the land used for the linaloe cultivation and its tree growth as part of agrarian reforms which is its dominant purpose. Proposal to preserve the paintings, artefacts, carvings and other valuables and to establish an Art-Gallery-cum-Museum are merely ancillary to the main purpose. The dominant purpose of the Act is to protect and preserve the land used for Linaloe cultivation, a part of agrarian reforms. The Act is, therefore, saved by the provisions of Art.31A(1)(a).

72. We, therefore, hold that Roerich's estate falls within the expression "estate" under clause (2) of Article 31A of the Constitution and the Act has obtained the assent of the President, hence, is protected from the challenge under Articles 14 and 19 of the Constitution of India. No arguments have been raised on the applicability or otherwise of Article 31C and hence it is unnecessary to examine whether the Act is protected by Article 31C of the Constitution or not. Part-III Article 300A of the Constitution and the Acquisition Act

73. We will now examine the validity of the Acquisition Act on the touchstone of Article 300A of the Constitution and examine whether the concept of eminent domain be read into Art.300A and in the statute enacted to deprive a person of his property.

74. Shri Andhyarujina, learned senior counsel submitted that Art.300A and the statute framed should satisfy the twin principles of public purpose and adequate compensation. Learned counsel submitted that whenever there is arbitrariness in State action whether it be of the legislature or of the executive or of an authority under Article 12, Article 14 springs into action and strikes down such State action as well as the legislative provisions, if it is found to be illegal or disproportionate. Reference was made to the judgments of this Court in Kavalappara Kottarathil Kochuni's case (supra), E.P Royappa v. State of Tamil Nadu & Another (1974) 4 SCR 3; Maneka Gandhi v. Union of India & Another 1978 (1) SCC 248; Ramana Dayaram Shetty v. International Airport Authority of India & Others (1979) 3 SCC 489; Kasturi Lal Lakshmi Reddy, represented by its Partner Kasturi Lal, Jammu & Others v. State of Jammu & Kashmir & Another. (1980) 4 SCC 1. Learned counsel submitted that even a tax law can be discriminatory and violative of Article 14 or confiscatory and hence can be subjected to judicial review. Learned counsel made reference to the decisions of this court in Chhotabhai Jethabhai Patel & Co. v. Union of India & Another (1962) Supp (2) SCR 1 and Kunnathat Thathunni Moopil Nair v. State of Kerala & Another AIR 1961 SC 552.

75. Shri Andhyarujina also submitted that the Act does not provide for any principle or guidelines for the fixation of the compensation amount and the amount fixed is illusory, compared to the value of the property taken away from the company in exercise of the powers of eminent domain. Learned senior counsel submitted that the inherent powers of public purpose and eminent domain are embodied in Article 300A, and Entry 42 List III, "Acquisition and Requisitioning of Property" which necessarily connotes that the acquisition and requisitioning of property will be for a public use and for compensation, as it is the legislative head for eminent domain. Learned senior counsel also submitted that the twin requirements of public purpose and compensation though seen omitted from Article 300A, but when a person is deprived of his property, those limitations are implied in Article 300A as well as Entry 42 List III and a Constitutional Court can always examine the validity of the statute on those grounds.

76. Learned senior counsel traced the legislative history and various judicial pronouncements of this Court in respect of Articles 19(1)(f), 31(1) and 31(2) and submitted that those are useful guides while interpreting Article 300A and the impugned Act. Reference was made to the judgments of this Court in State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors. (1952) 1 SCR 889; State of West Bengal v. Union of India (1964) 1 SCR 371; Sub-Committee of Judicial Accountability v. Union of India & Others (1991) 4 SCC 699; I.R. Coelho(Dead) by LRs. v. State of Tamil Nadu (2007) 2 SCC 1; D.C. Wadhwa & Others v. State of Bihar & Others (1987) 1 SCC 378 and Glanrock Estate Private Limited. v. State of Tamil Nadu (2010) 10 SCC 96.

77. Learned counsel further submitted that the action depriving a person of just and fair compensation is also amenable to judicial review under Articles 32 and 226 of the Constitution of India, which is the quintessence of the rule of law, otherwise the Constitution would be conferring arbitrary and unbridled powers on the Legislature, to deprive a person of his property. Reference was made to the provisions of the Constitutions of Australia and Republic of South Africa.

78. Mr. Patil, on the other hand, contended that, having regard to the express language of Article 300A, the common law limitations of eminent domain cannot be read into that Article especially when, the right to property is no more a Fundamental Right on deletion of Article 19(1)(f), Article 31(1) and (2). Learned senior counsel submitted that the history of Constitutional Amendments shows that the Legislature in its wisdom expressed its intention to do away with the requirement of public purpose and compensation. Further, the adequacy of the amount fixed by Legislature is also not amenable to judicial review.

79. Learned senior counsel also referred to the decisions of this Court reported in Subodh Gopal Bose's case (supra), Dwarakadas Shrinivas (1954) 1 SCR 674; Sir Kameshwar Singh's case (supra), P. Vajravelu Mudaliar's case (supra) and State of Gujarat v. Shantilal Mangaldas & Others (1969) 1 SCC 509.

80. Learned senior counsel submitted that the impugned Act has provided Rs.5 crore to meet various priorities, which cannot be said to be illusory, especially when the Government has withdrawn the exemption granted with respect to the land used for linaloe cultivation. Further, it was pointed out but for impugned Act the Roerich's or the transferors would have got only Rs.2 lakhs under Section 72 of the Land Reforms Act, if they were in possession and ownership of the land.

81. Learned counsel submitted, in any view, sale deeds dated 23.03.1991 and 16.02.1992 would show that the company had paid only a total sale consideration of Rs.1,46,10,000 for purchasing the lands from Roerichs' but the transferees/owners and other claimants, if any, would get more than what they had paid. Learned counsel also submitted that Section 19A also provides for principles/machinery for payment of amount to the owners/interested persons and the amount is to be apportioned among owners, transferees and interested persons having regard to value on the appointed day i.e. 18.11.1996. Further learned counsel also submitted that the company has not perfected their title or possession over the land and litigation is pending in the civil court between the company and the other claimants.

82. Right to life, liberty and property were once considered to be inalienable rights under the Indian Constitution, each one of these rights was considered to be inextricably bound to the other and none would exist without the other. Of late, right to property parted company with the other two rights under the Indian Constitution and took the position of a statutory right. Since ancient times, debates are going on as to whether the right to property is a "natural" right or merely a creation of `social convention' and `positive law' which reflects the centrality and uniqueness of this right. Property rights at times compared to right to life

which determine access to the basic means of sustenance and considered as prerequisite to the meaningful exercise of other rights guaranteed under Article

83. Eminent thinkers like Hugo Grotius, Pufendorf, John Locke, Rousseau and William Blackstone had expressed their own views on the right to property. Lockean rhetoric of property as a natural and absolute right but conventional in civil society has, its roots in Aristotle and Aquinas, for Grotius and Pufendorf property was both natural and conventional. Pufendrof, like Grotius, never recognised that the rights of property on its owners are absolute but involve definite social responsibilities, and also held the view that the private property was not established merely for the purpose "allowing a man to avoid using it in the service of others, and to brood in solitude over his hoard or riches." Like Grotius, Pufendorf recognised that those in extreme need may have a right to the property of others. For Rousseau, property was a conventional civil right and not a natural right and private property right was subordinate to the public interest, but Rousseau insisted that it would never be in the public interest to violate them. With the emergence of modern written constitutions in the late eighteenth century and thereafter, the right to property was enshrined as a fundamental constitutional right in many of the Constitutions in the world and India was not an exception. Blackstone declared that so great is the regime of the law for private property that it will not authorise the land violation if it - no, not even for the general good of the whole community. Writings of the above mentioned political philosophers had also its influence on Indian Constitution as well.

EMINENT DOMAIN

84. Hugo Grotius is credited with the invention of the term "eminent domain" (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain: the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle varies from countries to countries. Germany, America and Australian Constitutions bar uncompensated takings. Canada's constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law, the same is the situation in United Kingdom which does not have a written constitution as also now in India after the 44th Constitutional Amendment.

85. Canada does not have an equivalent to the Fifth Amendment taking clause of the U.S. Constitution and the federal or provincial governments are under any constitutional obligation to pay compensation for expropriated property. Section 1(a) of the Canadian Bill of Rights does state that, "The right of the individual to life, liberty, security of a person and enjoyment of property and the right not to be deprived thereof except by due process of law."

86. In Australia, Section 51 (xxxi) of the Constitution permits the federal government to make laws with respect to "the acquisition of property on just terms from any State or persons for any purpose in respect of which the Parliament has powers to make laws."

87. Protocol to the European Convention on Human Rights and Fundamental Freedom, Article 1 provides that every natural or legal person is entitled to the peaceful enjoyment of his possession and no one shall be deprived of his possessions except in public interest and subject to the conditions provided by law and by the several principles of International law.

88. Fifth Amendment of the U.S. Constitution says that the government shall not take private property for public use without paying just compensation. This provision referred to as the eminent domain, or taking clause has generated an enormous amount of case laws in the United States of America.

89. The US Supreme Court in Hawaii Housing Authority v. Midkiff, 467 US 229 (1984) allowed the use of eminent domain to transfer land from lesser to lessees. In that ruling the court held the government does not itself have the use the property to legitimate taking, it is a takings purpose and not its mechanics that must pass the muster under the public use clause. The US Supreme Court later revisited the question on what constitute public use in Kelo v. City of New London (545 US 469 (2005). In that case the Court held that a plan of economic development, that would primarily benefit a major pharmaceutical company, which incidentally benefited the public in the nature of increased employment opportunities and increased tax benefits was a `public use'. The Court rejected the arguments that takings of this kind, the Court should require a `reasonable certainty' that the respective public benefits will actually accrue.

90. Eminent domain is distinguishable alike from the police power, by which restriction are imposed on private property in the public interest, e.g. in connection with health, sanitation, zoning regulation, urban planning and so on from the power of taxation, by which the owner of private property is compelled to contribute a portion of it for the public purposes and from the war-power, involving the destruction of private property in the course of military operations. The police power fetters rights of property while eminent domain takes them away. Power of taxation does not necessarily involve a taking of specific property for public purposes, though analogous to eminent domain as regards the purposes to which the contribution of the taxpayer is to be applied. Further, there are several significant differences between regulatory exercises of the police powers and eminent domain of deprivation of property. Regulation does not acquire or appropriate the property for the State, which appropriation does and regulation is imposed severally and individually, while expropriation applies to an individual or a group of owners of properties.

91. The question whether the "element of compensation" is necessarily involved in the idea of eminent domain arose much controversy. According to one school of thought (See Lewis, Eminent Domain, 3rd Edition, 1909) opined that this question must be answered in the negative, but another view (See Randolph Eminent Domain in the United States (Boston 1894 [AWR]), the claim for compensation is an inherent attribute of the concept of eminent domain. Professor Thayer (cases on Constitutional law Vol 1.953), however, took a middle view according to which the concept of eminent domain springs from the necessity of the state, while the obligation to reimburse rests upon the natural rights of individuals. Right to

claim compensation, some eminent authors expressed the view, is thus not a component part of the powers to deprive a person of his property but may arise, but it is not as if, the former cannot exist without the other. Relationship between Public Purpose and Compensation is that of "substance and shadow". Above theoretical aspects of the doctrine have been highlighted only to show the reasons, for the inclusion of the principle of eminent domain in the deleted Article 31(2) and in the present Article 30(1A) and in the 2nd proviso of Article 31A of our Constitution and its apparent exclusion from Article 300A.

92. Our Constitution makers were greatly influenced by the Western doctrine of eminent domain when they drafted the Indian Constitution and incorporated the right to property as a Fundamental Right in Article 19(1)(f), and the element of public purpose and compensation in Articles 31(2). Of late, it was felt that some of the principles laid down in the Directive Principles of State Policy, which had its influence in the governance of the country, would not be achieved if those articles were literally interpreted and applied. The Directive Principles of the state policy lay down the fundamental principles for the governance of the country, and through those principles, the state is directed to secure that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Further, it was also noticed that the fundamental rights are not absolute but subject to law of reasonable restrictions in the interest of the general public to achieve the above objectives specially to eliminate Zamindari system.

93. While examining the scope of the Bihar Land Reforms Act, 1950 conflicting views were expressed by the Judges with regard to the meaning and content of Article 19(1)(f) and Article 31 as reflected in Sir Kameshwar Singh's case (supra). Suffice it to say that the Parliament felt that the views expressed by the judges on the scope of Articles 19(1)(f) and 31 might come as a stumbling block in implementing the various welfare legislations which led to the First Constitutional Amendment 1951 introducing Articles 31A and 31B in the Constitution.

94. Article 31A enabled the legislature to enact laws to acquire estates which also permitted the State in taking over of property for a limited period either in the `public interest' or to `secure the proper management of the property', amalgamate properties, and extinguish or modify the rights of managers, managing agents, directors, stockholders etc. Article provides that such laws cannot be declared void on the grounds that they are inconsistent with Articles 14 and 19. Article 31B protected the various lands reform laws enacted by both the Parliament and the State Legislatures by stating that none of these laws, which are to be listed in the Ninth Schedule, can become void on the ground that they violated any fundamental right.

95. This Court in a series of decisions viz. in State of West Bengal v. Bella Banerjee & Others AIR 1954 SC 170 and State of West Bengal v. Subodh Gopal Bose AIR 1954 SC 92 took the view that Article 31, clauses (1) and (2) provided for the doctrine of eminent domain and under clause (2) a person must be deemed to be deprived of his property if he was

"substantially dispossessed" or his right to use and enjoy the property was "seriously impaired" by the impugned law. The Court held that under Article 31(1) the State could not make a law depriving a person of his property without complying with the provisions of Article 31(2). In Bella Banerjee's case (supra), this Court held that the legislature has the freedom to lay down principles which govern the determination of the amount to be given to the owners of the property appropriated, but the Court can always, while interpreting Article 31(1) and Article 31(2), examine whether the amount of compensation paid is just equivalent to what the owner had been deprived of.

96. The Parliament, following the above judgment, brought in the Fourth Amendment Act of 1955 and amended clause (2) of Article 31 and inserted clause (2-A) to Article 31. The effect of the amendment is that clause (2) deals with acquisition or requisition as defined in clause (2-A) and clause (1) covers deprivation of a person's property by the state otherwise than by acquisition or requisition. The amendment enabled the State to deprive a person of his property by law. Under amended clause (2), the property of a citizen could be acquired or requisitioned by law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined. However, it was also provided that no such law could be called in question in any court on the ground that the compensation provided by that law was not adequate.

97. This Court in Kavalappara Kottarathil Kochuni's case (supra) held that Articles 31(1) and (2) are different fundamental rights and that the expression `law" in Article 31(1) shall be a valid law and that it cannot be a valid law, unless it imposes a reasonable restriction in public interest within the meaning of Article 19(5) and therefore be justiciable.

98. The Constitution was again amended by the Seventeenth Amendment Act of 1964, by which the State extended the scope of Article 31A and Ninth Schedule to protect certain agrarian reforms enacted by the Kerala and Madras States and Jagir, Inam, muafi or any other grant, janmam, ryotwari etc. were included within the meaning of "estate". It also added the 2nd proviso to clause (1) to protect a person of being deprived of land less than the relevant land ceiling limits held by him for personal cultivation, except on payment of full market value thereof by way of compensation.

99. This Court in P. Vajravelu Mudaliar's case (supra) examined the scope of the Land Acquisition (Madras Amendment) Act 1961 by which the lands were acquired for the purpose of building houses which move was challenged under Articles 31 and 14. The Court held that if the compensation fixed was illusory or the principles prescribed were irrelevant to the value of the property at or about the time of acquisition, it could be said that the Legislature had committed a fraud on power and therefore the law was inadequate. Speaking for the Bench, Justice Subha Rao stated that "If the legislature, through its ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the

compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the legislature made the law in fraud of its powers." Justice Subha Rao reiterated his view in Union of India v. Metal Corporation of India Ltd. & Another AIR 1967 SC 637.

100. In Shantilal Mangaldas's case (supra), the validity of Bombay Town Planning Act 1958 was challenged before this Court on the ground that the owner was to be given market value of land at date of declaration of scheme, which was not the just equivalent of the property acquired, the Court held that after the Fourth Amendment resulting in the changes to Article 31(2) the question of `adequacy of compensation' could not be entertained. Justice Hidayatullah stated that the stance taken in the previous case by Justice Subha Rao as "obiter and not binding". The validity of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1969 came up for consideration before the eleven judges Bench of this Court in Rustom Cowasjee Cooper v. Union of India (1970) 2 SCC 298. The Act, it was pointed out, did lay down principles for determination and payment of compensation to the banks, which was to be paid for in form of bonds, securities etc., and compensation would not fulfil the requirement of Article 31(2). A majority of the judges accepted that view and held that both before and after the amendment to Article 31(2) there was a right to compensation and by giving illusory compensation the constitutional guarantee to provide compensation for an acquisition was not complied with. The Court held that the Constitution guarantees a right to compensation - an equivalent in money of the property compulsorily acquired which is the basic guarantee and, therefore, the law must provide compensation, and for determining compensation relevant principles must be specified; if the principles are not relevant the ultimate value determined is not compensation.

101. The validity of Articles 19(1)(f) and (g) was also the subject matter of I.C. Golaknath and Others v. State of Punjab, AIR 1967 SC 1643. In that case, a large portion of the lands of Golak Nath family was declared surplus under the Punjab Security of Land Tenures Act 1953. They challenged the act on the grounds that it denied them their Constitutional Rights to acquire and hold property and practice any profession. Validity of Articles 19(1)(f) and (g), the 17th Amendment, the 1st Amendment and the 4th Amendment were also questioned. Chief Justice Subha Rao speaking for the majority said that the Parliament could not take away or abridge the Fundamental Rights and opined that those rights form `basic structure' of the Constitution and any amendment to the Constitution can be made to preserve them, not to annihilate.

102. The Parliament enacted the (24th Amendment) Act 1971, by which the Parliament restored to the amending power of the Parliament and also extended the scope of Article 368 which authorised the Parliament to amend any part of the Constitution.

103. Parliament then brought in the 25th Amendment Act, 1971 by which Article 31(2) was amended by which private property could be acquired on payment of an "amount" instead of "compensation". A new Article 31(C) was also inserted stating that "no law giving effect to the policy of the State towards acquiring the principles specified in clause (b) or clause (c) of

Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

104. The constitutionality of the above amendments was also the subject matter in His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Another (1973) 4 SCC 225, which overruled the principles laid down in Gokalnath's case (supra) and held that a Constitutional amendment could not alter the basic structure of the Constitution, and hence Article 19(1)(f) was not considered to be the basic structure of the Constitution, as later explained in Indira Nehru Gandhi v. Raj Narain (1975) Supp. SCC

105. We are in these cases, primarily concerned with the scope of the Forty Fourth Amendment 1978, which deleted Article 19(1)(f) and Article 31 from the Constitution of India and introduced Article 300A, and its impact on the rights of persons, who are deprived of their properties. We have extensively dealt with the scope of Articles 19(1)(f) and Article 31 as interpreted in the various decisions of this Court so as to examine the scope and content of Article 300A and the circumstances which led to its introduction. The Forty Fourth Amendment Act, inserted in Part XII, a new chapter: "Chapter IV - Right to Property and inserted Article 300A, which reads as follows:-

> "No person shall be deprived of property save by authority of law."

106. Reference to the Statement of Objects and Reasons of the 44th Amendment in this connection may be apposite. Paragraphs 3, 4 and 5 of the Statement of Objects and Reasons reads as follows:

> "3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one Amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to Article 19 and Article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.
>
> 4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.
>
> 5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law."

107. In Jilubhai Nanbhai Khachar & Others v. State of Gujarat & Another (1995) Supp. 1 SC 596, this Court examined whether Section 69-A, introduced by the Gujarat Amendment Act 8 of 1982 in the Bombay Land Revenue Code which dealt with vesting mines, minerals and

quarries in lands held by persons including Girasdars and Barkhalidars in the State violated Article 300A of the Constitution. The Court held that the `property' in Article 300A includes mines, minerals and quarries and deprivation thereof having been made by authority of law was held to be valid and not violative of Article 300A.

108. Article 300A, when examined in the light of the circumstances under which it was inserted, would reveal the following changes:

> "1. Right to acquire, hold and dispose of property has ceased to be a fundamental right under the Constitution of India.
>
> 2. Legislature can deprive a person of his property only by authority of law.
>
> 3. Right to acquire, hold and dispose of property is not a basic feature of the Constitution, but only a Constitutional right.
>
> 4. Right to Property, since no more a fundamental right, the jurisdiction of the Supreme Court under Article 32 cannot be generally invoked, aggrieved person has to approach the High Court under Article 226 of the Constitution."

109. Arguments have been advanced before us stating that the concept of eminent domain and its key components be read into Article 300A and if a statute deprives a person of his property unauthorizedly, without adequate compensation, then the statute is liable to be challenged as violative of Articles 14, 19 and 21 and on the principle of rule of law, which is the basic structure of our Constitution. Further it was also contended that the interpretation given by this Court on the scope of Article 31(1) and (2) in various judgments be not ignored while examining the meaning and content of Article 300A.

110. Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression `Property' in Art.300A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law. This Court in State of W. B. & Others v. Vishnunarayan & Associates (P) Ltd & Another (2002) 4 SCC 134, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300A that the State or executive offices cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights. Article 300A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of `public purpose' and `compensation' in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of entry 42, List III, as well

and, hence, would apply when the validity of a statute is in question. On the other hand, it was the contention of the State that since the Constitution consciously omitted Article 19(1)(f), Articles 31(1) and 31(2), the intention of the Parliament was to do away the doctrine of eminent domain which highlights the principles of public purpose and compensation.

111. Seervai in his celebrated book `Constitutional Law of India' (Edn. IV), spent a whole Chapter XIV on the 44th Amendment, while dealing with Article 300A. In paragraph 15.2 (pages 1157-1158) the author opined that confiscation of property of innocent people for the benefit of private persons is a kind of confiscation unknown to our law and whatever meaning the word "acquisition" may have does not cover "confiscation" for, to confiscate means "to appropriate to the public treasury (by way of penalty)". Consequently, the law taking private property for a public purpose without compensation would fall outside Entry 42 List III and cannot be supported by another Entry in List III. Requirements of a public purpose and the payment of compensation according to the learned author be read into Entry 42 List III. Further the learned author has also opined that the repeal of Article 19(1)(f) and 31(2) could have repercussions on other fundamental rights or other provisions which are to be regarded as part of the basic structure and also stated that notwithstanding the repeal of Article 31(2), the word "compensation" or the concept thereof is still retained in Article 30(1A) and in the second proviso to Article 31A(1) meaning thereby that payment of compensation is a condition of legislative power in Entry 42 List III.

112. Learned senior counsel Shri T.R. Andhyarujina, also referred to the opinion expressed by another learned author Prof. P.K. Tripathi, in his article "Right to Property after 44th Amendment - Better Protected than Ever Before" (reported in AIR 1980 J pg. 49-52). Learned author expressed the opinion and the right of the individual to receive compensation when his property is acquired or requisitioned by the State, continues to be available in the form of an implied condition of the power of the State to legislate on "acquisition or requisition of property" while all the exceptions and limitations set up against and around it in Article 31, 31A and 31B have disappeared. Learned author opined that Article 300A will require obviously, that the law must be a valid law and no law of acquisition or requisitioning can be valid unless the acquisition or requisition is for a public purpose, unless there is provision in law for paying compensation, will continue to have a meaning given to it, by Bela Banerjee's case (supra).

113. Learned author, Shri S.B. Sathe, in his article "Right to Property after the 44th Amendment" (AIR 1980 Journal 97), to some extent, endorsed the view of Prof. Tripathi and opined that the 44th amendment has increased the scope of judicial review in respect of right to property. Learned author has stated although Article 300A says that no one shall be deprived of his property save by authority of law, there is no reason to expect that this provision would protect private property only against executive action. Learned author also expresses the wish that Article 21 may provide viable check upon Article 300A.

114. Durga Das Basu in his book "Shorter Constitution of India", 13th Edition, dealt with Article 300A in Chapter IV wherein the learned author expressed some reservation about the

views expressed by Seervai, as well as Prof. Tripathi Learned author expressed the view, that after the 44th amendment Act there is no express provision in the Constitution outside the two cases specified under Article 30(1A) and the second proviso to 31(1A) requiring the State to pay compensation to an expropriated owner. Learned author also expressed the opinion that no reliance could be placed on the legislative Entry 42 of List III so as to claim compensation on the touchstone of fundamental rights since the entry in a legislative list does not confer any legislative power but only enumerates fields of legislation. Learned counsel on the either side, apart from other contentions, highlighted the above views expressed by the learned authors to urge their respective contentions.

115. Principles of eminent domain, as such, is not seen incorporated in Article 300A, as we see, in Article 30(1A), as well as in the 2nd proviso to Article 31A(1) though we can infer those principles in Article 300A. Provision for payment of compensation has been specifically incorporated in Article 30(1A) as well as in the 2nd proviso to Article 31A(1) for achieving specific objectives. Constitution's 44th Amendment Act, 1978 while omitting Article 31 brought in a substantive provision Clause (1A) to Article 30. Resultantly, though no individual or even educational institution belonging to majority community shall have any fundamental right to compensation in case of compulsory acquisition of his property by the State, an educational institution belonging to a minority community shall have such fundamental right to claim compensation in case State enacts a law providing for compulsory acquisition of any property of an educational institution established and administered by a minority community. Further, the second proviso to Article 31A(1) prohibits the Legislature from making a law which does not contain a provision for payment of compensation at a rate not less than the market value which follows that a law which does not contain such provision shall be invalid and the acquisition proceedings would be rendered void.

116. Looking at the history of the various constitutional amendments, judicial pronouncements and the statement of objects and reasons contained in the 44th Amendment Bill which led to the 44th Amendment Act we have no doubt that the intention of the Parliament was to do away with the fundamental right to acquire, hold and dispose of the property. But the question is whether the principles of eminent domain are completely obliterated when a person is deprived of his property by the authority of law under Article 300A of the Constitution. PUBLIC PURPOSE

117. Deprivation of property within the meaning of Art.300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known. The concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of statute and the policy of the legislation. Public purpose is, therefore, a condition precedent, for invoking Article 300A.

COMPENSATION

118. We have found that the requirement of public purpose is invariably the rule for depriving a person of his property, violation of which is amenable to judicial review. Let us now examine whether the requirement of payment of compensation is the rule after the deletion of Article 31(2). Payment of compensation amount is a constitutional requirement under Article 30(1A) and under the 2nd proviso to Article 31A(1), unlike Article 300A. After the 44th Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article 300A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

119. Before answering those questions, let us examine whether the right to claim compensation on deprivation of one's property can be traced to Entry 42 List III. The 7th Constitutional Amendment Act, 1956 deleted Entry 33 List I, Entry 36 List II and reworded Entry 42 List III relating to "acquisition and requisitioning of property". It was urged that the above words be read with the requirements of public purpose and compensation. Reference was placed on the following judgment of this Court in support of that contention. In State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. (1959) SCR 379 at 413), this Court considered Entry 48 List II of the Government of India Act, 1935, "tax on sales of goods", in accordance with the established legal sense of the word "sale", which had acquired a definite precise sense and held that the legislature must have intended the "sale", should be understood in that sense. But we fail to see why we trace the meaning of a constitutional provision when the only safe and correct way of construing the statute is to apply the plain meaning of the words. Entry 42 List III has used the words "acquisition" and "requisitioning", but Article 300A has used the expression "deprivation", though the word deprived or deprivation takes in its fold "acquisition" and "requisitioning", the initial presumption is in favour of the literal meaning since the Parliament is taken to mean as it says.

120. A Constitution Bench of this Court in Hoechst Pharmaceuticals Ltd.'s case (supra), held that the various entries in List III are not "powers" of Legislation but "fields" of Legislation. Later, a Constitution Bench of this Court in State of West Bengal & Another v. Kesoram Industries Ltd. & Others AIR 2005 SC 1646, held that Article 245 of the Constitution is the fountain source of legislative power. It provides that subject to the provisions of this Constitution, the Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. The legislative field between the Parliament and the Legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in Seventh Schedule, called the Union List and subject to the said power of the Parliament, the Legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the Concurrent List.

Subject to the above, the Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the State List. Under Article 248, the exclusive power of the Parliament to make laws extends to any matter not enumerated in any Concurrent List or State List.

121. We find no apparent conflict with the words used in Entry 42 List III so as to infer that the payment of compensation is inbuilt or inherent either in the words "acquisition and requisitioning" under Entry 42 List III. Right to claim compensation is, therefore, cannot be read into the legislative Entry 42 List III. Requirement of public purpose, for deprivation of a person of his property under Article 300A, is a pre-condition, but no compensation or nil compensation or its illusiveness has to be justified by the state on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300A, it can be inferred in that Article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.

122. Article 300A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300A Parliament has only borrowed Article 31(1) [the "Rule of law" doctrine] and not Article 31(2) [which had embodied the doctrine of Eminent Domain]. Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive. The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above. At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the government to establish validity of such law. In the latter case, the court in exercise of judicial review will test such a law keeping in mind the above parameters.

123. Right to property no more remains an overarching guarantee in our Constitution, then is it the law, that such a legislation enacted under the authority of law as provided in Article 300A is immune from challenge before a Constitutional Court for violation of Articles 14, 21 or the overarching principle of Rule of Law, a basic feature of our Constitution, especially when such a right is not specifically incorporated in Article 300A, unlike Article 30(1A) and the 2nd proviso to Article 31A.

124. Article 31A was inserted by the 1st Amendment Act, 1951 to protect the abolition of Jamindari Abolition Laws and also the other types of social, welfare and regulatory legislations effecting private property. The right to challenge laws enacted in respect of subject matter enumerated under Article 31A(1)(a) to (g) on the ground of violation of Article 14 was also constitutionally excluded. Article 31B read with Ninth Schedule protects all laws even if they are violative of the fundamental rights, but in I.R. Coelho's case (supra), a Constitution Bench of this Court held that the laws added to the Ninth Schedule, by violating the constitutional amendments after 24.12.1973, if challenged, will be decided on the touchstone of right to freedom guaranteed by Part III of the Constitution and with reference to the basic structure doctrine, which includes reference under Article 21 read with Articles 14, 15 etc. Article 14 as a ground would also be available to challenge a law if made in contravention of Article 30(1)(A).

125. Article 265 states that no tax shall be levied or collected except by authority of law, then the essential characteristics of tax is that it is imposed under statute power, without tax payer's consent and the payment is enforced by law. A Constitution Bench of this Court in Kunnathat Thathunni Moopil Nair's case (supra) held that Sections 4, 5-A and 7 of the Travancore-Cochin Land Tax Act are unconstitutional as being violative of Article 14 and was held to be in violation of Article 19(1)(f). Of course, this decision was rendered when the right to property was a fundamental right. Article 300A, unlike Articles 31A(1) and 31C, has not made the legislation depriving a person of his property immune from challenge on the ground of violation of Article 14 or Article 21 of the Constitution of India, but let us first examine whether Article 21 as such is available to challenge a statute providing for no or illusory compensation and, hence, expropriatory.

126. A Constitution Bench of this Court in Ambika Prasad Mishra v. State of U.P. & Others (1980) 3 SCC 719, while examining the constitutional validity of Article 31A, had occasion to consider the scope of Article 21 in the light of the judgment of this Court in Maneka Gandhi's case (supra). Dealing with the contention that deprivation of property amounts to violation of the right guaranteed under Article 21 of the Constitution of India, this Court held as follows:

> "12. Proprietary personality was integral to personal liberty and a mayhem inflicted on a man's property was an amputation of his personal liberty. Therefore, land reform law, if unreasonable, violates Article 21 as expansively construed in Maneka Gandhi. The dichotomy between personal liberty, in Article 21, and proprietary status, in Articles 31 and 19 is plain, whatever philosophical justification or pragmatic realisation it may possess in political or juristic theory. Maybe, a penniless proletarian, is unfree in his movements and has nothing to lose except his chains. But we are in another domain of constitutional jurisprudence. Of course, counsel's resort to Article 21 is prompted by the absence of mention of Article 21 in Article 31-A and the illusory hope of inflating Maneka Gandhi to impart a healing touch to those whose property is taken by feigning loss of personal liberty when the State takes only

property, Maneka Gandhi is no universal nostrum or cure-all, when all other arguments fail!"

127. The question of applicability of Article 21 to the laws protected under Article 31C also came up for consideration before this Court in State of Maharashtra & Another v. Basantibai Mohanlal Khetan & Others (1986) 2 SCC 516, wherein this Court held that Article 21 essentially deals with personal liberty and has little to do with the right to own property as such. Of course, the Court in that case was not concerned with the question whether the deprivation of property would lead to deprivation of life or liberty or livelihood, but was dealing with a case, where land was acquired for improving living conditions of a large number of people. The Court held that the Land Ceiling Laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot be struck down by invoking Article 21 of the Constitution. This Court in Jilubhai Nanbhai Khachar's case (supra) took the view that the principle of unfairness of procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300A.

128. Acquisition of property for a public purpose may meet with lot of contingencies, like deprivation of livelihood, leading to violation of Art.21, but that per se is not a ground to strike down a statute or its provisions. But at the same time, is it the law that a Constitutional Court is powerless when it confronts with a situation where a person is deprived of his property, by law, for a private purpose with or without providing compensation? For example, a political party in power with a massive mandate enact a law to acquire the property of the political party in opposition not for public purpose, with or without compensation, is it the law, that such a statute is immune from challenge in a Constitutional Court? Can such a challenge be rejected on the ground that statute does not violate the Fundamental Rights (due to deletion of Art.19(1)(f)) and that the legislation does not lack legislative competence? In such a situation, is non-availability of a third ground as propounded in State of A.P. & Others v. Mcdowell & Co. & Others (1996) 3 SCC 709, is an answer? Even in Mcdowell's case (supra), it was pointed out some other constitutional infirmity may be sufficient to invalidate the statute. A three judges Bench of this Court in Mcdowell & Co. & Others case (supra) held as follows:

> "43. .....The power of Parliament or for that matter, the State Legislature is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground..... No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom....."

129. A two judges Bench of this Court in Union of India & Another v. G. Ganayutham (1997) 7 SCC 463, after referring to Mcdowell's case (supra) stated as under:

> "that a statute can be struck down if the restrictions imposed by it are disproportionate or excessive having regard to the purpose of the statute and that the Court can go into the question whether there is a proper balancing of the fundamental right and the restriction imposed, is well settled."

130. Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy.

131. In Dr. Subramanian Swamy v. Director, CBI & Others (2005) 2 SCC 317, the validity of Section 6-A of the Delhi Special Police Establishment Act, 1946, was questioned as violative of Article 14 of the Constitution. This Court after referring to several decisions of this Court including Mcdowell's case (supra), Khoday Distilleries Ltd. & Others v. State of Karnataka & Others (1996) 10 SCC 304, Ajay Hasia & Others v. Khalid Mujib Sehravardi & Others (1981) 1 SCC 722, Mardia Chemicals Ltd. & Others v. Union of India & Others (2004) 4 SCC 311, Malpe Vishwanath Achraya & Others v. State of Maharashtra & Another (1998) 2 SCC 1 etc. felt that the question whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness being facets of Article 14 of the Constitution are available or not as grounds to invalidate a legislation, is a matter requiring examination by a larger Bench and accordingly, referred the matter for consideration by a Larger Bench.

132. Later, it is pertinent to note that a five- judges Bench of this Court in Ashok Kumar Thakur v. Union of India & Others (2008) 6 SCC 1 while examining the validity of the Central Educational Institutions (Reservation in Admission) Act, 2006 held as follows:

> 219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law....."

Court also generally expressed the view that the doctrines of "strict scrutiny", "compelling evidence" and "suspect legislation" followed by the U.S. Courts have no application to the Indian Constitutional Law.

133. We have already found, on facts as well as on law, that the impugned Act has got the assent of the President as required under the proviso to Article 31A(1), hence, immune from challenge on the ground of arbitrariness, unreasonableness under Article 14 of the Constitution of India.

134. Statutes are many which though deprives a person of his property, have the protection of Article 30(1A), Article 31A, 31B, 31C and hence immune from challenge under Article 19 or Article

> "14. On deletion of Article 19(1(f) the available grounds of challenge are Article 14, the basic structure and the rule of law, apart from the ground of legislative competence. In I.R. Coelho's case (supra), basic structure was defined in terms of fundamental rights as reflected under Articles 14, 15, 19, 20, 21 and 32. In that case the court held that statutes mentioned in the IXth Schedule are immune from challenge on the ground of violation of fundamental rights, but if such laws violate the basic structure, they no longer enjoy the immunity offered, by the IXth Schedule."

135. The Acquisition Act, it may be noted, has not been included in the IXth Schedule but since the Act is protected by Article 31A, it is immune from the challenge on the ground of violation of Article 14, but in a given case, if a statute violates the rule of law or the basic structure of the Constitution, is it the law that it is immune from challenge under Article 32 and Article 226 of the Constitution of India?

136. Rule of law as a concept finds no place in our Constitution, but has been characterized as a basic feature of our Constitution which cannot be abrogated or destroyed even by the Parliament and in fact binds the Parliament. In Kesavanda Bharati's case (supra), this Court enunciated rule of law as one of the most important aspects of the doctrine of basic structure. Rule of law affirms parliament's supremacy while at the same time denying it sovereignty over the Constitution.

137. Rule of law can be traced back to Aristotle and has been championed by Roman jurists; medieval natural law thinkers; Enlightenment philosophers such as Hobbes, Locke, Rousseau, Montesquieu, Dicey etc. Rule of law has also been accepted as the basic principle of Canadian Constitution order. Rule of law has been considered to be as an implied limitation on Parliament's powers to legislate. In Reference Re Manitoba Language Rights (1985) 1 SCR 721, the Supreme Court of Canada described the constitutional status of the rule of law as follows:

> "The Constitution Act, 1982 ... is explicit recognition that "the rule of law is a fundamental postulate of our constitutional structure." The rule of law has always been understood as the very basis of the English Constitution characterising the political institutions of England from the time of the Norman Conquest. It becomes a postulate of our own constitutional order by way of the preamble to the Constitution Act, 1982 and its implicit inclusion in the preamble to the Constitution Act, 1867 by virtue of the words "with a Constitution similar in principle to that of the United Kingdom."
>
> Additional to the inclusion of the rule of law in the preamble of the Constitution Acts of 1867 and 1982, the principle is clearly implicit in the very nature of a Constitution. The Constitution, as the Supreme Law, must be understood as a purposive ordering of social relations providing a basis upon which an actual order of positive laws can be brought into existence. The founders of this nation must have intended, as one of the basic principles of nation building, that Canada be a society of legal order and normative structure: one governed by the rule of law. While this is not set out in a specific provision, the principle of the rule of law is clearly a principle of our Constitution."

138. In Re: Resolution to Amend the Constitution (1981) 1 SCR 753, the Supreme Court of Canada utilized the principle of rule of law to uphold legislation, rather than to strike it down. The Court held that the implied principles of the Constitution are limits on the sovereignty of Parliament and the provincial legislatures. The Court reaffirmed this conclusion later in OPSEU v. Ontario (A.G.) (1987) 2 SCR 2. This was a case involving a challenge to Ontario legislation restricting the political activities of civil servants in Ontario. Although the Court upheld the legislation, Beetz. J described the implied limitations in the following terms:

> "There is no doubt in my mind that the basic structure of our Constitution, as established by the Constitution Act, 1867, contemplates the existence of certain political institutions, including freely elected legislative bodies at the federal and provincial levels. In the words of Duff C.J. in Reference re Alberta Statutes "such institutions derive their efficacy from the free public discussion of affairs" and, in those of Abbott J. in Switzman v. Elbling ... neither a provincial legislature nor Parliament itself can "abrogate this right of discussion and debate." Speaking more generally, I hold that neither Parliament nor the provincial legislatures may enact legislation the effect of which would be to substantially interfere with the operation of this basic constitutional structure."

139. The Canadian Constitution and Courts have, therefore, considered the rule of law as one of the "basic structural imperatives" of the Constitution. Courts in Canada have exclusively rejected the notion that only "provisions" of the Constitution can be used to strike down legislation and comes down squarely in favour of the proposition that the rule of law binds legislatures as well as governments.

140. Rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine rule of law so also at times arbitrariness, proportionality, unreasonableness etc., but such violations may not undermine rule of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of our Constitution and our democratic principles. But once the Court finds, a Statute, undermines the rule of law which has the status of a constitutional principle like the basic structure, the above grounds are also available and not vice versa. Any law which, in the opinion of the Court, is not just, fair and reasonable, is not a ground to strike down a Statute because such an approach would always be subjective, not the will of the people, because there is always a presumption of constitutionality for a statute.

141. Rule of law as a principle, it may be mentioned, is not an absolute means of achieving the equality, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. Rule of law as an overarching principle can be applied by the constitutional courts, in rarest of rare cases, in situations, we have referred to earlier and can undo laws which are tyrannical, violate the basic structure of our Constitution, and our cherished norms of law and justice. One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that any interference with the peaceful enjoyment of possession should be lawful.

142. Let the message, therefore, be loud and clear, that rule of law exists in this country even when we interpret a statute, which has the blessings of Article 300A. Deprivation of property may also cause serious concern in the area of foreign investment, especially in the context of International Law and international investment agreements. Whenever, a foreign investor operates within the territory of a host country the investor and its properties are subject to the legislative control of the host country, along with the international treaties or agreements. Even, if the foreign investor has no fundamental right, let them know, that the rule of law prevails in this country.

143. We, therefore, answer the reference as follows:

> "(a) Section 110 of the Land Reforms Act and the notification dated 8.3.94 are valid, and there is no excessive delegation of legislative power on the State Government.
>
> (b) Non-laying of the notification dt.8.3.94 under Section 140 of the Land Reforms Act before the State Legislature is a curable defect and it will not affect the validity of the notification or action taken thereunder.
>
> (c) The Acquisition Act is protected by Article 31A of the Constitution after having obtained the assent of the President and hence immune from challenge under Article 14 or 19 of the Constitution.

(d) There is no repugnancy between the provisions of the Land Acquisition Act, 1894 and the Karnataka Land Reforms Act, 1961, and hence no assent of the President is warranted under Article 254(2) of the Constitution.

(e) Public purpose is a pre-condition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that Article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

(f) Statute, depriving a person of his property is, therefore, amenable to judicial review on grounds hereinbefore discussed. 144. We accordingly dismiss all the appeals and direct the notified authority under the Acquisition Act to disburse the amount of compensation fixed by the Act to the legitimate claimants in accordance with law, which will depend upon the outcome of the pending litigations between the parties. Further, we also order that the land acquired be utilized only for the purpose for which it was acquired. In the facts and circumstances of the case, there will be no order as to costs.