ALLAHABAD HIGH COURT

Nand Ram Chhotey Lal

Vs.

Kishori Raman Singh

Civil Revn. No. 1438 of 1955. , against order of Special Judge, 1st class, Aligarh

(M.C. Desai, C.J. and Mithan Lal, J.)

12.11.1955. 26.12.1961

Judgment

M. Lal, J.

1. This Civil Revision by Messrs. Nand Ram Chottey Lal, decree-holders, has been filed against the orders passed by the Special Judge, first class, Aligarh, reducing the debts of the applicants from Rs. 6,46,000/- to Rs. 1,84,571/- under section 4 of the U.P. Zamindars Debt Reduction Act, 1952 (hereinafter called the Act).

2. Briefly stated the facts are that the applicants advanced a sum of Rs. 5,11,000/- on the basis of a mortgage dated 20th June, 1924, and another sum of Rs. 1,35,000/- on the basis of another mortgage dated 23rd May, 1929 to Raja Datt Prasad Singh. The properties mortgaged in the first deed consisted of Zamindari properties of 56 villages and the right to receive Malikana in the sum of Rs. 23,802/- per annum from the Government treasuries at Mathura and Aligarh. In the second mortgage 35 other villages besides the 56 villages of the first mortgage, all in the? districts of Mathura and Aligarh, constituted the mortgage property.

3. The original mortgagor Raja Dutt Prasad Singh died some time in the year 1932 and the estate was taken under the superintendence of the Court of Wards. The Court of wards had first filed a suit under section 33 U.P. Agriculturists' Relief Act for accounting and declaration of the amount due in respect of both the mortgages. The liability of the mortgagor was determined on 21st October, 1936, at a sum of Rs. 7,00,108/- and though the decree-holder could claim a decree for the sum determined in these proceedings, yet he did not do so. About a week after, on 28th October, 1936, the Court of wards filed an application under section 4 of the U.P. Encumbered Estates Act impleading all the creditors including the applicants. The claims of the creditors were determined including that of the present applicants. We are not concerned in this case with the determination of other claims. The claim of the present applicants was determined on, 10-3-

1949, at a sum of Rs. 6,46,000/- which constituted the principal amount of the two mortgages. After the decree liquidation proceedings were started which remained stayed either due to the orders of the Government or the passing of U.P. Act X of 1950 pending legislation regarding the abolition of the zamindari.

4. The estate of Raja Kishori Raman Singh (hereinafter called the judgment-debtor) was released from the superintendence of the Court of Wards by orders dated 14th January, 1953. On 24th August, 1954 the present applicants (hereinafter called the decree-holder or the creditor) filed an application under section 4 of U.P. Zamindars Debt Reduction Act for reduction of decretal amount and for satisfaction of the amount out of the compensation bonds and rehabilitation grant payable to the judgment-debtor. We were told by the learned counsel for the respondent that due to the filing of this application a temporary injunction was also issued restraining the judgment-debtor from receiving compensation bonds and rehabilitation grant till the decision of the proceedings under the U.P. Zamindars Debt Reduction Act. When this application came up for hearing the learned counsel for the decree-holder made a statement that he did not want to press the application under section 4 of the U.P. Zamindars Debt Reduction Act. This request was refused by the Court mainly on the ground that it was the duty of the Special Judge under section 19-A of the U.P. Encumbered Estates Act, as amended to reduce the amount in accordance with the provisions of the Act. Consequently, the decretal amount was reduced to Rs. 1,84,571/- from Rs. 6,46,000/-. The Court further held that malikana was also an estate and so there was no question of apportionment of the debt and the provisions of section 4 (2) of the Act would apply. It is against this order that the present application in revision has been filed.

5. In the original petition in revision the constitutionality of the Act was challenged clue to contraventon of Articles 19 (1)(f) and 31 (2) of the Constitution of India, but later on an amendment was sought and some of the provisions of the Act were said to contravene the provisions of Article 14 also.

6. It has been contended by Sri Shanti Bhusan, learned counsel for the applicants, that the provisions of sections 3, 4 and 7 of the Act, which provide for the reduction of debts and the satisfaction of the balance of the debt with the scheme of reduction given in the schedule, amount to deprivation of property and infringe the decree-holder's right to hold, acquire and dispose of property inasmuch as not merely the interest due to a creditor is curtailed but it drastically reduces the principal amount and further places a ban on the right of the decree-holder to realise the balance. The constitutionality of section 9 of the Act has also been challenged besides the definition of the word 'debt' contained in section 2 (1) of the Act. This definition is said to be discriminatory and based on no reasonable classification. It is also his contention that even though the provisions of sections 3 and 9 of the Act are not applicable to the present case, yet those provisions being such as the legislature could not have intended to enact without the other provisions and which cannot be severed and so they may also be declared to be unconstitutional.

It is also his contention that right to receive malikana is not an estate within the meaning assigned to it by the Act read with U.P. Zamindari Abolition and Land Reforms Act, and so the case should have been dealt with under sub-section (3) of section 4 and apportionment of the debt should have been done.

7. A notice had also been given to the learned Advocate General who himself could not appear, and the case on behalf of the State was argued by the Senior Standing Counsel Sri Shambhu Prasad. The opposite party was represented by Sri Jagdish Swamp and Sri. Chowdhury Advocates. According to their arguments, none of the provisions of the Act violate any of the articles of the Constitution, nor the definition of the word 'debt' is discriminatory.

8. The fallowing points require consideration in the case:-

1. Whether the provisions of sections 3, 4, 7 and 9 of the Act in any way contravene Article 31 of the Constitution of India?
2. Whether the provisions of sections 8 and 9 in particular, and sections 3, 4 and 7, in general, of the Act violate the constitutional guarantee given under Article 19 (1)(E) of the Constitution?
3. Whether the definition of the word "debt" contained in section 2 (f) of the Act is not based on any reasonable classification?

Does it violate the provisions of Article 14 of the Constitution?

4. Whether the right to receive malikana at Mathura and Aligarh mortgaged to the creditor is not an estate? If so, whether apportionment of the debt should have been done as required by section 4 (3) of the Act?

Point No. 1 :-

9. The main contention of the learned counsel is that even though the object of the Act may be the reduction of the debts due from ex-zamindars, yet the scheme of redaction, given under the Act drastically reduces both the principal as well as interest and in this particular case, the principal amount due to the decree-holder was Rs. 6,46,000/-which after applying the provisions of the Act has been reduced to Rs. 1,84,571/-. What is further provided in the Act is that the decree passed on the basis of a debt when reduced in accordance with the provisions of the Act shall be deemed to have been duly satisfied to the extent of the reduction. These provisions according to the applicants' contention, amount to deprivation of the considetable portion of the property of the creditor without payment of any compensation for the reduced amount and without there being a public purpose. In this way these provisions are said to contravene Article 31.

10. The first question which arises in the case is whether the constitutionality of the Act should be judged with reference to Article 31, as it stands now after amendment by the Constitution IVth amendment Act, 1955, or as it stood on the date when the impugned Act was passed in 1953. Article 13 of the Constitution constitutes a safeguard of the fundamental rights given in Articles 14 to 35 of Part III of the Constitution. Clauses (1) and (2) of the said Article, which are relevant for our purpose, read as follows:-

> "13 (1) - All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency be void.
> (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

A careful scrutiny of the above two clauses will show that clause (1) makes the existing law? to the extent of inconsistency or laws in derogation of the fundamental right void, while clause (2) puts a sort of ban on the legislative power of the State in taking away or abridging the fundamental rights, by making any law and any law made in contravention of the fundamental rights will be void. The language used in the two clauses of Article 13 came up for interpretation in three cases before their Lordships of the Supreme Court. The first case was of *Saghir Ahmad v. State of U.P*[1]*.,* The second case was that of *Bhikaji Narain Dhakras v. State of Madhya Pradesh*[2]*,* while the latast case is of *Deep Chand v. State of U.P*[3]*.,* In Saghir Ahmad's case, AIR 1954 Supreme Court 728: 1955-1 SCR 707 the constitutionality of the Road Transport Act, 1951, which became law from 10th February, 1951, was challenged. That Act was enforced after the commencement of the Constitution and their Lordships observed at p.728 (of SCR): (as p.739 of AIR):-

> "The amendment of the Constitution which came later, cannot be invoked to validate an earlier legislation which must be regarded as unconstitutional when it was passed. As Professor Cooley has stated in his work on Constitutional Limitations 'a statute void for unconstitutionality is dead and cannot be vitalized by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted'. We think that this is sound law and our conclusion is that the legislation in question which violates the fundamental right of the appellants under Article 19 (1)(g) of the Constitution and is not shown to be protected by clause (6) of the article, a; it stood at the time of the enactment, must be held to be void under Article 13 (2) of the Constitution."

In the case of Bhikaji Naram, AIR 1955 Supreme Court 781 the impugned law was a pre-constiutional law. It was an amendment Act of 1947 amending the provisions of the Motor vehicles Act, 1939. Their Lordships observed that the amending Act was on the date of its passing a perfectly valid piece of legislation. It was an existing by at the commencement of the

Constitution and that certain provisions of that Act being infraction of the provisions of Article 19 (1) (g) of the Constitution the existing law became void to the extent of such inconsistency' under Article 13 (1). Their Lordships applied the theory of eclipse and observed at P.784:-

> "Article 13 (1) by reason of its language cannot be read as having obliterated the entire operation of the inconsistent law or having wiped it out altogether from the statute book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution, as was held in *Keshavan Madhava Menon v. State of Bombay*[4], The law continued in force, even after the commencement of the Constitution, with respect to persons who were not citizens and could not claim the fundamental right. In short, Article 13 (1) had the effect of nullifying or rendering the existing law which had become inconsistent with Article 19 (1)(g) read with, clause (6) as it then stood ineffectual, nugatory and devoid of any legal force or binding effect only with respect to the exercise of the fundamental right on and after the date of the commencement of the Constitution.....

[1] AIR 1954 SC 728: 1955-1 SCR 707. [3] AIR 1959 SC 648
[2] AIR 1955 SC 781 [4] AIR 1951 SC 128

The true position is that the impugned law became, as it were, eclipsed, for the time being, by the fundamental right.....and that inconsistency was removed on and from 27-4-1955 by the Constitution (Fourth Amendment) Act."

Thus the law, which had been eclipsed, or had become dormant because of the inconsistency, came to life again or was revived by the amendment of the Constitution and became good law again.

11. In the last mentioned case in AIR 1959 Supreme Court 648, the views taken in the aforementioned two cases were explained and it was laid down that the doctrine of eclipse has no application to the post-constitution laws infringing the fundamental rights as they would be ab initio void in toto or to the extent of their contravention of the fundamental rights. In this case after a long discussion of the various arguments both for and against the propositions of law argued before their Lordships of the Supreme Court the final conclusions were summarized in the judgment of Mr Justice Subba Rao, on page 664 in the following words:-

> "The result of the aforesaid discussion may be summarized in the following propositions, (i) Whether the Constitution affirmatively confers power on the legislature to make laws subjectwise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power; (ii) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitation laid down in Part III of the Constitution; (iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case may be; and (iv) the doctrine of eclipse can be invoked only in the case of a law

> valid when made, but a shadow is cast on it by supervening constitutional inconsistency; when the shadow is removed, the impugned Act is freed from all blemish or infirmity."

That case was not a case of want of legislative powers at the time the Act was passed. The same principle, however, does not apply to the other class of cases to which provisions of Article 13 (2) will apply because in those cases there will be want of legislative power and the law when made could not be so made or would still be a law which could not be revived after amendment of the Constitution. In a nutshell their Lordships laid it down that so far as the Acts passed after the coming into force of the Constitution are concerned, their validity is to be judged by the provisions of the Constitution as they stood on the date of the passing of the Act and not by the provisions of the Constitution as they stand on the date when the validity of the Act is challenged. In the other class of cases, that is, cases in which there was an existing law and some provisions of which became repugnant to Part III of the Constitution, the validity of the law shall have to be looked into on the basis of the provisions of the Constitution which existed on the date when the validity of that law was challenged because in such cases the law continues to exist and if the cloud or blemish is removed by the amendment of the Constitution the law which may have remained repugnant or inconsistent for some time would again become a valid law.

12. In the instant case the impugned Act was passed and enforced in the year 1953. It is a post-Constitution legislation and so the validity of the law shall have to be judged on the basis of the provisions of the Constitution which existed on the date when the law was passed.

13. Before going into, that question it may be stated that by the Constitution (Fourth Amendment) Act, 1955 a new Clause (2) was substituted in place of old Clause (2) of Article 31 while another Clause (2A) was also newly added by Section 2 of the Constitution (Fourth Amendment) Act, 1955. In place of Clause 2 of old Article 31 the following two clauses were substituted:

> "(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixed the amount of the compensation Or specified the principles on which, and the manner in which, the compensation is to be determined and giver, and no such law shall be called in, question in any court on the ground that the compensation provided by that law is not adequate.
> (2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

14. Article 31A of the Constitution was also amended. There is no manner of doubt that if the amended provisions apply they would save the impugned law because the Zamindars Debt

Redemption Act does not provide for transfer of ownership or right of possession of any property to the State or to any corporation owned or controlled by the State and so it cannot be taken to provide for compulsory acquisition or requisition of the property. The amended article however will have no application to the present case because neither the amendment in Clause (2) of Article 31 has been given retrospective effect nor the theory of eclipse applies and the law being a post-constitution Act its validity has to be judged on the basis of the constitutional provisions existing on the date of the passing and enforcement of the Act.

15. The question now is whether the provisions of Sections 3, 4, 7 and 9 of the Act in any way violate the provisions of old Article 31. Clauses (1) and (2) of old Article 31 of the Constitution as they existed in 1953 were:

> "31(1) No person shall be deprived of his property save by authority of law.
> (2) No property, moveable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall he taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which and the manner in which, the compensation is to be determined and given."

16. This article came for interpretation before his Lordship Mr. Justice Das in the case of *Chiranjit Lal Chowdhury v. Union of India*[5], It was laid down that Clause (1) enunciated the general principle that no person shall be deprived of his property except by authority of law, which, put in a positive form,, implies that a person shall be deprived of his property, provided he is so deprived by authority of law. No question of compensation arises under Clause (1). The effect of Clause (2) was that deprivation of property brought about by acquisition or taking possession of was not permissible under any law unless the law provided for payment of compensation. This view was not accepted later on.

17. Before stating the propositions of law it may be worthwhile to mention the scope, the object and the provisions of the four sections which have been impugned.
It was provided in the Preamble of the Act:

> "Whereas it is expedient to provide for scaling down of debts of Zamindars whose estates have been acquired under the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950;

It is hereby enacted as follows:"

The statement of objects and reasons was:

"The Zamindari Abolition Committee made certain recommendations as regards the scaling down of intermediaries debts. They pointed out that our existing debt laws do not take into account the special problem of the reduced capacity of the landlord to pay his debts due to abolition of zamindari. To the Committee it appeared sound and equitable that after the abolition of zamhidari the landlord's debts should be reduced in proportion to the reduction in the value of his land consequent upon the abolition."

It was with the objects aforesaid that the debts were scaled down. After giving the definition of the word 'debt' and some other important words used in the Act, the scheme for reduction of the debt at the time of the passing of the decree is given in Section 3 while that for reduction of the debt after the decree is given in Section 4. The law also provides, how the apportionment of a debt is to be made in case a part of it is charged on the estate and a part on some other property and then provides how the decree shall be deemed to be satisfied to the extent of the reduced debt in Section 7. The Act provides further how the secured debt is to be realized from the compensation and rehabilitation grant and how a decree for an unsecured debt, if sought to be executed against compensation and rehabilitation grant is to be realized. Sections 3, 4, 7 and 9, which are said to contravene the provisions of Article 31 are;

"3. Reduction of debt at the time of passing of decree. - (1) Notwithstanding anything in any law, agreement or document, in any suit to which this Act applies relating to a secured debt, the Court shall, after the amount due has been ascertained, but before passing a decree, proceed as hereinafter stated.

(2) Where the mortgaged property consists of estate and such estate has been acquired under the provisions of the U.P. Zamindari Abolition and Land Reforms

[5]1950 SCR 869

Act, 1950, the Court shall -

(a) if there is only one mortgagor who was on the 30th day of June, 1952, entitled as owner to the estate, reduce the amount due in accordance with the formula is schedule I;

(b) apportion between the mortgagors so an titled the amount due, where the mortgage deed defines their respective liability for the debt in the ratio of their liability, otherwise in proportion to their respective shares in such estate;

and

(c) after the amount due has been so apportioned, reduce in the case of each mortgagor the apportioned amount in accordance with the formula given in Schedule I.

(3) Where the mortgaged property consists partly of estate as aforesaid and partly of property other than such estate, the Court shall proceed to distribute the amount due on the two properties separately in accordance with the principles contained in Section 82 of the Transfer of Property Act, 1882, as if they had been properties belonging separately to two persons with separate and distinct rights of ownership and -

(a) after the amount due has been so distributed -

(i) if there was only one mortgagor who was on the 30th day of June, 1952, entitled as

owner to the estate, reduce the amount due on the estate, reduce the amount due on the estate in the manner laid down in clause (a) of sub-section (2) as if it had been a debt charged on such estate; and

(ii) if there are two or more mortgagors and all or more than one out of them were on the thirtieth day of June, 1952, entitled as owner to the mortgaged estate, apportion between the mortgagors the amount due on the estate, where the mortgaged deed defines their respective liability, in the ratio of their liability otherwise in proportion to their respective shares in the estate; and

(b) after the amount due has been so apportioned reduce the amount in the case of each of the mortgagors in accordance with the formula given in Schedule I.

.. ..

4. Powers to reduce debts after passing of decree. -

(1) Notwithstanding anything in the Civil Procedure Code or any other law, the Court, which passed a decree to which this Act applies relating to a secured debt, shall, on the application either of the decree-holder or judgment-debtor, proceed as hereinafter seated.

(2) Where the mortgaged property charged under the decree consists exclusively of estate and such estate has been acquired under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950, the Court shall -

(a) if there is only one judgment-debtor entitled as owner to the estate, calculate the amount due on the first day of July, 1952, and then reduce it in accordance with the formula given in the schedule;

(b) if there are two or more judgment-debtors and all or more than one out of them were on the thirtieth day of June, 1952, entitled as owners to the mortgaged estate -

(i) calculate the amount due on the first day of July, 1952;

(ii) apportion between the judgment-debtors so entitled the amount due, where the decree defines their respective liability in the ratio of their liability otherwise in proportion to their respective shares in such estate; and

(iii) after the amount due has been so apportioned, reduce the amount in the case of each of the judgment-debtors in accordance with the formula given in Schedule I.

(3) Where the mortgaged property charged under the decree consists partly of estate and partly of property other than estate, the Court shall -

(a) determine the amount due on the 1st day of July, 1952 and distribute the same on the two properties separately in accordance with the principles contained in section 82 of the Transfer of Property Act, 1882, as if the decree had been a debt and the two properties belonging separately to two persons with separate and distinct rights of ownership, and

(b) after the amount due as correct the estate has been so calculated, -

(i) if there is only one judgment-debtor who was on the 30th day of June, 1952, "entitled as owner to the estate, reduce it in accordance with the formula given in Schedule I;

(ii) if there are two or more judgment-debtors, and all or more than one out of them were on thirtieth day of June, 1952, entitled as owner to the estate apiportion the amount due as aforesaid between them where the decree defines their respective liability, in the ratio of

their liability, otherwise in nroportion to their respective shares; and

(iii) after the aforesaid amount has been so apportioned reduce the amount in accordance with the formula given in Schedule I.

7. Satisfaction of the decree. - After the amount due has been reduced under and in accordance with the provisions of section 4, the decree shall to the extent of the reduction so effected be deemed for all purposes and on all occasions to have been duly satisfied.

9. Execution of decree - relating to unsecurted debt against the bonds. - Where a decree to which this Act applies relating to other than is executed by attachment and sale of bonds granted to the judgment-debtor on account of compensation or rehabilitation grant for his estate, the Court executing this decree shall, notwithstanding anything in any law, enter satisfaction in accordance with the formula given in Schedule II."

A mention may also be made of Schedule I in which the formula for reduction of debt referred to in sections 3 and 4 is given. The formula is:

Reduced amount

(i.e. x) = Amount of debt x 8

Multiple for determina-tion of value under E.E. Act in this case the amount was reduced from 6,46,000/-to Rs. 1,84,721/-.

For purposes of section 9 the formula has been given in Schedule II according to which per every one rupee of the face value of the bond sold the amount deemed to be said shall be M.E./8 which would be Rs. 5/- for every one .rupee in case the muitiple value i.e., ME is 40 and in case it is the minimum i.e., 20 it will be Rs. 2/8/- for every one rupee.

According to the formula given in both the schedules above, the principal amount is greatly reduced and thereafter if the amount is realised from compensation or rehabilitation grant under section 9 for every one rupee of the face value of the bond a payment ranging from Rs. 2/8/- to Rs. 5/- shall be deemed to have been made.

18. The aforementioned provisions of the Act do not provide for acquisition of the creditor's property (that is the debt due to him) by the State. The debt is also not wiped out but is scaled" down by applying the formula given in the schedule. Under the provisions of Section 7 after the amount due has been reduced in accordance with the provisions of Section 3 or 4 in the manner given in the schedule the amount to the extent of reduction is deemed for all Purposes to have been duly satisfied. The reduced amount of a decree relating to a secured debt can only be realized to the extent of three-fourth amount against compensation awarded for the mortgaged estate. The amount can also be realized from three-fourth of the rehabilitation grant payable in respect of the mortgagor's estate. The law further provides that a mortgagee of an estate shall not be entitled to realize the reduced amount to the decree otherwise than out of the compensation and rehabilitation grant payable in respect of the mortgagor's estate. The contention of the learned counsel for the applicant is that the aforesaid provisions relating to the reduction of the decretal amount, the provisions for the realization of this reduced amount from three-fourth of the compensation and three. fourth of the rehabilitation grant as well as the provisions relating to the satisfaction of the remainder of the decree, all amount to deprivation and should be struck

down under the provisions of the old Article 31 (2). The contention of the learned counsel for the opposite party is twofold. The first is that the words "taking possession of or acquisition" given in old Article 31 mean taking possession of or acquisition by the State. There should also be complete deprivation of the property which amounts to non-existence of the property after it has been acquired which is not so as the debt still exists. The Act is said to regulate the relationship between the creditor and the debtor and is not an exproprietary Legislation. According to his submission the reduction of debt was done as a consequence of the abolition of the zamindari and as the abolition resulted in the reduction of the value of the estate the debts had naturally to be reduced in proportion to the reduction in value the whole Act is said to be saved by Articles 31-A and 31-B which were introduced with retrospective effect by the Constitution (First Amendment) Act, 1951. The scaling down of debt is said to be nothing more than modification of rights in respect of an estate and as the Zamindars Debt Reduction Act was made with the assent of the President the validity of the Act
cannot be challenged because of the provisions of Article 31-A (i) (a) of the Constitution.

19. The question for consideration which arises in this case is whether the provisions aforesaid of the Act amount to "taking possession of or acquisition" or in other words deprivation of the property of the creditor and do these provisions contravene old Article 31 of the Constitution.

20. The true scope and meaning of the old Article 31 of the Constitution has been explained by their Lordships of the Supreme Court in the following three cases: *State of West v Subodh Gopal*[6], Dwarkadas Shrinivas v, Sholapur Spinning and Weaving Co., Ltd., 1954 SCR 674 and 1955-1 SCR 707,

21. In the first case of State of West Bengal, 1954 SCR 587; (AIR 1954 Supreme Court 92) the leading judgment was given by the Chief Justice, his Lord. ship Patanjali Shastri with which Mr. Justjce Mahajan and Mr. Justice Ghulam Hasan also agreed. The scope of Article 31 of the Constitution has been considered from pages 600 to 611 (of SCR) (pp.96 to 99 of AIR). The Chief Justice did not agree with the view of Mr. Justice Das expressed

[6]1954 SCR 587

in the case of Chiranjit Lal, 1950 SCR 869. That view in a nutshell was that (1) of Article 31 of the Constitution enunciates the general principle that no person shall be deprived of his property except by authority of law, which, put in a positive form, implies that a person may be deprived of his property, provided he is deprived by authority of law. No question of compensation arises under clause (1). The effect of clause (2) is that only certain kinds of deprivation of property or taking possession of it, will not be permissible under any law, unless such law provides for payment of compensation. If the deprivation of property is brought about by means other than acquisition of taking possession of it no compensation is required, provided that such deprivation is by authority of law. The above is a summary of the view taken by Mr. Justice Das in the earlier case and his Lordship the Chief Justice after giving a fuller extract of the view of Mr. Justice Das observed at p.602 (of SCR) :-

"There are several objections to the acceptance of this view. But the most serious of them all is that it largely nullifies the protection afforded by the Constitution to rights of Private property and, indeed, stultifies the very conception of the 'right to property' as a fundamental right. For, on this view, the State acting through its legislative organ, could, for instance, arbitrarily prohibit a person from using his property, or authorise its "destruction, or render it useless for him, without any compensation and without a public purpose to be served thereby, as these two conditions are stipulated only for acquisition and taking possession under claue (2). Now, the whole object of Part III of the Constitution is to provide protection for the freedoms and rights mentioned therein against arbitrary invasion by the State, which as defined by Article 12 includes the Legislatures of the country. It would be startling irony if the fundamental rights of property were, in effect to be turned by constitution into an arbitrary power of the State to deprive a person of his property without compensation in all ways other than acquisition or taking possession of such property. If the Legislatures were to have such arbitrary power, why should compensation and public purpose be insisted upon in connection with what are termed two particular forms of deprivation? What could be the rational principle underlying this differentiation? To say that clause (1) defines the 'police power' in relation to rights of property is no satisfactory answer, as the same power could as well have been extended to these two particular kinds of deprivation. Such extension would at least have avoided the following anomaly; compensation is paid to indemnify the owner for the losse of his property. It could make no difference to him whether such deprivation was authorized under clause (1) or clause (2). In either case his property would be gone and he would suffer loss. It would matter little to him what happened to the property after he was deprived of it - whether it was used for a public purpose or was simply destroyed without any public purpose being served."

At p.606 (of SCR) it was observed :-

"Thus the American doctrine of police power as a distinct and specific legislative power is not recognized in our Constitution and it is therefore contrary to the scheme of the Constitution to say that clause (1) of Article 31 must be read in positive terms and understood as conferring police power on the Legislature in relation to rights of property."

At p.607 (of SCR) it was stated :-

"The purpose of Article 31, it is hardly necessary to emphasize, is not to declare the right of the State to deprive a person of his property but, as the heading of the article shows, to protect the 'right to property' of every person. But how does the article protect the right to property? It protects it by defining the limitations on the power of the State to take away private property without the consent of the owner. It is an important limitation on that power that legislative action is a pre-requisite for its exercise."

It was observed at p.608 (of SCR) :-

> "It is this limitation which the frames of our "Constitution have embodied in clause (1) of Article 31 which is thus designed to protect the rights to property against deprivation by the State acting through its executive organ, the Government. Clause (2) imposes two further limitations on the Legislature itself. It is prohibited from making a law authorising expropriation, except for public purposes and on payment of compensation for the injury sustained by the owner. These important limitations on the power of the State, acting through the executive and legislative organs to take away private property are designed to protect the owner against arbitrary deprivation of his property. Clauses (i) and (2) of Article 31 are thus not mutually exclusive in scope and content, but should, in my view, be read together and understood as dealing with the same subject, namely, the protection of the right to property by means of the limitations on the State power referred to above, the deprivation contemplated in Clause (1) being no other than the acquisition or taking possession of property referred to in clause (2)."

In the second case of Dwarkadas Srinivas, 1954 SCR 674 the leading judgment is of Mr. Justice Mahajan with which the Chief Justice patanjali Shastri agreed on p.679 (of SCR): (p.122 of AIR) and Mr. Justice Ghulum Hasan also agreed on p.735 (of SCR): (p.138 of AIR). The point relating to Article 31 has been dealt with in the judgment of Mr. Justice Mahajan on p.691 (of SCR): (p.125 of AIR) onwards. It was observed at p.692 (of SCR):-

> "The construction sought to be placed by the learned Attorney-General on the language of Article 31 is neither borne out by the phraseology employed in that article nor by the scheme of Part III of the Constitution. It seems to me that our Constitution subject to certain exceptions has guaranteed the fullest protection to private property. It has not Only provided that no person can he deprived of property by the executive without legislative sanction but it has further provided that even the legislature cannot deprive a person of his property unless there is a public purpose and then only on payment of compensation."

Then it was observed at p.695 (of SCR) :-

> "Article 31 (2) defines the powers of the legislature in the field of eminent domain. It declares that private property shall not be taken by the State under a law unless the law provides for compensation for the property taken. It is also implicit in the language of the article that such taking can only be for public purposes. Clause (3) of the article places an additional limitation on State laws enacted on this subject while clause (4) limits the justiciability of the quantum of compensation in certain cases."

At p.697 (of SCR) it was laid down :-

"From the language employed in the different sub-clauses of Article 31 it is difficult to escape the conclusion that the words 'acquisition' and 'taking possession' used in Article 31 (2) have the same meaning as the word 'deprivation' in Article 31 (1)."

22. The argument which has been raised hero by the learned counsel for the opposite party was also raised in Dwarkadas's case, 1954 SCR 674 that is, the words 'taking possession of or acquisition' should be taken to mean taking possession of or acquisition by the State and his Lordship observed at p.701 (of SCR) that this argument cannot be sustained because

"As above pointed, both these expressions used in clause (2) convey the same meaning that is conveyed in clause (1) by the expression 'deprivation'. As I read Article 31, it gives complete protection to private property as against executive action, no matter .by what process a person is deprived of possession of it. In other words the Constitution declares that no person shall be deprived of possession of private property without payment of compensation and that too under the authority of law, provided there was a public purpose behind that law. It is immaterial to the person who is deprived of property as to what use the State makes of his property or what title it acquires in it. The protection is against loss of Property to the owner and there is no protection given to the State by the article. It has no fundamental right as against the individual citizen. Article 31 states the limitations on the power of the State in the field of taking property and those limitations are in the interests of the person sought to be deprived of his property."

23. Both the aforementioned cases were fallowed in Saghir Ahmad's case, 1955-1 SCR 707. The point relating to Article 31 of the Constitution has been dealt with in the judgment of Mr. Justice Mukherjea from 728 of SCR). After stating that the effect of taking certain routes for running the State buses was not the acquisition of the right of the petitioners whether such right was property or not or was merely an interest in a commercial or industrial undertaking it was stated that it certainly had the effect of prohibiting the petitioners from operating their buses on certain routes.

"According to the High Court, therefore mere deprivation of the petitioner's right to run buses or their interest in a commercial undertaking is not sufficient to attract the operation of Article 31 (2) of the Constitution as the deprivation has been by the authority of law within the meaning of clause (1) of that article. Clause (2) could be attracted only if the State had acquired or taken possession of this very right or interest of the petitioners or in other words if the right of the petitioners to run buses had been acquired by or had become vested in the Government.. .. ..This argument, we think, is not tenable leaving regard to the majority decision of this Court in 1954 SCR 587 and 1954 SCR 674 (both of which have been discussed earlier). In view of that decision it must be taken to be settled now that clauses (1) and (21 of Article 31 are not mutually exclusive in scope but should be read together as dealing with the same subject, namely, the protection of the right to property by means of limitations of the State's powers, the deprivation contemplated in

clause (1) being no other than acquisition or taking possession of the property referred to in clause (2) The learned Advocate General conceded this to be the true legal position, after the pronouncements of this Court referred to above. The face that the buses belonging to the appellants have not been acquired by the Government is also not material. The property of a business may be both tangible and intangible. Under the Statute the Government may not deprive the appellants of their buses or any other tangible property but they are depriving them of the business of running buses on hire on public roads. We think therefore that in these circumstances the legislation does conflict with the provisions of Article 31 (2) of that Constitution and as the requirements of that clause have not been complied with, it should be held to be invalid on that ground."

24. The following propositions of law have been laid down in the aforementioned three cases (1) clauses (1) and (2) of Article 31 are not mutually exclusive in scope but should be read together as dealing with the same subject namely, the protection of right to property by means of limitation on the State's powers. (2) The expressions 'taking possession op or 'acquisition' used in clause (2) convey the same meaning as conveyed by the word 'deprivation' under in clause (1) or, in other words, the deprivation contemplated by clause (1) is no other than acquisition or taking possession of the property referred to in clause (2). (3) Article 31 gives complete protection to private property against executive action, no matter how a person is deprived of his property or to what use the state puts that property or what title it acquires in it. (4) The protection given by Article 31 is against the loss of the property to the owner and there is no protection given to the State by the Article. (5) Article 31 imposes limitation on the power of the State in taking property and the limitations are in the interest of the person deprived of his property. (6) Deprivation cannot be done except (i) under the authority of law, (ii) for public purpose and (iii) on payment of compensation. (7) The property may be both tangible and intangible such as a right of business.

25. The scope and object of the Act as well as the impugned sections have already been, given earlier. It may be stated that the Act was passed (a) with the object of scaling down the debts of the ex-zamindars because of the abolition of the zamindari and reduction of the debts in proportion to the reduction in value of the estates (b). It is one of the several legislations like the Agriculturists Relief Act, U.P. Encumbered Estates Act, Regulation of Agricultural Credit Act etc. passed in order to secure a social order for the promotion and welfare of the people for improving the rural economy of regulating agricultural indebtednesections (c) The Act was passed in furtherance of the scheme or to complete the abolition of zamindari. (d) Notwithstanding the fact that the debt due to a creditor from an ex-zamindar has to be drastically reduced by applying the provisions of the Act yet the debt due-to the creditor continues to exist and is not wiped out. (e) The right to realise the reduced debt is not taken away but is only restricted in the sense that secured and unsecured debts due from ex-zamindars can be realised only in a particular manner and to a particular extent, (f) The provisions of the Act do not authorise expropriation of the property.

26. It seems to us that in view of the law laid down about the scope and meaning of the old Article 31 and the provisions of the impugned Act, the Zamindars Debt Reduction Act is merely in the nature of regulatory law reflating the relationship of the creditors and the ex-zamindars It cannot be called a piece of legislation authoring the acquisition or expropriation of a private property or affecting such rights of property as are guaranteed under the constitution. Our view is that the provisions of the said four sections do not amount to 'deprivation' as contemplated by Article 31.

27. Before we pass on to the provisions of Article 31 A (i)(a) of the Constitution it will be worthwhile to mention that the Act was pissed within the legislative competency of the State Legislature. Entry 30 of List II (State List) authorises the State Legislature to make law with respect to 'money lending and money-lenders' i.e. relief for agricultural indebtedness, while entry 13 of List III authorises the State Legislature to make "Civil Procedure including all matters included in the C.P.C. at the commencement of this Constitution Limitation and Arbitration." The impugned provisions of the Act are covered either by the one or the other of the aforesaid two entries in the two lists. The Act was also made law after receiving the assent of the President.

28. As the very object of the Act will show, the Zamindari Abolition Committee recommended the scaling down of the debts of the zamindars in proportion to the reduction in value of the property because of the abolition of zamindari. The formula of reduction of debts given in the schedule has a direct connection with the depreciated value of the property of ex-zamindars. The legislature thought that it was in the public interest not to leave the zamindars, whose property had been acquired, at the mercy of the money lenders; and as the zarnindars were left only with compensation bonds and rehabilitation grants the legislature made a provision that the secured debts on the estate and non-estate property should be apportioned in the manner given in Sections 3 and 4 after reduction of the debts according to the formula given in the schedule. The compensation, bonds and the rehabilitation grants in a way constituted a substituted security for secured debts and so the method of recovery of the secured debts from the compensation and rehabilitation grants was provided by the legislature, For the unsecured debts the creditor had an option and if he wanted to proceed against the estate of ex-zamindars, the manner was restricted by realisation of such debts against compensation and rehabilitation grants as given in Section 9. We are of opinion that having regard to the provisions of the Act as well as the scope and meaning of Article 31 the impugned sections do not offend against the constitutional safeguard, given in Article 31.

29. It was further argued on behalf of the respondents that Articles 31A and 31B, which were introduced in the Constitution by the Constitution (First) Amendment Act, 1951, and which were given retrospective effect also save the impugned sections. The contention is that the right to realise the debt from the estate of the ex-zamindars was in the nature of a right in the estate and as the acquisition by the State of any estate or any rights therein or the extinguishment or

modification of any such rights has been made constitutional, notwithstanding anything contained in Article 13 and notwithstanding the fact that the provisions of the law may be inconsistent with Article 13, 19 or 30 the modification of the rights of the creditor in the estate cannot be deemed to violate the provisions of Article 31 or 19 (1)(f).
Art. 31A (1)(a) reads as follows :

"Notwithstanding anything contained in Article 13 no law providing for:

> (a) the acquisition by the State of any estate or of any rights therein or the extinguish meat of modification of any such rights, or ..... 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, 19 or 31.
> Provided that where such law is a law made by the legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

30. The expression 'estate' and 'rights in relation to an estate' have also been defined in subsection (2) of Article 31A as given below;

> "(2) In this article:
> (a) the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant;
> (b) the expression 'rights', in, relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, uuder-proprietor, tenure-holder or other intermediary and rights or privileges in respect of land revenue."

31. For the meaning of expresion 'estate' we have therefore to look to the provisions of the Zamindari Abolition and Land Reforms Act, which was the existing law in relation to land fenures That expression has been defined in Section 3 (8) as follows:

> "(8) 'Estate' means the area included under one entry in any of the registers prepared and maintained under Clause (a), (b), (c) or (d) of Section 32 of the United Provinces Land Revenue Act, 1901, or in the registers maintained under Clause (e) of the said section in so far as it relates to a permanent tenure-holder and includes share in or of an estate;"

This definition was amended by U.P. Act XXV of 1958 and the definition of 'Estate' as if stands now is given below:

> "(8) 'Estate means and shall be deemed to have always meant the area included under one

> entry in any of the registers described in Clause (a), (b), (c) or (d) and, in so far as it relates to a permanent tenure-holder, in any register described in Clause (c) of Section 32 of the U.P. Land Revenue Act, 1901, as it stood immediately prior to the coming into force of this Act, or subject to the restriction mentioned with respect to the register described in Clause (c), in any of the registers maintained under Section 33 of the said Act or in a similar register described in or prepared or maintained under any other Act, Rule, Regulation or Order relating to the preparation or maintenance of record-of-rights in force at any time and includes share, in, or of an 'estate'.

In order that a particular property should constitute an estate it is necessary that it should be an area or a share in or of an estate. It is true that in the instant case the property mortgaged, at least the villages, (leaving aside the question of malikana at this stage) constituted an estate. But in this case we are not concerned with the mortgagor's estate or his rights in relation thereto. We are only concerned with the rights of a simple mortgagee to whom estate had been mortgaged and the question is whether the mortgagee rights also constitute an estate within the meaning assigned to the expression 'estate' in the Zamindari Abolition and Land Reforms Act. The Zamindars Debt Reduction Act does not provide for the acquisition of any estate. It also does not provide for the modification of any rights in an estate and so the further question is whether the provisions of reduction of debt and the manner of its realization can in any way be construed to mean modification of any rights in relation to an estate.

32. To constitute an estate it is necessary that it should be an area or a share therein defined in Zamindari Abolition and Land Reforms Act, while the expression "right in relation to an estate" has been defined to include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or 'other intermediary or any rights and privileges in respect of land revenue. The mortgagee rights of a simple mortgagee are nether an area, nor such rights are vested in a proprietor, sub-proprietor, or under-proprietor etc. given in Article 31-A(2)(b). The contention of the learned counsel for the respondents is that the word 'include' used in the definition of the expression 'rights in relation to an estate', shows that the definition is not exhaustive and so such inferior rights as that of a simple mortgagee whose right of a realization of the mortgage money is now restricted to the substituted security in the form of compensation bonds and rehabilitation grants should be deemed to be the rights in relation to an estate.

33. A mortgage has been defined in Section 58 (a) of the Transfer of Property Act as

> "the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability."

34. A simple mortgage comes into existence "Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the

mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee."

35. This definition will show that a simple mortgage consists of the transfer of a right to cause the property to be sold, the right transferred to the mortgagee can in no way be called to be the transfer of ownership of the property or the vesting of the property in the mortgagee. The only security for the debt advanced on a simple mortgage is therefore a personal obligation of the mortgagor and the right of a mortgagee to get the mortgaged property sold. It is not possible at all to accept the argument that the right of a simple mortgagee can be called an esate and that the provisions of the impugned sections of the Act can at all be called to be modification of rights in relation to an estate.

36. As stated earlier, the Zamindars Debt Reduction Act came into force in 1953. On the date when it was enforced, the estate of the mortgagor had already been abolished with effect from 1st July, 1952. His estate and in fact the estates of all the intermedlajies in Uttar Pradesh stood vested in the State as a consequence of abolition. On such abolition no rights in relation to an estate could continue to exist, nor were they existing in 1953, nor can it be said that such rights have been modified by the provisions of the Act. The Act, if it modified any rights modified the rights of a secured creditor against a debtor or more precisely the Act regulated the relationship between the creditor and an erstwhile zamindar-debtor. The very definition of the expression "rights in relation to an estate" given in Article 31-A contemplates the rights of a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary. Without going into the question whether this definition can or cannot be called to be exhaustive, one thing, which is certain, is that the expression "rights in relation to an estate" cannot include the rights of a simple mortgagee, who himself had limited right.

37. The learned Standing counsel relied upon the case of *Sampuran Singh v. Competent Officer*[7], That was a case in which the order passed by the Competent Officer in respect of evacuee property was sought to be quashed and it was held that

> "where the property had been lawfully acquired in the terms of Article 31, then it can be of no avail to contend that the right guaranteed under Article 19 (1)(f) must all the same remain inviolable."

He also made a reference to the cases of *Bhaskar Narayan v. Mohammad AlimuUakhan*[8], *Bramadathan Nambooripad v. Cochin Devaswom Board*[9], and *Jugal Kishore v. Labour Commissioner, Bihar*[10], But these are cases which have no application, because the constitutional point involved in those cases was quite different from the one involved in the present case. The only case which has any application is the Supreme Court case of *Kavalappa Kottarathil Cochuni v. States of Madras and Kerala*[11], It was in this case that the scope and object of Article

31-A was considered. The Supreme Court laid down: "As the new Article 31-A deprives citizens of the fundamental right, the provisions of the said Article had to be considered strictly." That was a case which related to the provisions of Madras Marumak (Removal of Debts) Act (32 of 1955). According to their Lordships what is protected by Article 31-A is the modification of rights between a proprietor and a subordinate tenure-holder or the rights relating to agrarian reform, but if there was modification of the rights of the proprietor alone, protection of Article 31-A could not be sought. Having regard to the provisions of Article 31-A, its scope and meaning as expounded by their Lord-ships of the Supreme Court in the aforementioned case, it cannot at all be said that the provisions of the impugned Act in any way modified the rights in relation to an estate Article 31 (sic) (S.31-A?) therefore cannot give any protection

38. According to our finding given above thee provisions of sections 3, 4, 7 and 9 of the

[7] AIR 1955 Pepsu 148 [9] AIR 1956 Tran Coc 19 (FB) [11] AIR 1960 SC 1080
[8] AIR 1953 Nag 40 [10] AIR 1958 Pat 442.

Act do, not in any way contravene Article 31 of the Constitution of India.

POINT No.2:

39. It has been contended that after the debt has been reduced in accordance with the provisions of some of the Sections the whole of the reduced amount cannot still be realized from the compensation and rehabilitation grant. The right of realisation is restricted to the extent of three-fourth amount of the compensation and rehabilitation grant which amounts to a restriction on the right of the creditor to hold or acquire property, which is guaranteed under Article 19 (1)(f). Section 9 is also said to impose restrictions on the right of an unsecured creditor in a similar manner and the satisfaction of such a decree is to be entered in accordance with the formula given in Schedule II. Both these sections are said to impose unreasonable restrictions on the right to hold and acquire property which is also not in the interest of the general public and so these sections are not said to be covered by the provisions of clause 5 of Article 19.

40. We have already quoted the provisions of sections 3, 4, 7 and 9 of the Act earlier. It will be worthwhile to quote the provisions of section 8 now.

> "8. Debt realisable from Compensation money and rehabilitation grant. - (1) Notwithstanding anything in any agreement, document or law for the time being in force, but subject to the provisions of sub-section (2) a decree relating to a secured debt passed in any suit to which this Act applies -
>
> (a) shall, in so far as the compensation for the mortgaged estate is concerned, be executed to the extent of three-fourths amount only against such compensation, and
>
> (b) be also executable, in addition to and without prejudice to every other remedy to which the decree-holder may be entitled under the decree or law for the time being in force, against the rehabilitation grant payable in respect of the mortgaged estate to the extent of three-fourths of each grant.
>
> (2) Notwithstanding anything in any law the reduced amount found in the case of a mortgagor or judgment-debtor as the case may be, under section 3 or 4 as respects

mortgaged estates shall not be legally recoverable otherwise than out of the compensation and rehabilitation grant payable 16 such mortgagor or judgment-debtor in respect of such estates."

41. The validity of sections 3, 4, 7, 8 and 9 has been challenged on the grounds given below,

42. The argument of the learned counsel for the petitioner in general is that even if there was some justification for scaling down debts of the ex-zamindars in the manner given in sections 3 and 4 of the Act, it was unreasonable to place a further restriction on the right of the creditor to realise even the reduced amounts to its full extent. According to him, the creditor has already suffered considerably by a drastic cut in his loan and so a further provision to make the creditor suffer still more was highly unreasonable and bears no proportion to the corresponding hardship suffered by the ex-zamindars by abolition of the zamindari. According to his submission even if the object of the Act was to reduce the debt in proportion to the reduction in value of the zemindar's property, there should have been no further restriction on the right of the creditor to realise the whole of the reduced amount, and the restriction placed by the Act to execute the mortgage decree to the extent of three-fourths of the amount of compensation and three-fourths of the amount of the rehabilitation grant can in no way be said to be a reasonable restriction, or a restriction which can be said to be protected by clause (6) of Article 19.

43. The general argument of the learned counsel for the respondents is that the Zamindars Debt Reduction Act has to be Judged in the context of the abolition of Zamindari under the Zamindari Abolition and Land Reforms Act, and as the reduction of the zamindars debt was a mere consequence to the abolition of zamindari, the reduction of the debt as well as the restriction on the right of the creditor to realise the debt in the manner given in sections 8 and 9 of the Act, amount to reasonable restrictions in public interest and so protected by clause (5) of Article 19.

44. The point which arises for determination is whether the restrictions placed by the Act on the right of the creditor in case of both secured and unsecured debts, are unreasonable restrictions upon the right of holding and acquiring property.

45. Clause (5) of Article 19 of the Constitution authorises the State to impose reasonable restrictions on the rights of property (1) in the interest of the general public, or (2) for the protection of the interest of any scheduled tribe. In this case we are not concerned with the latter, but only with the former. The expression "in the interest of the general public" is certainly something more than the "grounds of public order". This expression will also include grounds of social and economic interest or the ground of common good, enunciated in some of the Articles of part IV of the Constitution. The expression "reasonable restrictions" has been interpreted by the Supreme Court to mean that the limitations imposed on a person for enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. The word "reasonable" would imply intelligent care and deliberation. It has, therefore, to

be seen whether the provisions of the Act in general and of the sections impugned before us in particular are in the interest of the general public and whether the restrictions imposed upon the right of the Creditor are reasonable.

46. We have, while dealing with the question relating to contravention of Article 31, under point already held that the Act in general and the provisions of sections 3, 4 and 7 of the Act in particular, neither contravene the Provisions of Article 31 nor do they violate Article 19 (1)(f) of the Constitution. The Act has further been held to be a regulatory measure regulating the relationship of creditors and ex-zamindar debtors. Legislation does not also authorise expropriation of the property. Our view is (I) that the provisions of these three sections are in consonance with the object of scaling down the debts of the ex-zamindars in proportion to the reduced value of their estates; (2) that the legislation is one of the several legislations the object of which was to secure social order for maintaining and improving the rural economy by regulating agricultural indebtedness; (3) that the Act was passed in order to complete the picture of the abolition of zamindari; (4) that the debt continued to exist, though reduced, and that the right to realise the same was also not taken away, though it had been restricted to realise the secured and unsecured debts in the manner given in some of the provisions of the Act; and (5) that the provisions of these three sections cannot be said to contravene the guarantee given by Article 19 (1)(f) of the Constitution and these sections only amount reasonable restrictions on the right of the Creditors.

47. Before we pass on to the provisions of sections 8 and 9, it will be worthwhile to mention that the learned counsel for the respondents relied upon the case of *State of Bombay v Bhanji Munji*[12]., and urged that Articles 31 and 19 of the Constitution being mutually exclusive, and once it had been found that the provisions of sections 3, 4 and 7 are not contravened by Article 31, it is not open to the petitioner to argue that the provisions of the said three sections should be struck down under Article 19 (1)(f). This argument of the learned counsel has no force in view of the latest decision of the Supreme Court in AIR 1960 Supreme Court 1080. In this ease the Supreme Court took the view that after the Constitution (Fourth Amendment) Act, 1955 Article 31 (1) and (2) cannot be held as dealing with the same subject-matter, but they deal with two different subjects: Article 31 (2) and (2-A) with acquisition and requisition and Article 31 (1) with deprivation of property by authority of law. After that Act, Bhanji Munji's case AIR 1955 Supreme Court 41 no longer holds the field and Article 31 (1) does not exclude the operation of Article 19 (1). In Kochuni's case, AIR 1960 Supreme Court 1080 a 'Sthanee' had been deprived of a certain share in a sthanam and the same had been transferred to other members of the Tarward. As Article 31 of the Constitution, as amended, had not been contravened, the Supreme Court judged the validity of the Act on the basis of Article 19 (1)(f) and held that the provisions of the Act placed unreasonable restrictions on the right of a sthanee to hold his property. It was further found that the Act was only a legislative device to take away property from one and give it to another without any compensation, and was, therefore, unreasonable. The Act was, therefore, thought to be ex-propriatory in its nature, and though not hit by Article 31 contravened

the provisions of Article 19 (1)(f). In view of this decision of their lordships of the Supreme Court the argument of the learned counsel cannot be accepted, and even though the provsions may not contravene Article 31, yet they may still be unreasonable and contravene the provisions of Article 19 (1). However this position does not arise in the case as we have already held above that Sections 3, 4 and 7 of the Act place reasonable restrictions and are covered by clause (5) of Article 19.

48. We have now to see whether the provisions of sections 8 and 9 of the Act relating to secured and unsecured debts, imposing resections on the right of the creditor, i.e., requiring him to realise the debt from three-fourth of the compensation and three-fourth of the rehabilitation grant, are reasonable or not, and whether they are arbitrary, particularly the provisions of section 9.

49. A glance at the scheme of the Act, which has already been diseased earlier, will show that the provisions of sections 8 and 9 of the Act become applicable only after the debt has been reduced under the provisions of sections 3 and 4 in the manner given in the Act. After the amount has been reduced satisfaction of the decree to the extent of the reduced amount is entered under section 7 of the Act. In the instant case the debt was a secured one and so we are only concerned with the provisions of section 8. But while arguing about unreasonableness the learned counsel contended that even though section 9 of the Act may not be applicable, yet reasonableness or otherwise of that section should also be gone into because the legislature could not have enacted section 8 without making

[12]1955-1 SCR 777: AIR 1955 SC 41

provision for unsecured debts under section 9. It is in this context that we have also to look to the principle of severability.

50. The grounds of unreasonableness pointed out by the learned counsel are:

> (1) The object of the Act being scaling down of ex-zamindars' debts, once these debts were reduced in accordance with the provisions of sections 3 and 4 of the Act, it was unreasonable for the legislature to place any restrictions on the right of a creditor to realise his debts from 3/4th of the compensation and 3/4th of the rehabilitation grant; particularly when satisfaction of the balance of the decree was provided for under section 7.
> (2) The compensation bond and the rehabilitation grant being in a way substituted security the whole of it should have been made available to the secured creditors and any restriction on the creditors right amounted to contravention of the guarantee given by Article 19 (1)(f) of the Constitution to hold and acquire property.
> (3) Section 8 debars a simple mortgagee to avail himself of the personal remedy against a mortgagor if such a remedy was open to him and so any such restriction is unconstitutional.
> (4) The formulae given in Schedules I and II of the Act are unreasonable because.
> (a) they bear no proportion to the reduction value of the property

(b) the value of the estates of the assets of ex-zamindars did not go down in proportion to ME/8 as eight times of the net assets was the amount of compensation payable to ex-zamindars besides rehabilitation grant which varied from 1 to 20 times of the net profits,
(c) according to the formula given in Schedule II for one rupee of the face value of the bond sold in execution of the decree satisfaction would be entered for an amount which will be ME/8 times thereof, i.e., if ME is 40 payment of Rs. 5/-for every rupee would be presumed, but if ME is the minimum i.e., 20 times payment of Rs. 2/8/-for every one rupee would be presumed,
(d) the provision for satisfacton of an amount equal to ME/8 times of the face value of the bond was unjustified and even if a higher amount was intended to be Presumed to have been paid ME/8 times should have been of the amount realised and not of the face value of the bond.
(5) The ex-aamindars were still possessed, of Khudkasht and Sir land ad well as the groves. Their value did not suffer any reduction and so a general formula taking the reduced value of every kind of estate of the ex-zmindars was totally unjustified and unreasonable.

51. The arguments covered by points Nos.1 to 3 above relate to the provisions of section 8 while points Nos.4 and 5 relate to both sections 8 and 9. All the arguments of the learned counsel for the petitioner are based on the assumption that by placing the restrictions under sections 8 and 9 the decree-holder shall not be able to realise the whole of the reduced decretal amount. The very basis of the argument will be knocked out if it can be shown by mathematical calculations that the argument is based on wrong hypothesis. To us it seems that the provisions of sections 8 and 9 read with formula given in Schedules I and II, are directly related to the reduced value of the estates which had been abolished and had been taken over by the State. The calculations made below will further show that the formula given in Schedule I reduced the amount of decree in such a manner that the whole of the decretal amonnt shall almost in every case be realized from 3/4th of the compensation and 3/4th of the rehabilitation grant.

52. The provisions of sections 3 and 4 apply to secured debts alone and even though the provisions of the Act apply to unsecured debts yet there is no section in the Act which empowers the courts to reduce the amount of unsecured debt either at the time of the passing of the decree or after the passing of the decree on the application made by the decree-holder or the judgment-debtor. The method of reduction given in the Act is only with respect to the secured debts and not with respect to the unsecured debts. The provisions of section 9 which apply to unsecured debts also appear to be optional inasmuch as that section will apply only when unsecured decree-holder wishes to proceed against the compensation and the rehabilitation grant of an ex-zamindar. If such a creditor takes out execution against other Property of the debtor or against his person (if that remedy is open to him) neither section 9 will apply nor the formula given in Schedule II.

53. We have already mentioned in the earlier portion of the judgment as to how the reduced

amount in respect of a secured debt is to be calculated under the provisions of sections 3 and 4. The formula given in Schedule I is :

X = D X 8.
ME
'X' stands for the reduced amount 'D' for the decretal amount and 'ME' for the multiple for determining the valuation of an estate under the U.P. Encumbered Estates Act. In the instant case 'X' is equal to 1,84,571, while 'D' is equal to 6,46,000/-. To put this in a formula
6,46.000 X 8
ME
The ME therefore comes to 27.

54. The decretal amount has also been reduced to 1/3.4 times.
It further appears from the record that for all the mortgaged property the respondent mortgagor was ordered to be paid Rs. 4,59,650/- as compensation. Under the provisions of the Zamindari Abolition and Land Reforms Act it has been provided in section 54 that the amount of compensation payable to an intermediary in respect of his proprietary rights, shall be eight times the net as sets mentioned in the roll. The net assets are calculated in the manner given in section 44 while the gross assets of a mahal have been described in section 39. In order to prepare a final compensation) roll it is necessary for the Compensation Officer to prepare a statement of gross assets and thereafter prepare a draft compensation roll and then after inviting objections a final roll of the amount of compensation which would be 8 times of the net assets.

55. In this case the mortgagor was to receive Rs. 4,59,650/- as compensation for the mortgaged property and as this amount is eight times of the net profits the pre-slump profits of the mortgaged property would be

Rs. 4,59,650 = Rs. 57,456.

56. Since the amount of compensation which is payable under the Zamindari Abolition and Land Reforms Act has a direct relation with ME which represents the multiple for determining the valuation of the estates under the U.P. Encumbered Estates Act it is necessary to make a reference to the provisions of that Act as well. The transfer value of an estate under that Act isdetermined under section 26. The transfer value of the debtor's proprietary right in land has been given as profits x multiple to be used in calculating the transfer value of the debtor's proprietary right in transfer value of the debtor's proprietary right in be 27 as already worked' out earlier. The expression "proprietary rights in land" has been defined under section 2 (n) as amended as to include a reference to compensation and rehabilitation grant payable under and in accordance with the U.P. Zamindari Abolition and Land Reforms Act, while the expression "transfer value of proprietary rights in land" has been defined in clause (m) of the old Act as valuation at which such proprietary rights would be transferred to a creditor under this Act in the

liquidation of a debt. Since the transfer value of proprietary rights in land is obtained by multiplying the multiple given in Cl (b) of Section 26 of the Encumbered Estates Act with the pre slump profit of the land, the payment of compensation on the abolition of zamindari and the transfer value of the land determined under the Encumbered Estates Act have a direct connection and it seems that it was after keeping the provisions of the Encumbered Estates Act in view that compensation of the assets on abolition of zamindari was determined at 8 times of the net profits.

57. It has already been found out earlier that ME in this case is 27 and that the profits of the mortgaged property amount to Rs. 57,456. The transfer value of the mortgaged property therefore comes to Rs. 57,456 x 27: 15,50,312/-. Under the provisions of the Encumbered Estates Act therefore the transfer value of the mortgaged property would be Rs. 15,50,312/-, but the mortgagor i.e. the ex-zamindar got compensation only to the Extent of Rs. 4,59,650/-. This means that the value of the mortgagors asset was reduced in the proportion of 15,50,312: 4,59,650 which comes to 1/3.377, i.e. 1/3.4. It has been shown earlier that the decretal amount has been reduced from Rs. 4,46,000/-to Rs. 1,84,571/- i.e. in the proportion of 1/3.4. The reduction in the decretal amount is almost in the same proportion as the reduction value of the mortgagor's estate. This, therefore, establishes a direct connection between the reduced amount of the decree and the reduced value of the Property. It may also be stated that after the validity of the Zamindari Abolition and Land Reforms Act has been upheld by the Supreme Court and after a new Article 31-B read with IX Schedule has been introduced in the Constitution neither the constitutionality of the Zamindari Abolition and Land Reforms Act nor the amount of compensation awarded thereunder can be questioned.

58. In the instant case the remedy of the creditor as a simple mortgagee lay against the mortgaged property alone, personal remedy was not open to him because one of the mortgages was of the year 1924 while the second mortgage was of the year 1929. The creditor could, therefore, only claim sale of the property which was given as a security for the loan. After determination of the liability of the debtor under the Encumbered Estates Act the creditor could only proceed against the compensation bonds because the debtor's proprietary right in the land haying vested in the State Government by abolition of the zamindari the mortgagee-creditor could only claim compensation and rehabilitation grant because of the definition of the expression "proprietary rights in land" as defined in the Encumbered Estates Act. As shown above the value of the mortgaged property had been reduced on account of the abolition of the zamindari to 1/3.4 and so the creditor could not be allowed to claim the whole of the mortgaged money from the reduced value of the mortgaged property. The debt due to the creditor respondent had to be reduced in the same proportion. In this particular case the reduction in value of the mortgaged property is almost in the same proportion as the reduction in debt made under the Act,

59. The argument of the learned that the provision for realising the decretal amount from 3/4 of the compensation and 3/4th of the rehabilitation grant is in the nature of restriction appears to be

more fallacious than true. Firstly because under the provisions of the Transfer of Property Act a mortgagee should advance only as much amount as represents 2/3rd value of the property. This margin was obviously kept in view while making the advance in the present case, because, as stated earlier, the amount due to the decree-holder was at first determined at Rs. 7,00,108/- under the Agriculturists Relief Act and then later on at Rs. 6,46,000/- which was the principal amount under the Encumbered Estates Act against the property the value of which works out to be Rs. 15,50,312/-. It was after the abolition of the zamindari that the value of the mortgaged property was reduced to Rs. 4,59,650/- and consequently a proportionate reduction in the debt had to be made. It was for this reason that the decretal amount was reduced from Rs. 6,46,000/- to Rs. 1,84,571/-. It therefore appears that if a mortgagee was cautious and advanced money on sufficient security of the property as required by the Transfer of Property Act the whole of the secured debt shall invariably be realized from 3/4th of the compensation and 3/4th of the rehabilitation grant even after adding pendente lite and future interest as well as the costs of the Suit. To us it seems that the provisions of Section 8 read with Schedule 1 are such as to make it possible for every secured creditor to realize the whole of his reduced amount of debt from the composition and the rehabilitation grant provided the creditor was not careless in advancing money against insufficient security of property. We thus find no restriction and no unreasonableness in the previsions.

60. Learned counsel also raised a question of the personal remedy of the mortgagee against the person of the mortgagor. But this question does not arise in the present case. The personal remedy is also such as is not always open to the mortgagee. It is dependent upon certain other factors and so we do not think that this argument of the learned counsel has in reality any effect or it can be taken to amount to any contravention of the constitutional guarantee.

61. Learned counsel also raised a question about the valuation of the khudkasht and sir land as well as the groves and contended that the value of such property did not go down and the legislature while enacting the formula did not take this point into consideration at all. We are unable to accept this argument because once it is found that the reduction in debt has been done in the same ratio as reduction in value of the estates after the abolition of the zamindari it is of no importance whether the value of such property was or was not taken into consideration. The fact remains that the reduction in debt is reasonable and a secured creditor will be able to realise his whole of the secured debt, even though only 3/4th of the compensation and 3/4th of the rehabilitation grant is available to him for satisfaction of his debt.

62. Our findings therefore are that the debts of the secured creditors have been reduced in direct proportion to the reduction in value of the estates of the ex-zamindars by abolition of the zamindari, that the restriction which has been placed upon the right of the creditor to realise his debt against 3/4th of the compensation and 3/4th of the rehabilitation grant under Section 8 is in fact no restriction because the whole of such a debt shall invariably be realisable. To us it seems that the restriction placed by section 8 is no restriction at all. There is thus no contravention of

any constitutional guarantee by Section 8 and the formula given in Sch.I bears a direct relation to the reduced value of the mortgaged estate.

63. We are therefore of opinion that Section 8 of the Act does not in any way contravene the provisions of Article 19 (1)(f) of the Constitution and even if the restriction on the right of the creditor is taken to be a restriction, which, to our mind is not so, it being directly connected with the reduced value of the property is a reasonable restriction protected by Clause (5) of the said Article.

64. So far as the provisions of section 9 of the Act go, that section has a limited application, depending upon the choice of the unsecured creditor. If such a creditor elects to proceed against the compensation and rehabilitation grant paid to the ex-zamindar, satisfaction of the debt shall be entered into under Section 9 after applying the formula given in Schedule II. It has already been observed earlier that there is no provision in the Act providing for reduction of an unsecured debt as has been made for secured debts and even though the provisions of the Act are applicable to unsecured debts as well, the legislature, it seems, in order to avoid discrimination bettween secured and unsecured creditors and to achieve the avowed object of scaling down the debts devised the formula given in Schedule II which appears to be a composite formula relating to the reduction of debt and its satisfaction. In the case of unsecured creditor the debt is deemed to be satisfied in the proportion of ME/8 times for every one rupee of the face value of the bond.

65. The method of satisfaction given in the formula appeals to be consistent with the method of reduction of debt and its satisfaction provided for secured creditors. This can be better illustrated with reference to the facts of the present case. In this case the original liability of the debtor was determined at Rs. 6,46,000/-. If the whole of it is treated to be unsecured debt and if the creditor wanted to seek remedy against compensation and rehabilitation grant satisfaction of an amount equal to ME/8 shall be entered for every one rupee of the face value of the bond, ME has already been determined to be 27 and so satisfaction would be in the proportion of 1: 27/8 i.e. the total debt of Rs. 6,46,000/- would be deemed to be satisfied, if 8/27 of it was realized from the compensation and rehabilitation grant. This comes to 6,46,000 x 8/27: 1,91,407. Under the formula of the secured debts given in Sch.I this amount has been reduced to Rs. 1,84,571/- but if this debt had been unsecured the creditor would have been entitled to realize a sum of Rs. 1,91,407/- i.e a sum of Rs. 7,000/- more. The comparative figures of secured debt under section 8 read with Schedule I and of unsecured debt under section 9 read with Schedule II will show that the legislature devised the two formulae for the secured and unsecured debt in such a manner as to keep the balance slightly in favor of the unsecured creditor. After looking to the comparative provisions of the Encumbered Estates Act, the Zamindari Abolition and Land Reforms Act and the Zamindars Debt Reduction Act, the provisions of Sections 8 and 9 are in every way connected with the reduced value of the ex-zamindars estates. None of these two sections can be said to be unreasonable nor can it be said that any of these sections places any unreasonable restriction on the right of a creditor to hold and acquire property. We further find

that Section 9 being applicable only at the option of an unsecured creditor and the amount realisable by the unsecured creditor being approximately the same or even slightly more than what is realisable by secured Creditor, the provisions of Section 9 do not in any way violate any constitutional guarantee nor are they hit by Article 19 (1)(f) of the Constitution.

66. In the instant case we have only to look to the right of a secured creditor and so Section 9 has no application at all. Even if Section 9 would apply we are of the view that the provisions of that section as well as Schedule II are intra vires and are in no way hit by any of the Articles of the Constitution.

67. Learned counsel for the petitioner had also raised a question of the severability of Section 9 from the rest of the Act but that argument does not now arise. If it becomes necessary we will deal with that argument while dealing with the next point relating to the violation of the provisions of Article 14 of the Constitution.

68. We therefore hold that the provisions of sections 8 and 9 in particular and Sections 3, 4 and 7 in general do not in any way violate the constitutional guarantee given under Article 19 (1)(f) of the Constitution.

POINT No.3:

The main contention of the learned counsel for the petitioner is that the definition of the word "debt" given in Section 2 (f) of the Act is not based on any reasonable classification and is discriminatory in favour of the various categories of the creditors given in the exception Learned counsel for the respondent as well as the State Counsel have, on the other hand, contended that the definition is based on reasonable classification and does not violate the provisions of Article 14. The definition given in the Act is as below:

> "2(f). 'Debt' means an advance in cash or in kind and includes any transaction which is in substance a debt but does not include an advance as aforesaid made on or after the first day of July 1952 or a debt due to -
> (i) the Central .Government or the Government of any State.,
> (ii) a local authority;
> (iii) a scheduled bank;
> (iv) a cooperative society;
> (v) a waqf, trust or endowment for a charitable or religious purpose only; and
> (vi) a person, where debt was advanced on his behalf by the court of wards to a ward."

It has been conceded by the learned counsel that there is no discrimination in categories (i) to (v) but there is a discrimination in respect of category (vi) because a debt due to a person where the debt was advanced on his behalf by the court of wards to a ward, in other words by the court of wards on behalf of one ward to another ward, should not have been placed in the excepted category and because it has been so placed it means discrimination between a creditor and a

creditor. For this purpose we have to see the scope and effect of Article 14 of the Constitution.

69. The provisions of Article 14 of the Constitution came up for discussion before the Supreme Court in a number of cases since 1950 and the latest pronouncement of their Lordships on the point is contained in *Ram Krishna Dalmia v. S.R. Tendolkar*[13]. It will be better to quote the observations given in paragraph 11 at page 547 where their Lordships laid down;

> "It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In Order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentiation which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration, it is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

It was further observed that the decisions of the Supreme Court establish,

> "(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
> (b) that there is always a presumption in favor of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
> (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
> (d) that the Legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
> (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
> (f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law Or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown

reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

70. In judging the constitutionality of the definition of the word 'debt' given in Section 2 (f) of the Act we have, therefore, to bear in mind the principles laid down by the Supreme Court in the above proposition of law. We have further to see whether the classification of the different categories of creditors who have been excepted from the definition of 'debt'

[13] AIR 1958 SC 538

can be reasonably regarded as based on some differentia which distinguishes such persons from those who have been left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the Act are intended to apply only to a particular person or thing or only to a particular class of persons or things. If we find that the classification satisfies the test laid down by the Supreme Court the validity of the law has to be upheld.

71. It cannot be gainsaid that the legislature has discriminated between debts due to private individuals and the debts due to different authorities excepted from the definition. To us it seems that this discrimination was based on public policy and in order to complete the scheme of abolition of zamindari, a consequence of which was the reduction of debt due from the ex-zamindars in proportion of the reduced value of their estates which have been abolished. The second Purpose appears to have been to achieve improvement of the rural economy by regulating agricultural indebtedness. It has also been shown earlier that the law was made within the legislative competence of the State under entry No. 30 of List II and entry 13 of list III after obtaining the assent of the President. There is a presumption of constitutionality of the law. It appears to us that the legislature had to make a distinction between debts due from the ex-zamindars to private individuals and the debts due to scheduled banks or to Government or semi Government authorities. The obvious reason appears to be that the private money lenders were considered to be a bane to rural economy and perpetrating agricultural indebtedness. It was to save the Cutlivators from such unscrupulous money lenders that such laws had to be enacted, the last in series being the Zamindars Debt Reduction Act. We are not prepared to accept the argument that the loan advanced by the court of wards on behalf of one ward to another ward stood on the same footing as a loan by an ordinary money lender to ordinary debtor. When the estate of a ward was taken under the superintendence of the court of wards the Act required the management of the estate to be done through the government officials with the Collector of the district as the head. Such debts which have been excepted in category (vi) were permitted by the Court of Wards Manual and when the court of wards advanced a debt from the estate of one ward to another ward as permitted by law it cannot be said that such a loan stood on the same basis as a loan given by an ordinary creditor or money lender to an agricultural debtor. Even though category (vi) may have been added subsequently after the presentation of the draft bill to the State Legislature yet it cannot be treated to be a sufficient ground for calling the provision a discriminatory one. The classification appears to be reasonable. We would have discussed this

point at greater length but we find that in Miscellaneous Case No. 4 of 1955 connected with Miscellaneous *Raja Ganga Pratap Singh v. Allahabad Bank Ltd*[14]*.,* kucknow a Bench of this Court (consisting of Mr. Justice Beg and Mr. Justice D.S. Mathur sitting at Lucknow), on 25-4-1960, took the view that the exception in favour of a scheduled bank in the definition of 'debt' was a valid classification based on intelligible differentia which has nexus to the object of the Act After considering the exceptions given in the definition the Bench came to the conclusion that the definition of the word 'debt' was not discriminatory. The matter has been considered by that Bench from all points of view and in view of this decision with which we entirely agree it does not seem necessary to say anything further in the matter.

72. One other thing which is worth noting in the case is that the question of exception in

[14] Case No.189 of 1955

Clause (vi) does not at all arise because the debt in the instant case has been advanced by a private individual. Even if our view had been that exception (vi) was not constitutionally valid we would have been reluctant to hold that the exception was not severable from the rest of the definition or because that exception was not valid the whole law had became abortive and the intention of the legislature cannot be given effect to. Since we agree with the decision of the Bench given in the case of Raja Ganga Pratap Singh, Misc. Case No.4 of 1955 connected with Misc. Case No.189 of 1955 (All) and since we find that the exceptions given in the definition of the word 'debt' in Section 2(f) of the Act are based on reasonable classification, we do not think it necessary to go into the question of severability of exception (vi) from the rest of the exceptions given in the definition. Suffice it to say that in view of the test laid down by the Supreme Court of United States of America in *Spraigue Soullee and Co. v. Thompson*[15]*, poindexter v. Greenhow*[16]*, Louisville Gas and Electric Co. v. Coleman*[17]*,* and *R.M.D. Chamarbaugwalla v. Union of India*[18]*,* it cannot be said that if the part of the statute given in exception (vi) was void the whole of the Act would be void in toto. According to the principles laid down, if valid and invalid provisions of the law are so distinct and separate from each other that after taking out the invalid portion the remainder of the law is complete in itself and independent of the rest, then the enactment shall have to be upheld as valid even though a portion of it may have become unenforcible. If the definition clause contains both valid and invalid clauses the exclusion of the invalid clause may still make the statute enforcible.We are of the view that even if the exception (vi) had been struck down the whole law would have still remained valid and constitutional. We are further alive to the fact that the definitions given in any statute sometimes do hardships in some cases but such hardship in a particular case or cases cannot invalidate the law when the exemptions are based on reasonable classification and they have reasonable relation with the subject matter of the legislation. On the view taken by our brothers, who decided the aforementioned Division Bench case, we hold that the definition of the word 'debt' contained in Section 2 (f) of the Act is based on reasonable classification and does not violate the provisions of equal protection of laws given in Article 14 of the Constitution.

POINT No.4.

The last point which requires consideration in this case is whether the right to receive Malikana at Mathura and Aligarh which was mortgaged to the creditor does or does not constitute an estate. The learned Special Judge without going deep into the matter thought Malikana was given as proprietor of an estate and as compensation had been awarded in, respect of the same, in the same manner as for the other estates of the debtor, it constituted an estate. Under Section 2(j) the word 'estate' has been given the same meaning as assigned to it in the U.P. Zamindari Abolition and Land Reforms Act. The word 'estate' has been defined in Section 3 (8) of the latter Act thus:

> "Estate" means and shall be deemed to have always meant the area included in one entry in any of the registers described in clauses (a), (b), (c) or (d) and in so far as it relates to a permanent tenureholder in any register described in clause (e) of Section 32 of the U.P. Land Revenue Act 1901, as it stood immediately prior to the coming into forcs of this Act, or subject to the restriction mentioned with respect to

[15](1885) 30 Law Ed. 115 [17](1927) 72 Law Ed 770

[16] (1884) 29 Law Ed. 185 [18]1957 SCR 930: AIR 1957 SC 628

> the register described in Clause (e), in any of the registers maintained under Section 33 of the said Act or in a similar register described in or prepared or maintained under any other Act, Rule, Regulation or Order relating to the preparation of maintenance of record of rights in force at any time and includes share in, or of an estate".
>
> Explanation: The Act, Rule or Order referred to in this clause shall include, Act, Rule, Regulation or order made or promulgated by the erstwhile Indian States whose territories were merged or absorbed in the State of Uttar Pradesh prior to the date of vesting notified under Section 4 of this Act."

The primary requirement under the definition, therefore, is that in order that the property may constitute an estate it must be an area or a share therein recorded in the registers described in the definition. In Order therefore to see whether Malikana is or is not covered by the definition of the word 'estate' the nature of the Malikana has to be determined 73. Copies of some of the khewats which are on the record go to show that the name of Kishori Raman Singh who is mortgagor is entered in them while some other persons of the family are entered as persons in possession. It also appears to be correct that amount of compensation was also assessed on the malikana and perhaps no malikana dues were ever paid by the state to the mortgagor ever since the vesting of the zamindari. These facts alone cannot make the malikana an estate unless it is covered by the definition of the word 'estate.'

74. We had asked the State counsel as well as the counsel for the respondents to let the Court know the origin of the grants known as malikana and its nature. The State counsel submitted a note by the Assistant Settlement Officer, Aligarh, but that note is of no help to us because in the second paragraph the Settlement Officer has himself observed: "The origin of these grants in particular is shrouded in darkness and the applicants are unable to throw any light on the subject"

We have therefore to depend upon the provisions of law made from time to time with respect to malikana. We have been referred to S.XLIV of the Bengal Regulation No.VIII of 1793, in which malkana has been described as an allowance in consideration of the proprietary rights in the following words;

> "Proprietors who may finally decline engaging for the jumma propose to them, and whose lands may consequently be let in farm or held khas, are to receive malikanah (an allowance in consideration of their proprietary rights) at the rate of ten per cent on the sudder jumma of their lands, if let in farm, or at the same rate on the neat collections from their lands if held khas, viz., on the neat amount realised by Government, after defraying malikanah as well as all other charges. Out of this allowance, however, a provision is to be made for such persons belonging to the families of the proprietors as may entitled thereto."

Some changes were made in subsequent regulations of 1822-1825 but the material definition that malikanah was an allowance paid to the proprietors of lands remained the same. This allowance was also paid by subsequent regulations to sudder Malguzars and Taluqedars in lieu of their title of management or to zamindars whose lands were let out by Revenue Officers or to proprietors dispossessed for non-payment of revenue.

75. Baden-Powell in his book 'Laand-systems of British India, Volume I, page 84' has defined malikana dues under the heading "Refusal to engage". He has observed:

> "If the assessment is not accepted, then the estate can be formed or held under the direct management of the Collector for a time not exceeding 15 years and the owner, being thus kept out of the management, gets a (malikana) allowance out of the profits of the estate, of not less than 5 nor more than 15 per cent, on the assessment, and is allowed to continue to hold his own 'Sir'." The same will be clear from the old Land Revenue Act of 1873 as well as from Section 68 of the U.P. Land Revenue Act of 1901. According to the provisions in both these Acts malikana was paid to the actual proprietor of the land and the reason for payment of the allowance was that the proprietor was kept out of possession as he did not agree to, the settlement of the land with him and the same had been settled with a third person. There can, therefore, be no doubt that malikana dues are paid to proprietors because of their interest in land and this view was taken in some of the earlier cases.

76. In the case of *Herranund Sheo v. Mt. Ozeerun*[19], it was held that

> "the right to rasie the malikana is a distinct proprietary right and that it constitutes an interest in land".

In the case of *Bhoalee Singh v. Neemoo Baboo*[20], it was held that the malikana was not rent and

that it was a right to receive a portion of the profits of the estate for which the Government had made settlement with another person, In the case of *Gobind Chunder Roy Chowdhry v. Ram Chunder Chowdhry*[21], the same view was reiterated and the Division Bench held that a malikana allowance is that which comes to the proprietor in respect of his ownership and has a mode of enjoying ownership.

77. These cases were followed by the full Bench authority of *Churaman v. Balli*[22], in which malikana was held a hereditary right. The last case on the point is that of *Tri Vikram Narain Singh v. Govt. of the State of Uttar Pradesh*[23], The Division Bench consisted of V Bhargava and G. Mehrotra JJ. who held that malikana was a grant. It could not be held to be a right or privilege of an intermediary or a person having any interest in any estate or land situated in any estate acquired under the U.P. Zamindari Abolition and Land Reiorms Act. In that case a question arose whether on the abolition of the U.P. Zamindari Abolition and Land Reforms Act, malikana should be treated to be an estate which vested in the State Government on abolition, or whether it was a sort of compensation or allowance payable to the applicant in lieu of his estate. The Division Bench after considering the various authorities held that the right to receive malikana could not be treated to be an estate which could have vested in the State Government as a consequence of abolition of zamindari, but it was only in the nature of an allowance or grant, which could not be treated to be a right or privilege of a proprietor of an estate.

78. We have already referred to the definition of the word 'estate', the essential

[19]9 Suth WR 102 2119 Suth Wr 94 [23] AIR 1956 All 564

[20]12 Suth WR 598 22 ILR 9 All 591

requirement of which is that it should be an area or a share therein recorded in register described in the definition. Whatever may be the origin of malikana or whatever may be the reason why an allowance in the form of malikana was paid to the original proprietor, yet it can in no way, having regard to the definition of the word 'estate' given in Zamindari Abolition and Land Reforms Act, be treated to be an area or a share therein recorded in the register of rights in the manner contemplated. On the date the mortgages were created the mortgagor could not be said to be proprietor of the area in respect of which malikana was paid, nor could he be said to have been left with any proprietary right in the area. He simply had a right to receive the malikana and so, to our mind, what ever may be the provisions with respect to payment of compensation in Zamindari Abolition and Land Reforms Act, malikana cannot be treated to be an estate covered by the definition of that expression. We, therefore, accept the argument of the learned counsel for the petitioner that the malikana payable to the mortgagor in this case could not by any stretch of imagination be said to be an estate.

79. In view of what has been stated above the whole of the mortgaged property did not constitute an estate. The Special Judge wrongly held that malikana constituted an estate and wrongly proceeded under the provisions of Section 4. sub-section (2) of Zamindari Debt Reduction Act. The case is covered by the provisions of sub-section (3), Cl, (a) read with Clause (b)(i).

80. We accordingly hold that the provisions of Sections 3, 4, 7 and 9 are not hit by Article 31 of the Constitution of India, nor the provisions of Sections 8 and 9 in particular and the provisions of Sections 3, 4 and 7 in general violate the constitutional guarantee given in Article 19 (i)(f) of the Constitution and that the definition of 'debt' given in the Act is based on reasonable classification and does not contravene Article 14. The right to receive malikana is not an estate and the case is covered by the provisions of sub-section (3) Clause (a) read with Clause (b)(i) of Section 4 of the Zamindari Debt Reduction Act and not by Section 4 (2) of that Act. For the purpose of apportionment the case has to be sent back.

81. The revision is partly allowed and the case is remanded to the court of Special Judge, first class, Aligarh, with the direction to readmit it to its original number and proceed to apportion the debt in the manner and in the light of the observations made above. Costs shall be borne by the parties.
Revision partly allowed.