KERALA HIGH COURT

V.N. Narayanan Nair

Vs

State of Kerala

Original Petns. Nos. 209, 307, 371, 493, 509, 515, 517, 518, 550, 554, 557, 565, 582, 594, 624, 625, 635, 655, 656, 660, 666, 672, 673, 686, 704, 715 to 721, 723, 727 to 729, 732, 749, 1358 and 1359 of 1970

(P.T. Raman Nayar, C.J., T.C. Raghavan and K.K. Mathew, JJ.)

14.08.1970

JUDGMENT

Raman Nayar, C.J.

1. The Kerala Land Reforms Act, 1963 (Act 1 of 1964) as originally enacted (the original Act as we shall call it) finds a place in the Ninth Schedule to the Constitution -see Item 39 -and therefore has the protection of Article 31-B. It has been amended three times, first by Act 12 of 1966, then by Act 9 of 1967, and now by Act 35 of 1969, the amendments made by the last mentioned Act (which we shall call the amending Act) being far-reaching. (To the 132 sections in the original Act, over 50 new sections have been added while over 60 sections have been amended. To the 62 definitions 10 have been added while 20 have been amended. The amended Act is therefore virtually a new piece of legislation). The first of these was enacted by the President while the remaining two have received his assent -it has been contended not in the free and proper exercise of his judgment, but, of course, we cannot go into that -but none of them has been included in the Ninth Schedule. Therefore, such of the provisions of the amended Act (or simply, the Act) as are not part of the original Act (whether they be entirely new provisions or provisions in substitution) cannot claim the protection of Article 31-B see *Ramanlal v. State of Gujarat*[1], and *State of Orissa v. Chandrasekhar Singh Bhoi*[2], The petitioners in these forty applications under Article 226 of the Constitution are land-holders, and, between them, they assail virtually all the material provisions of the amended Act as violative of Articles 14, 19, 25, 26 and 31 of the Constitution -many of them seek the striking down of the Act in entirety on that score. The principal, indeed almost the sole, defense is that the provisions are protected from such attack by Article 31-A.

2. The contesting respondents are the State of Kerala and the Land Board constituted under Section 100 of the Act which has been made a party respondent to some of the petitions. In a few petitions, persons likely to claim the benefits of the Act have been made party respondents but in a large number they have not, possibly because it is

[1] AIR 1969 SC 168

[2]1970-1 SCWR 306 : AIR 1970 SC 398
difficult to postulate who they are and what their claims will be. However, general notice of these petitions inviting all persons interested to intervene at the hearing has been given by advertisement in five Malayalam dailies having a wide circulation throughout the State, but no one has addressed us pursuant thereto although ten persons did obtain leave to intervene.

3. Many of the petitions assail numerous provisions of the Act without disclosing how the petitioners are affected thereby. It is said that the purpose is to make out that the Act as a whole is bad. But it is well settled that only those who are personally and directly affected by the impugned provisions of a statute are entitled to challenge their constitutionality. A person who is aggrieved by one provision of a statute cannot be heard to challenge another by which he is not aggrieved even if the two be inseverable -that is by no means the case here -so that the striking down of the provision by which he is not aggrieved might have the result of making the provision by which he is aggrieved of no avail. Moreover, it seems to us that the strict doctrine of what might be called, bad in part bad in whole, of *Romesh Thapper v. State of Madras*[3], is but of rare application. In most cases it would be possible to save the statute to the extent it is within the constitutionally permissible limits by limiting its operation to those limits either by applying the principle of severability in application expounded in *State of Bombay v. United Motors Ltd*[4]., and in *R. M. D. C. v. Union of India*[5], or, as was done in *In re Hindu Women's Rights to Property Act*[6], by adopting the device of construing the apparently wide language of the statute in a restricted sense so as to keep it within bounds. It is true that in that last mentioned case the apparent transgression was in the field of legislative competence but we see no reason why the rule of construction there adopted should not be adopted where the apparent transgression is in the field of other constitutional prohibitions.

4. It might be as well to begin with a brief outline of the Act. Chapter I (Sections 1 and 2) which is headed, "Preliminary" contains besides the short title, extent and commencement, the definitions some of which we might have to consider in examining the impugned provisions of the Act. There is now, since the 1st January, 1970, no provision of the Act that has not been brought into force. Chapter II (Sections 3 to 80-G) is headed, "Provisions Regarding Tenancies". Section 3 exempts certain leases such as, for example, leases of lands vested in the Government or a local authority, leases granted for industrial or commercial purposes, leases created by an officer of Court or by a possessory mortgagee or life-estate holder, leases of private forests and plantations exceeding 30 acres, and leases of the premises of religious institutions, from the provisions of the Chapter. Sections 4 to 9 and 10 and 11 make deemed tenants or presumed tenants of certain persons who are really not tenants and by thus bringing them within the definition of "tenant" in Section 2 (57), confer on them all the benefits conferred by the Act on a tenant, while imposing on the landowner all the disabilities of a landlord. Sections 9-A and 12 enact rules of evidence -the former declares certain documents of surrender to be inadmissible while the latter enables an interested person to prove that a transaction purporting to be a mortgage or a license is in substance a lease, the provisions of the Evidence Act or of any other law or any judgment or decree notwithstanding. Section 13 confers fixity of

[3] AIR 1950 SC 124 [5] AIR 1957 SC 628
[4] AIR 1953 SC 252 [6] AIR 1941 FC 72

tenure on tenants except to the extent that resumption is permitted by Sections 14 to 22. Sections 13-A to 13-D provide for the restoration of possession to certain dispossessed tenants or tenants whose holdings have been sold for arrears of rent and for cancellation of certain sales for arrears

of rent or for damages. Sections 14 to 24 deal generally with resumption of lands from tenants and the restoration of lands wrongly resumed. Section 25-A fixes a so-called contract rent for the newly created tenants who, before the amending Act, were not under an obligation to pay rent. Section 25-B provides for the apportionment of rent on the severance of a holding while Section 26 enables the recovery of arrears of rent by application to the Land Tribunal constituted under Section 99 of the Act. Section 27 lays down how the fair rent which is the rent payable by a cultivating tenant to his landlord, is to be fixed. Section 29 provides for the preparation of a record of rights. Section 29-A bars proceedings under Chapter XII of the Code of Criminal Procedure in respect of disputes between a person claiming to be a tenant cultivating land and who has taken certain proceedings pursuant to his claim and another person claiming to be in possession of that land, while Section 29-B provides for settlement of disputes regarding the right to cultivate land. Section 31 provides for determination of fair rent by Land Tribunals while Section 32 bars suits for the eviction of a tenant who has applied for such determination and prohibits an injunction against him pending the proceedings before the Land Tribunal. Sections 53 to 64 provide for the purchase of their landlords' rights by cultivating tenants while Sections 65 to 71 make special provision for religious, charitable or educational institutions of a public nature whereby, in respect of land owned by such institutions, they can opt for an annuity in perpetuity payable by the Government instead of the purchase price. By Section 72 the rights of landlords whose rights have not been purchased by cultivating tenants vest in the Government free of all encumbrances on a date to be notified by the Government in that behalf -the date has been notified as the 1st January, 1970 -and Section 72A lays down what shall be the compensation payable to the landlord for such vesting. Section 72F provides for the determination of such compensation by the Land Tribunal and Section 72H for the payment of one half of this compensation by the Tribunal in eight equal annual instalments, the balance being paid by the Land Board after a fresh determination by it, either in cash in eight equal annual instalments or negotiable bonds bearing interest at the rate of 4% per cent. per annum and redeemable after 16 years, or partly in cash or partly in such bonds. Section 73 provides for the scaling down of all arrears of rent due from the 1st May 1968 and outstanding at the commencement of the amending Act while Section 74 prohibits the creation of tenancies in future. Sections 75 to 80G deal with the rights and liabilities of Kudikidappukars who may briefly, but not very accurately, be described as hutment dwellers in permissive occupation of the land. (The definition of "Kudikidappukaran" running to two pages is contained in Section 2 (25)). They are to have fixity under Section 75 and under Section 80A a Kudikidappukaran is given the right to purchase the land on which his Kudikidappu stands up to the extent of three cents in a city or major municipality, five cents in any other municipality and ten cents in a panchayat area or township for a price which is 1/4th of the market value, or, where the person in possession of the land holds lands in excess of the ceiling area, 1/8th of the market value, this price to be paid in twelve annual instalments, half by the Kudikidappukaran and the other half from the Kudikidappukars Benefit Fund to be constituted under Section 109.

Chapter III (Sections 81 to 98-A) is headed, "Restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands". Section 81 contains exemptions and provides that the Chapter shall not apply to lands such as lands belonging to the Government or any local authority, lands under the management of the Court of Wards (this being a temporary exemption for three years from the commencement of the Act), lands comprised in mills, factories or workshops and necessary for the use thereof, lands comprised in private forests and plantations (plantations, as Section 2 (44) tells us, being land used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon), lands mortgaged to the Government and

co-operative societies (the exemption ending at the close of three years from the commencement of the Act), lands purchased by the Kerala Financial Corporation or institutions similar to it, lands belonging to industries or commercial undertakings, house sites, sites of religious institutions and cemeteries and burial and burning grounds, sites of buildings, commercial sites, lands occupied by educational institutions and lands specially exempted by the Government in the public interest. Section 82 says that the ceiling area of the land shall be, five standard acres (but not less than six or more than 71/2 ordinary acres) in the case of a single person, ten standard acres (but not less than 12 or more than 15 ordinary acres) in the case of a family (family, according to Section 2 (14), meaning husband, wife and their unmarried minor children or such of them as exist) of two or more persons with one standard acre added for each member in excess of five (but not less than 12 or more than 20 ordinary acres) and in the case of any other person other than a joint family, ten standard acres but not less than 12 or more than 15 acres). All the lands held by members of the family shall be deemed to be held by the family and the share of an adult unmarried person or a member of a family in joint family lands, or lands held by a co-operative society is to be taken into account in calculating the extent of the land held by the adult unmarried person or the family as the case may be. Under Section 83, with effect from such date as may be notified by the Government -the date has been notified as the 1st January, 1970 -no person shall be entitled to own or hold, or to possess under a mortgage, lands in aggregate in excess of the ceiling area. Sub-section (1) of Section 84 renders invalid all voluntary transfers (save those excepted) after the date of publication of the Kerala Land Reforms Bill, 1963, of lands held in excess of the ceiling area, and sub-section (2), transfers after the 1st July, 1969. Section 85 provides for the surrender of lands held in excess of the ceiling, sub-section (2) thereof requiring any person holding lands in excess to file a statement before the Land Board giving full particulars of all lands held by him and indicating the lands proposed to be surrendered before the Land Board within three months of the date notified under Section 83. Under sub-section (5) the Land Board is to finally determine the particulars of the land to be surrendered, as far as practicable accepting the choice indicated by the land-holder. On that being determined, Section 86 requires the Land Board to issue a notice to the person bound to surrender the land before a specified date not being less than thirty days from the date of the notice and on receipt of such notice the person shall surrender the land in the manner prescribed. If he fails to make a surrender, the Land Board may authorize any officer to take possession and assume ownership of the land in such manner as may be prescribed and upon such surrender or assumption the land shall vest in the Government free from all encumbrances. Section 88 provides that the compensation payable for the land so vested in Government shall be fifty-five per cent of the market value of the land and the improvements thereon. This compensation is to be paid either in cash or in negotiable bonds bearing interest at 41/2 per cent. per annum and redeemable after 16 years, or partly in cash or partly in bonds in such manner as may be prescribed. Under Section 96 the land so vested, after reservation of such lands as are necessary for public purposes, is to be assigned by the Land Board to the kudikidappukars, if any, on the land, to landless agriculturists and to small holders. Chapter IV (Sections 99 to 132) headed, "Miscellaneous" provides for the constitution of the Land Tribunal, the appellate authority and the Land Board and defines the powers of the Land Board and the Land Tribunal. There is a revision provided by Section 103 to the High Court from orders of the appellate authority and the Land Board. Sections 106 and 106-A, intrude into the realm of agrarian reform, extending, subject to certain conditions, the principle of fixity to leases for commercial or industrial purposes and to kudikidappukars using the land in which the kudikidappu is situate for such purposes, find place in this Chapter -Chapter II would not apply to such leases in view of the

exemption in Section 3 (1) (iii), nor would the land occupied by the kudikidappukaran for industrial or commercial purposes be part of his kudikidappu. Section 109 provides for the constitution of an Agriculturist Rehabilitation Fund and a Kudikidappukars Benefit Fund, and Section 109-A, for solatium to small holders whose rights are vested in the Government under Section 72. By Section 110, Government is authorised to notify adaptations, exceptions and modifications to the Act to remove difficulties in applying its provisions owing to variation in the nomenclature of tenancies in the different areas of the State. Sections 117-A to 123 are concerned with penalties for offences. Section 124 gives protection in respect of action taken by an officer in good faith under the provisions of the Act, while Section 125 bars the jurisdiction of Civil Courts in respect of certain matters. Section 127 gives overriding power to the provisions of the Act against any other law or any custom, usage or any contract, express or implied, inconsistent with its provisions, and, by Section 128, the Government may as the occasion requires, by order, do anything not inconsistent with the Act for the purpose of removing difficulties. Section 129 provides for the making of rules and the last section of the Act, Section 132, contains repeals and savings.

5. The lands held by the several petitioners are indisputably estates within the meaning of Article 31-A of the Constitution -we think little of the contention that after the jenmam lands in the Malabar district were settled as ryotwari by the settlement of 1900 they ceased to be jenmam, but, all the same, did not become ryotwari and so do not come within the definition of "estate" in clause (2) (a) of Article 31-A -or of the argument that jenmam land directly held by the jenmi cannot constitute an estate because no tenure is involved and to defend the impugned provisions, the learned Advocate-General for the State depends primarily on the protective armour of this Article. Indeed, we should have said entirely, for the only provision he has dared to face after doffing the armour (even so with great reluctance, his case being that that provision also is covered by the armour) is Section 73 which provides for remission of arrears of rent.

6. It has been urged on behalf of some of the petitioners that the protection of Article 31-A is not available to statutes made after the decision in *Golak Nath v. State of Punjab*[5], It is said that the effect of that decision is that Article 31-A (first introduced with retrospective effect by the Constitution (First Amendment) Act, 1951, and subsequently amended with like effect by the Fourth and Seventeenth Amendment Acts of 1955 and 1964 respectively) has been prospectively struck down with the result that statutes made after that decision must be assayed in the light of Part III of the Constitution as if that Article were not there. It is enough to extract clauses (3) and (4) of paragraph 53 of the prevailing judgment in that case, namely, the judgment of Subba Rao, C. J., to repel this contention :

> "(53) The aforesaid discussion leads to the following results :
> xx xx xx
> (3) The Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, 1955, and the Constitution (Seventeenth Amendment) Act, 1964, abridge the scope of the fundamental rights. But on the basis of earlier decisions of this Court, they were valid.
> (4) On the application of the doctrine of prospective overruling, as explained by us earlier, our decision will have only prospective operation and, therefore, the said amendments will continue to be valid.

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It is clear that Article 31-A continues to be valid and continues to afford protection to statutes (whether made before or after Golak Nath's case, AIR 1967 SC 1643) which fall within its scope.

7. Article 31-A (in so far as we are here concerned with it) runs thus :

> "31-A. (1) 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 extinguishment or modification of any such rights,
> xx xx xx

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 :

> 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 :
> Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.
> (2) In this Article, -

[5] AIR 1967 SC 1643

> (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 -
> (i) any jagir, inam, or muafi or other similar grant and in the States of Madras and Kerala, any jenmam right;
> (ii) any land held under ryotwari settlement;
> (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;
> (b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue".

8. The definition of "estate" in clause (2) (a) of the Article is, even without recourse to sub-clause (iii) thereof, wide enough to cover virtually all lands in this State, we should think in the whole country, whatever their nature or extent. And, if the Article be read according to its apparent

tenor, it would mean that the fundamental rights vouchsafed by Article 19 (1) (f), Article 14 and Article 31 would be of no avail in respect of what in this country was, at the time of the framing of the Constitution, and continues to be, though perhaps not to the same degree, by far the most important, and the most cherished form of property, namely, land. It would mean that a law could provide for the acquisition by the State of any land whatsoever, for any purpose whatsoever, or for no purpose at all, without the payment of compensation. The law could, without the least restraint, take away one man's land and give it to another, or it could permit such waste or damage as to render the land useless. Articles 14, 19, and 31 would not be available to protect the rights of the owner. Virtually, it would mean that the Constitution was taking away by Article 31-A all it gave by Article 19 (1) (f), not to speak of Articles 14 and 31 in relation to land, and, if that were the intention, the Constitution need not have gone to all the trouble of furnishing the very elaborate definition of the word, "estate" contained in clause (2) (a) of Article 31-A. It would have simply used the word, "land" instead of the word, "estate" in sub-clause (a) of clause (1) of the article. Obviously, that cannot have been the intention, and having regard to the purpose of the article, the Supreme Court by a series of decisions (*Sri Ram Ram Narain v. State of Bombay*[6]*, Atma Ram v. State of Punjab*[7]*Jadab Singh v. Him. Pra. Administration*[8]*, Ranjit Singh v. State of Punjab*[9]*,* and *Inder Singh v. State of Punjab*[10]*,* to name only a few) was able to read into the article a restriction not apparent from its plain language. The Court held that the protection of the article was available only for the purpose of agrarian reform.
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9. What exactly did the Supreme Court mean by the expression, "agrarian reform" ? Like most words, the word "agrarian" has many shades of meaning. Etymologically it means, relating to or pertaining to land and that is its widest sense. But, if the word be given that wide meaning, if anything whatsoever pertaining to land of whatever description would constitute agrarian reform, then the restriction read by the Supreme

[6] AIR 1959 SC 459 [8] AIR 1960 SC 1008 [10] AIR 1967 SC 1776
[7]AIR 1959 SC 519 [9] AIR 1965 SC 632

Court into Article 31-A (1) (a) would be rendered meaningless. It would be as if the article had said "land" instead of "estate". In a narrow sense, the word, "agrarian" is confined to land tenures, to the relation between landlord and tenant, and that was apparently the sense in which it was understood in *Kochuni v. States of Madras and Kerala*[11]*,* But this was characterised as too narrow a view in AIR 1965 SC 632 and AIR 1967 SC 1776 where it was held that the term, "agrarian reform" includes anything pertaining to rural, in the sense agricultural, development.

10. The expression, "agrarian reform" carries with it a flavor of egalitarianism in relation to the holding of land, or, to adopt the language of Article 39 of the Constitution, an equitable distribution of what is still in this country the most material resource of the community, namely, land, so as best to subserve the common good, thus securing to the measure possible an adequate means of livelihood to the citizens of the country and preventing the concentration of wealth and the means of production to the detriment of the common good. It is the directive principles of the Constitution and nothing more that some decisions have in mind when they speak of the furtherance of the socialistic pattern of society as a vindicating factor.

11. Of course, not every change is a reform. It must be a change for the better, something calculated to effect an improvement and advance the common good. But, this is largely a matter of policy within the province of the legislature and not of the Court unless, of course, the change is something which no reasonable man would regard as a change for the better.

12. The new definition of the word, "estate" in sub-clause (iii) of Article 31-A (2) (a) introduced with retrospective effect in 1964 gives a clear indication of the scope of clause (1) (a) of the article and emphasizes that it is confined to land held or let for purposes of agriculture or for purposes ancillary thereto. It will be recalled that Article 31-A was first introduced in 1951 for the protection of laws for the abolition of the large estates compendiously known as zemindars, estates properly so-called in the terminology of the laws relating to land tenures in force in the various parts of the country. From the point of view of the abolition of the rights of the zemindars, who were really intermediaries between the State and the peasant, each zemindari could only be regarded as a single unit. So regarded, there can be no doubt that the zemindaris were essentially what we might call agricultural estates even if a small fraction of the lands comprised therein was non-agricultural land. Therefore, it was perhaps thought unnecessary to make express reference in the article to the agrarian or the agricultural character of the laws sought to be protected, but, having regard to the true scope and intendment of the article, judicial decisions so curtailed its apparently wide language.

13. This curtailment was, it would appear, accepted by Parliament, for, when in 1964 it was found necessary to extend the protection of the article to reforms in respect of lands other than zemindari lands such as ryotwari and other lands (jenmam lands had already been included in the definition of, "estate" in 1955) apart from including ryotwari lands also within the definition of, "estate", an essential instead of a derivative definition of the word, "estate" was attempted in the shape of sub-clause

[11] AIR 1960 SC 1080

(iii) of clause (2) (a) of the article in the following terms :

> "(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;"

The decision in *State of U. P. v. Anand Brahma*[12], tells us that this clause should be read thus : Any land including waste land, forest land and land for pasture held or let for purposes of agriculture or for purposes ancillary thereto, including sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans. This, it seems to us, provides the key to the true scope and intendment of the article, to what the Supreme Court meant (and what Parliament subsequently accepted) by the expression, "agrarian reform" when, despite the very wide definition of the word, "estate" in the article, it said that clause (1) (a) thereof was not intended to protect all land reforms but only agrarian reforms. As we have said, sub-clause (iii) of clause (2) (a) of the article embodies the essential definition of the word "estate" within the meaning of the article. We can think of no reason why the qualifications in sub-clause (iii) of clause (2) (a) of the article should not apply to the lands described in the earlier part of the clause, and we think that, so far as land reforms are concerned, the protection of the article extends only to land held or let for purposes of agriculture or for purposes ancillary thereto including sites of buildings occupied by cultivators, agricultural labourers and village artisans, namely, by persons having an intimate connection with agriculture, in other words, only to what we shall hereafter refer to as agricultural lands.

14. It is pointed out that in the decision just referred to, the Supreme Court (in paragraph 29 of the judgment) repelled the contention that the acquisition of the estate in that particular case was not for the purpose of agrarian reform since hundreds of square miles of forest land were sought to be acquired. The Court repelled the contention on the ground that the acquisition was of a jagir or inam and that the acquisition of all jagirs, inam or similar grants was a necessary step in the implementation of agrarian reform and was clearly contemplated by Article 31-A. This, it seems to us, was only because, like zamindaris and other large estates, the entire jagir or inam could be regarded but as a single unit and that unit being essentially agricultural in character its acquisition would be agrarian reform notwithstanding that portions of the land may not be agricultural land. The existence of a small tea-shop on a piece of paddy land would not change the character of even the site of the shop if the land is considered as a single unit as, for example, when the site is part of the same holding as the rest of the land, and the decision cannot be construed to mean that anything pertaining to janmam or ryotwari lands, irrespective of the character of the land, whether it be held for purposes of agriculture or for purposes ancillary thereto, or for industrial, commercial or other purposes, would be agrarian reform entitled to the protection of the article.

15. We have been taken through various reports by experts and expert bodies, both Indian and international, and though the definitions of the word "agrarian" in a

[12] AIR 1967 SC 661

number of dictionaries in an attempt to show what exactly is comprised within the expression, "agrarian reform". We think it unnecessary to refer to them, but, we might say that the following definitions of the word, "agrarian", in some of the standard dictionaries, indicate the true scope of the expression, "agrarian reform" :

> "Of, relating to, or connected with cultivated land, or its cultivation; pertaining to the advancement of agricultural groups; relating to the redistribution of landed property :

To put it in a nutshell, the slogan, "land for the tiller" seems to have informed the article -as far as possible, the means of production should be in the hands of the actual producer.

16. It has been argued that if the main object of a statute is agrarian reform, then, all the provisions of that statute would get the protection of the article. That is putting the case much too widely. Provisions totally foreign to the concept of agrarian reform, it must be obvious, cannot get the protection of the article merely because they are included in a statute dealing with agrarian reform. But provisions which form an integral part of such a statute, such as, what are variously described as incidental, ancillary or subsidiary, provisions, calculated to further the purpose of the statute and make it effective, will get the protection even if they are not, strictly speaking, provisions affecting rights in an estate. However, it must be remembered that it is the true nature of the provisions, not the mere accident of their finding place in a statute, that determines whether or not they are an integral part of the statute.

17. On the other hand, if what really informs a statute is agrarian reform, the presence therein of provisions altogether unrelated to agrarian reform will not invalidate the statute unless, of course, the statute cannot stand if they are laid low and must fall with them -at the worst it can only be that those provisions might have to be struck down.

18. It might be that the expression, "agrarian reform" is wide enough to include ameliorative measures for agriculturists, unrelated to rights in land, but, in the context of Article 31-A, it can comprise only measures affecting rights in estates and we shall hereafter use the expression in that limited sense.

19. It would appear that all the lands held by the petitioners in these cases are agricultural lands - at any rate, no arguments have been addressed before us on the footing that any of them are not; the assertions in some of the petitions, such as that a paddy land is not agricultural land because for part of the year, when it is under water, fishing is profitably conducted thereon, or that a coconut garden is not agricultural land because it happens to be situated within a city, have been rightly forgotten. We might here repeat that we are using the term, "agricultural land" in the sense relevant in the context of Article 31-A, namely, in the sense of the definition in sub-clause (iii) of clause (2) (a) of that article. It is the purpose for which the land is held, not its accidental use at a particular point of time, that determines whether it is agricultural land or not. If the land is held for purposes of agriculture or for purposes ancillary thereto (such as, for pasture or for the residence of cultivators of land, agricultural labourers or village artisans), it is agricultural land. Otherwise not. We suppose that something or other can be, and often is, grown on any vacant land, but that would not necessarily make it agricultural land for our purposes. To give an example the possibility of cultivating, or even the actual cultivation of, what is essentially a building site in the heart of a town would not make it agricultural land. It is the purpose for which it is held that determines its character, and the existence of a few coconut trees or a vegetable patch on the land cannot alter the fact that it is held for purposes of building and not for purposes of agriculture.

20. Some of the impugned provisions, it is pointed out, are on their wording wide enough to apply to non-agricultural land and such application, it is urged, being unrelated to agrarian reform, cannot have the protection of Article 31-A. That being so, the impugned provisions must pass the test of Articles 14, 19 and 31 in their application to non-agricultural land and must submit itself to such a test even at the instance of a person who holds only agricultural land. If it fails, then, it must be struck down in entirety. This contention is illustrative of the argument, "bad in part, bad in whole" we have already noticed, and we see no reason why, if that be necessary, the operation of a provision should not, despite the width of its language, be confined to agricultural lands. Supposing two separate statutes were framed in similar terms, one applicable to agricultural land, the other, to non-agricultural land, would the one be struck down because the other was bad ? Supposing there are separate sets of similar provisions in the same statute, the one set applicable to agricultural land the other to non-agricultural land. Would the one set be struck down because the other was bad unless it cannot stand without the other or unless it is manifest that it was not intended to stand by itself ? Why should the position be different because both agricultural and non-agricultural lands are dealt with by the same provision ? So long as the field is severable, why should not a provision be allowed to operate in the unforbidden portion of the field and barred only from the forbidden portion ?

21. For the aforesaid reasons, we shall consider the impugned provisions only in their application to agricultural land -as we have said, these petitions are not concerned with non-agricultural land, at any rate, not directly. We wish to make it clear that we are expressing no opinion whatsoever about their validity or otherwise in their application to non-agricultural land.

22. We do not think it can be denied that the Act as a whole is a measure of agrarian reform, its

main object being to confer such benefits as fixity of tenure and fair rent on cultivating tenants, to abolish intermediaries like landlords, between the cultivator and the State, and to distribute lands held in excess of the ceiling to the landless. The Act as a whole must, therefore, get the protection of Article 31-A even if portions thereof have to fail for want of that protection.

23. Many of the provisions of the Act have been dubbed as iniquitous -as we shall see, many of them are frankly ex-propriatory, (perhaps, not so frankly, for there is a show of compensation provoking the quip -we do not understand it as anything more -that even if the Constitution does authorize taking without compensation, it cannot and does not authorize taking under false pretences!). In particular it has been said that the effect of Section 72 which sequesters the rights of landlords would be to deprive many persons, solely dependent on the rent from their lands for their living persons who by reason of infancy or old age, or infirmity of body or mind, are incapable of gainful employment, persons who have invested the savings of a lifetime in land against old age and illness, of the very means of sustaining life. All we can say is that, if that be so, that too is justified by Article 31-A in cases falling within its scope in what it conceives to be the larger interests of the community.

24. Seven of these petitions O. P. Nos. 515, 635, 704, 716, 721, 727 and 749 are by or on behalf of devaswoms, which are undisputedly religious institutions established by religious denominations entitled to the protection of Article 26 of the Constitution. (The petitioners have relied on Article 25 as well, but, it is difficult to see how any of the provisions of the Act can conceivably interfere with any person's freedom of conscience or his right freely to profess, practice or propagate religion. Nor has any attempt been made to show that they do). This article, it will be recalled, is not one of the articles expressly mentioned in Article 31-A among the articles from which that article affords immunity. Therefore, it is argued, with special reference to Section 72 of the Act, which provides for the acquisition by the Government of the rights of landlords -it would appear that all the income earning lands belonging to these institutions are in the hands of tenants -that the protection of Article 31-A is not available against these institutions. Indeed, the extreme contention has been urged that no land belonging to such an institution can be acquired at all.

25. Article 26 reads as follows : "26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with law".

As pointed out in *Commissioner, H. R. E. v. L. T. Swamiar*[13], and in *Ratilal v. State of Bombay*[14], the article falls into two parts, clauses (a) and (b) dealing with what might be called the religious aspect of the guarantee, namely, the right of every religious denomination to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion, and clauses (c) and (d) dealing with what might be called the secular aspect, namely, the right of such a denomination to own and acquire property and to administer such property in accordance with law. There can be no doubt that all the four clauses are qualified by

the opening words of the article, "Subject to public order, morality and health", and the two decisions of the Supreme Court just referred to are authority for saying that the words, "in accordance with law", appearing at the close of the article, do not qualify clause (b), nor, it would appear, clause (a). The principal question is whether these words, "in accordance with law" qualify clause (c) or are confined, as might appear from the punctuation of the article and the arrangement of the clauses, to clause (d). If they qualify clause (c) as well, it would follow that secular aspect of the guarantee is not absolute, like, for example, the guarantee in Article 30 (1), and is

[13]2 AIR 1954 SC 282
[14] AIR 1954 SC 388

subject not merely to public order, morality and health to which alone the religious aspect is subject (of course, in its religious aspect also the article, like Article 30 (1), does not affect any regulatory non-restrictive law) but also to any valid law made by the competent legislature. And, if such a law falls within the scope of Article 31-A, then, it is immune from attack on the basis of Article 14, Article 19 or Article 31.

26. If the right guaranteed by clause (c) were absolute, in the sense that it is subject only to public order, morality and health, that we are afraid would, as pointed out in *Laxminarayan Temple v. L. M. Chandore*[15], lead to the most impossible results. What is guaranteed is the right to own and acquire movable and immovable property and the qualification of the word, "property" by the words, "movable and immovable" can leave no room for doubt that what is guaranteed is not merely the abstract right to own property but the concrete right to own particular property - Article 19(1)(1) speaks only of the right to acquire, hold and dispose of property without particularizing the property and yet it is now well settled that what is guaranteed is not the mere abstract right to property. If indeed the right guaranteed by clause (c) of Article 26 were an absolute right to own particular property, free of the trammels of any law and subject only to public order, morality and health, it would follow that no property, however unimportant, belonging to a religious denomination could be compulsorily acquired for a public purpose, however vital and pressing it be. A cent of land belonging to a religious denomination could hold up a big project vital to the economy of the nation -that indeed is the extreme form the argument has taken -and, contrary to what was decided in *State of Bihar v. Kameshwar Singh*[16], not even the circumstance that the land was only being converted into another form of property, namely, money would be of any avail. Other impossible results would be that laws relating to the acquisition and holding of essential commodities, laws such as the gold control laws, which are regarded as necessary for preserving the economy of the country, and laws forbidding or controlling imports, would not be applicable to religious denominations and such a denomination would be free to acquire property, both movable and immovable, by any means howsoever illegal and to hold such property in defiance of any law so long as the law does not fall within the realm of public order, morality and health. Even stolen property could be acquired and retained.

27. Shorn of the punctuation and the division of the four clauses of the article into separate clauses by the use of the letters, (a), (b), (c) and (d), indicative of that they are independent clauses, it is despite the repetition of the word "to" before the word "administer" in clause (d), possible to read the words, "in accordance with law" appearing at the end of the article as applicable also to clause (c), as if clauses (c) and (d), put together read to own and acquire movable and immovable property and administer such property in accordance with law. Or, to

put it more clearly, as if they read to own, acquire and administer movable and immovable property in accordance with law.

28. It is but proper that the secular aspect of the right guaranteed by Article 26 should

[15] AIR 1970 Bom 23
[16] AIR 1952 SC 252

be subject to the ordinary laws; both clauses (c) and (d) thereof deal with the same matter, namely, the right to property; the words, "such property" in clause (d) have the effect of attracting it to clause (c); and having regard to the absurd and impossible results which would otherwise follow, we think that the rules of statutory construction would justify us in ignoring the punctuation and the lettering of the clauses and reading the word, "in accordance with law" as qualifying not merely clause (d) but also clause (c) of the article, especially so when we are construing a constitutional provision.

29. It is said that so to construe the article would be to rob clause (c) thereof of its content and make it an empty guarantee. That is not so. The guarantee is that there can be no interference with the right of a religious denomination to own and acquire property save by authority of law, a guarantee similar to that vouchsafed by Articles 21 and 31 (1) of the Constitution. Mere executive interference is altogether excluded, and the law must be a valid law not merely made by the competent legislature but also keeping within the constitutional limitations.

30. The pre-natal history of the article seems to support the construction we have placed upon it, namely, that while the opening words, "Subject to public order, morality and health" qualify all the four clauses thereof, the closing words, "in accordance with law" qualify both clauses (c) and (d) though not clauses (a) and (b). As the article was first drafted, the right to own, acquire and administer property was (like the other rights therein) conferred in unqualified terms. There was difference of opinion as to whether a fundamental right to property should be given at all to religious denominations, and, after some discussion, the compromise suggested by Shri Rajagopalachari that the right to own, acquire and administer property be qualified by making it subject to the general law was accepted. At a later stage, a suggestion made by Dr. Pattabhi Sitaramayya that the words, "subject to public order, morality and health" be added at the beginning of the article was also accepted. It thus seems clear that the punctuation and the lettering apparently divorcing the closing words, "in accordance with law" from clause (c) were no more than an error in drafting.

31. The power to make law for the acquisition of property is conferred on both the Union and the States by Article 246 of the Constitution read with Entry 42 of List III of the Seventh Schedule. And, by reason of Articles 73 and 162, the executive power of the Union and the States extend to that matter subject, of course, to the provisions of the Constitution. The power is not conferred by Article 31 which only places limitations on the power both executive and legislative. Clause (1) of Article 31 limits the executive power by providing that there can be no deprivation of property save by authority of law, while clause (2) provides that there can be no compulsory acquisition or requisition 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 fixes the amount of the compensation or specifies the principles and the manner in which the compensation is to be determined and given. Compliance with Article 31, no doubt, ensures that a law for acquisition in

its substantive aspect comes within the saving in clause (5) of Article 19 of the Constitution in respect of the right guaranteed by clause (1) (f) thereof, and it also ensures that the law will not be called in question in any court on the ground that the compensation provided thereby is not adequate. Nevertheless, as we have said, it is not Article 31-A that confers the power to make law for the acquisition of property -it only places fetters on that power. That being so, the circumstance that neither Article 26 nor Article 31 is made subject to the other is of no consequence one way or the other. Indeed we should have thought that there could be no question of the one being subject to, or prevailing over, the other, both are protective provisions and there can be no question or the protection afforded by the one affecting the protection afforded by the other.

32. This, it is claimed, is not the end of Article 26. There is still clause (a) thereof which is not qualified by the words, "in accordance with law", and the guarantee whereunder is subject only to public order, morality and health. It is not claimed that to guarantee every religious denomination the right to establish and maintain institutions for religious and charitable purposes is to guarantee that it will be provided with the wherewithal for the purpose. But it is contended that the guarantee would be an empty promise if the property set apart for establishing or maintaining such an institution could be taken away in entirety leaving no means for meeting the expenses necessary for the purpose. We see considerable force in this submission but we should think that, so far as rights to property are concerned, the sum-total of the guarantee afforded by the article is contained in clauses (c) and (d) which are specific provisions dealing directly with such rights. No part of the guarantee is to be found in clause (a) which can but be indirectly affected and which, in that way is equally affected in a case where a religious denomination is unable to find the means to establish or maintain such an institution. After all, the guarantee against the deprivation of the property necessary to sustain life is to be found not in Article 21 but in Article 19; and if there are religious institutions which depend for their maintenance on the income from lands that have been leased out and which income will cease by reason of the expropriation under Section 72 of the Act, so are there human beings so dependent and likewise deprived of their sole means of subsistence.

33. It has been argued that in the context of Entry 42 of the Concurrent List the word, "acquisition" by itself implies the payment of compensation and that it is beyond the legislative competence of a State to make a law for acquisition without the payment of compensation. Such a law, it is said, can, if at all, fall only within the residuary entry, namely, Entry 97 of the Union List. But Article 31 (2) which says that no property shall be compulsorily acquired save by authority of a law providing for compensation is sufficient to show that the word, "acquisition" as used in the Constitution does not imply the payment of compensation. Entry 42 of the Concurrent List is wide enough to cover acquisition without compensation and the right to compensation springs only from Articles 19 and 31 -indeed, it was so held in AIR 1952 SC 252; *Pritam Singh Chahil v. State of Punjab*[17], and *B. Shankara Rao v. State of Mysore*[18],

34. It has been pointed out that many of the impugned provisions have their counterparts in the Kerala Agrarian Relations Act, 4 of 1961, which was struck down in *K. Kunhikoman v. State of Kerala*[19], But, that was only because

[17] AIR 1967 SC 930 [18] AIR 1969 SC 453 [19] AIR 1962 SC 723

the protection of Article 31-A was not available, the land concerned in that case being Ryotwari land which, at that time, was not included in the definition of, "estate" in the article. What is

more pertinent is that that Act as a whole was upheld in *Purushothaman v. State of Kerala*[20], where the protection of Article 31-A was available, the land there involved coming within the definition.

35. Vituperative epithets such as "fraud on the Constitution", "mala fides", "colourable legislation", "ulterior object", "politically motivated" and the like have been freely used in denigration of the Act, obviously because of the hardships it undoubtedly inflicts on persons like the petitioners. But, it is well settled that there is no such thing as legislative mala fides or colourable legislation excepting in the context of a covert trespass into a forbidden field, and that the motives that move the legislature are no concern of the courts -see *K. C. G. Narayan Deo v. State of Orissa*[21], Here, there is no question, but that the Act is completely within the legislative field of the State.

36. We shall now proceed to consider the impugned provisions of the Act; and if we fail to make express mention of any provision that has been assailed in one or the other of these petitions, it must be taken that it is only because of the absence of any averment as to the interest which entitles the particular petitioner to assail the provision. Neither this failure, nor the failure to grant relief in so far as that particular provision is concerned, is to be understood as meaning that we have upheld the provision or pronounced any opinion whatsoever as to the merits of the attack upon it. We might also add that, in testing the constitutionality of an impugned provision, we shall consider only its broad purport and that what we might say with regard to that is not to be taken as a construction of the provision. Most of the impugned provisions are very lengthy and very complicated. We do not pretend to have understood them fully in all their implications, and their construction must await the particular cases in which they are sought to be applied. Nothing we might say with regard to any provision must be taken as having the least bearing on its application in any particular case; nor are we expressing any opinion as to its validity or otherwise should a different construction than what we have indicated be placed upon it.

37. Most of the definitions in Section 2 of the Act have been challenged. But a definition by itself hurts nobody; a word, and therefore its meaning, can hurt only when it is used. We shall, if necessary, consider the definitions in considering the challenge on the enacting provisions in which the words defined have been used.

38. It is round the provisions for the vesting of the rights of landlords in the Government and the payment of compensation therefor (Sections 72, 72-A, 72-H and 72-I), for conferring certain rights on kudikidappukars (Sections 75 to 80-G) and for imposing a ceiling on ownership and possession of land and the surrender of excess lands and payment of compensation therefor (Sections 81 to 93) that the controversy has most fiercely raged, and we shall consider these provisions first.

39. Under Section 72 all the rights, title and interest of the landowners and

[20] AIR 1962 SC 694

[21] AIR 1953 SC 375

intermediaries in respect of holdings held by cultivating tenants entitled to fixity of tenure vest in the Government free of all encumbrances on a date to be notified by the Government. (What this means is surely, that all the rights in the lands comprised in the holdings are so vested and we see little substance in the argument that only the right to collect rent is

vested so that no right in an estate attracting Article 31-A is involved. We might also point out that, having regard to the definition of, "cultivating tenant" in Section 2 (8), there must always be a cultivating tenant on agricultural land that has been leased out). This date has been notified as the 1st of January, 1970, so that the rights of the landlords in the lands comprised in all such holdings now stand vested in the Government. The principal purpose of this vesting seems to be to assign the land (whether he wants it or not) to the cultivating tenant concerned for a price under Sections 72-B and 72-C up to the extent necessary to make up the ceiling area. For the rest, the entire land including the tenant's interest therein would, under the provisions of Chapter III, come into the hands of the Government for assignment in accordance with the provisions of Section 96.

40. As we have seen, Section 83 of the Act says that with effect from such date as may be notified by the Government -the date has been notified as the 1st January, 1970 -no person shall be entitled to own or hold or to possess under a mortgage lands in excess of the ceiling area. Section 82 specifies what the ceiling area shall be in respect of several classes of persons, while Section 85 provides for the surrender of excess lands, Section 86 for the vesting of excess lands, in Government, Section 88 for the compensation to persons surrendering land and Sections 90 and 91 for the determination of the amount of compensation and its payment.

41. The abolition of landlordism and the creation of a class of peasant-proprietors making the actual cultivator the owner of the land, in other words, the implementation of the slogan, "Land for the tiller", has always been regarded as a measure of agrarian reform. So has the fixing of a ceiling on the holding of agricultural lands (based on the concept of an economic holding) and the distribution of land held in excess of the ceiling to the landless or to persons holding land below the ceiling. This has been repeatedly recognized in numerous decisions of the Supreme Court so well-known that it is unnecessary to cite them. The principal attack on the provisions for the vesting of the rights of landlords in the Government and for the surrender of lands held in excess of the ceiling has therefore been that the compensation provided is so inadequate as to be illusory. That we are afraid is so, both with regard to the quantum of compensation and the mode of its payment, especially so in the case of the compensation payable for the rights of the landlords. This compensation to the landlord is, under Section 72-A sixteen times the fair rent of the holding, plus (subject to a ceiling of sixteen times the fair rent) the value of structures, wells and embankments of a permanent nature and one-half of the value of timber trees belonging to the landowner. (Even so, if the total compensation payable to a landlord exceeds Rs. 20,000/-, there is a progressive cut which for anything over Rs. 1,10,000/-comes to 50 per cent). The fair rent is the fair rent as determined under the provisions of the amended Act, which, a most cursory examination of the relevant provisions, is enough to show so far belies its name as to be an artificially depressed rent (and, especially in so far as there is a further reduction from the fair rent of the original Act) specially designed with an eye to keep the compensation as low as possible. Particular reference may be made in this connection to sub-section (2) (a) of Section 27 by which the fair rent in the case of nilams cannot be more than 50 per cent. of the contract rent, however low the contract rent might be, even if it be lower than the rent calculated in accordance with Schedule III. (The result obviously is that landlords who have been leasing their lands at low rents will suffer a greater reduction than landlords who have been leasing their lands at high rents). The net result of all these provisions would seem to be that the compensation payable under Section 72A is not likely to exceed a third of the market value of the property. Even this low compensation is not payable within a reasonable time -the landlord will have to wait almost

indefinitely for it. In the first place the Land Tribunal has to fix the compensation due to the landowner and the intermediaries after going through the elaborate procedure outlined in Sections 72F and 72G. This itself might well be a matter of years. The Land Tribunal's determination is subject to appeal and revision under Sections 102 and 103, so that it might well be a matter of a few more years before the determination becomes final. It is only thereafter -and we do not think that the petitioners are guilty of exaggeration when they say that it will only be, if at all, only after five years -that any compensation becomes payable. Even so, only half the amount of compensation is to be paid by the Land Tribunal, and that in eight equal annual installments (the interest on defaulting installments being four per cent. per annum), the first installment being payable within one year of the date on which the Land Tribunal's determination has become final. For the remaining half of the compensation the landlord has to apply to the Land Board which, after enquiry, has to determine the balance of the compensation payable to him. This balance is to be paid either in cash in eight equal annual installments (without any interest except on defaulted installments at four per cent. per annum), the first installment being payable within one year from the determination of the balance; or in negotiable bonds bearing interest at the rate of four and a half per cent per annum and redeemable after sixteen years; or partly in cash and partly in such bonds. Assuming that the entire compensation is paid in eight equal annual installments what the landlord will get after waiting for five years or more will be for each of the eight years thereafter something less than the annual contract rent, and after getting something less than the annual contract rent for these eight years he will get nothing more.

42. The State has no pretence that if market value be the criterion, the compensation payable is more than illusory or that the provisions referred to can properly be regarded as specifying the principles on which compensation is to be determined and given within the meaning of Article 31 (2). Its sole defense, as we have said, is the shelter of Article 31-A of the Constitution, and, so far as agrarian reform is concerned, there can be no doubt that it is fully protected by that Article from any attack based on Articles 14, 19, or 31. The provisions now under consideration being provisions for the acquisition by the State of rights in an estate for the purpose of agrarian reform, they are, it is clear, immune from attack under these Articles. That the acquisition by the State is not for itself but for making over the property to tenants and the landless is, even if such making over be not regarded as a public purpose, of no consequence.

43. As we have seen, the power to make law for the acquisition of property is conferred on the State as on the Union by Article 246 of the Constitution read with Entry 42 of the Concurrent List. Acquisition by itself does not imply the payment of compensation or the existence of a public purpose; and the right to compensation as also the requirement of a public purpose spring from Articles 19 and 31, neither of which can avail in a matter covered by Article 31-A. It is nevertheless argued on the strength of the following observation by the Supreme Court in *Amar Singhji v. State of Rajasthan*[22], that even in an acquisition covered by Article 31-A compensation is contemplated, and even if inadequate, cannot be illusory :

> "The utmost that can be said of these provisions is that the compensation provided thereunder is inadequate, if that is calculated on the basis of the market value of the properties. But that is not a ground on which an Act protected by Article 31-A could be impugned. Before such an Act could be struck down, it must be shown that the true

> intention of the law was to take properties without making any payment, that the provisions relating to compensation are merely veils concealing that intention, and that the compensation payable is so illusory as to be no compensation, at all, (Vide AIR 1952 SC 252 at p. 276). We are clear that this cannot be said of the provisions of the impugned Act, and the contention that it is a fraud on the Constitution must, in consequence, fail.

But what was held in AIR 1952 SC 252 was, as stated in paragraph 82 of this very judgment,

> "that an objection to the validity of an Act relating to acquisition of property on the ground that it did not provide for payment of compensation was an objection based on Article 31 (2), and that it was barred when the impugned legislation fell within Articles 31 (4), 31-A and 31-B".

There are a number of decisions of the Supreme Court that lay down what seems to be clear from the language of Article 31-A itself that a law for acquisition falling within its scope cannot be assailed on the ground that it enables acquisition without the payment of any compensation at all. That being so, there can be no complaint that the compensation payable is mere make-believe. The latest of these decisions brought to our notice is AIR 1969 SC 453.

44. The ceiling area under the amended Act is lower than the ceiling area under the original Act. It is contended that, in so far as the amended Act provides for the acquisition of land within the original ceiling area (namely, of the difference between the two ceiling areas), the second proviso to clause (1) of Article 31-A requires the payment of compensation at a rate not less than the market value so long as the land is held under personal cultivation. But it is clear from a reading of this article that the law for the time being in force referred to therein when it says that "it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force unless the law relating to the acquisition of such land provides for payment of compensation at a rate which shall not be less than the market value thereof is the law regarding ceiling in force at the time the acquisition is made, not a law which at that time is no longer in force.

[22] AIR 1955 SC 504 para 83

The contention that once there is a law fixing the ceiling limit, there can thereafter be no acquisition within that ceiling limit, without payment of at least the market value, even if the law be replaced or otherwise repealed, seems to us quite unsustainable. Here, the actual vesting of the excess land in the Government under Section 86 (4), in other words, the acquisition of the land by the Government, takes place only after the coming into force of Section 83 imposing the ceiling limit and the acquisition is only of land in excess of and not of land within the ceiling area. The prohibition against holding land in excess of the ceiling limits does not involve any acquisition by the State. Such acquisition takes place only when, upon surrender or assumption of the excess land, the land vests in the Government under Section 86 (4). Before that, the Land Board has to determine which is the land, to be surrendered and issue notice demanding the surrender. Moreover, Section 83 of the original Act imposing a ceiling limit was never brought into force although Section 82 specifying a higher ceiling limit than Section 82 of the amended Act, was. Therefore, when the amended Act came into force, there was no ceiling limit applicable to any person so as to attract the second proviso to clause (1) of Article 31-A. The

ceiling was imposed only by the amended Act and there is to be no acquisition within that ceiling, see 1970-1 SCWR 306 : AIR 1970 SC 398. That decision is also authority for what we have already said, namely, that the law in force referred to in the second proviso to clause (1) of Article 31-A is the law in force at the time the acquisition is made and not, as the Orissa High Court seems to have thought, the law in force at the time when the law for acquisition was made. That in that case the Supreme Court disposed of a contention similar to that raised before us only on the second of the reasons we have stated, namely, that the previous law providing for a ceiling limit had not been brought into force when the subsequent law fixing a lower ceiling limit and providing for the acquisition was made, does not mean that, had the previous law fixing a higher limit been brought into force, it would have continued to be "the law for the time being in force" within the meaning of the proviso in question, notwithstanding its replacement or outright repeal. The power of a legislature to fix the ceiling limit is not exhausted by a single exercise thereof. The legislature can, as pointed out by Hidayatullah, J., (as he then was) in Golak Nath's case, AIR 1967 SC 1643 reduce the ceiling limit from time to time or do away with it altogether and what is relevant is only the ceiling limit according to the law in force at the time of the acquisition.

45. We are told that the implication of the proviso which insists on payment of not less than the market value for acquisition within the ceiling is that for the acquisition of personally cultivated land, without the ceiling, due compensation, though not necessarily the market value, must be paid. We are unable to read any such implication into the proviso which only saves the acquisition of personally cultivated land within the ceiling from the operation of the body of the article which permits acquisition without the payment of any compensation at all.

46. Section 81, as we have seen exempts certain classes of land from the provisions of the Chapter in which it appears, namely, Chapter III, which prescribes a ceiling and provides for the disposal of excess land. Among the classes of land so exempted are lands which may be described as non-agricultural lands -it would appear that virtually all non-agricultural lands would come within the exceptions, at any rate, there is no complaint before us of any omission. But, certain classes of agricultural land like plantations which, by definition, means any land "used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon" and includes land used for ancillary purposes, have also been exempted. The exemption in respect of such lands was wider in the original Act and took in cashew estates having a contiguous extent of ten acres or more and pure pepper and pure areca gardens having a contiguous extent of five acres or more. The denial of exemption for these lands by the amended Act, it is claimed, is discriminatory. But, even if that be so, the attack can be based only on Article 14, which, as we have seen, is not available where the protection afforded by Article 31-A extends.

47. With the vesting of the rights of the landlords in the Government by reason of the notification under Section 72, the provisions of the Act relating to fixity of tenure, fair rent and the determination thereof, and the purchase of the rights of landlords by cultivating tenants, ceased to affect the landowners and are therefore of no consequence, excepting that the provisions regarding fair rent continue to operate in an indirect way. So, the attack on these provisions (and on the definitions that enter into them) need not be considered, in so far as their direct application is concerned. However, as we have indicated, the provisions regarding fair rent are not altogether a dead letter. The compensation payable to the landlords for the acquisition of their rights is based on the fair rent and therefore the fair rent determines the amount of compensation. But,

any attack on the compensation payable, whatever be the grounds can only be on the basis of Articles 14, 19 or 31, and in a matter covered by Article 31-A, the protection of these articles is unavailable. Therefore, it is not necessary for us to consider the contention that the provisions regarding fair rent are arbitrary and, in effect, expropriatory.

48. It is said that there might be pending applications for fair rent and that these applications will have to be disposed of in accordance with the provisions of the amended Act. The fair rent when fixed will operate from the date of the application and therefore the result of the reduction made by the amended Act will be that the rent payable to the landlords for the period before the acquisition of their lands will be reduced, any rent paid in excess of the fair rent as determined being adjusted by reason of Section 72-O (2) to the compensation payable to the landlord for the acquisition of his rights. This might be so, but this, so far as these cases are concerned, is only a hypothetical question. None of the petitioners has alleged that there is a fair rent application pending against him and none has said that he is adversely affected by the provisions in question in respect of the rent payable to him. The question must be left to be decided in a case where these matters are pleaded and with the applying tenant on the party array.

49. Lands held in excess of the ceiling vest in the Government under Sections 86 and 87 of the Act, sub-section (1) of Section 96 says that, after reserving in each village the lands necessary for public purposes, the Land Board shall assign these lands vested in the Government to kudikidappukars, landless agricultural labourers, and small holders having less than an acre of land in their possession. It is said that this reservation for public purposes can be for any purpose whatsoever, a purpose entirely unconnected with agriculture such as, for example, for an industrial undertaking. Therefore, the acquisition under Sections 86 and 87 and the imposition of the ceiling cannot be said to be for the purpose or agrarian reform and Chapter III in which these provisions appear cannot have the protection of Article 31-A. But we think that, despite the wide language of sub-section (1) of Section 96, having regard to the context in which it appears, the reservation for public purposes under that sub-section can only be for public purposes relating to agriculture, such as, for example, the provisions of thrashing floors or the construction of irrigation or drainage channels, or the housing of agricultural labourers. That being so both the imposition of a ceiling and the acquisition of excess lands come within the protection of Article 31-A.

50. By Section 84 all voluntary transfers after a certain date made by persons holding land in excess of the ceiling area (with certain exceptions as, for example, transfers by way of partition or in favour of a person who has been a tenant of the holding since the 27th July 1960, the date when the Agrarian Relations Bill was returned by the President) are declared to be transfers made to defeat the provisions of the Act and accordingly invalid. Sub-Section (1) deals with transfers made after the publication of the Kerala Land Reforms Bill, 1963 (the Bill of the original Act) while sub-section (2) deals with transfers effected after the 1st July 1969 on which date the report of the Select Committee on the Bill of the amending Act was expected to be published. Having regard to the fact that sub-section (2) is virtually a repetition of sub-section (1) (excepting that transfers on account of natural love and affection come within the exceptions in the former but not in the latter) and that sub-section (1) covers the period covered by sub-section (2), we should think that the ceiling area referred to in the former is the ceiling area under the Bill of 1963, while the ceiling area of the latter is the ceiling area under the amended Act. However that might be -we are expressing no final opinion on the point -the effect of the section is to deprive the

transferee of his rights in the land (which land constitutes an estate) and make him eligible for such compensation as the Land Tribunal thinks fit to award out of the compensation payable for the land covered by the transfer in cases where the land has to be surrendered by reason of the transferor holding land in excess of the ceiling, the land having become once more the transferor's land. (It is said, on behalf of the State that, as far as possible, it will be the untransferred land that will be chosen for surrender under Section 85 (5) and that Section 84 which only annuls transfers to the extent they defeat the provisions of the Act does not affect title as between the transferor and the transferee. With all this we are not here concerned). The section is necessary for the scheme of land reform, since, obviously, persons holding land in excess of the ceiling must have been making transfers (mostly benami) to evade the legislation that was on the anvil. The section, therefore, comes within the protection of Article 31-A -the right affected thereby is the transferee's right in the land, namely, the estate, bought by him -and is saved from attack under Articles 14, 19 and 31 -see in this connection *Raghubir Singh v. State of Ajmer*[23], and *State of Bihar v. Umesh Jha*[24], where like provisions for invalidating anticipatory transfers designed to defeat agrarian reforms were upheld on the ground that they were entitled to the protection of Article 31-A.

51. Section 85 provides for the surrender of excess land, but sub-section (1) thereof contains an explanation which we think cannot stand.Under the explanation, subject

[23] AIR 1959 SC 475

[24] AIR 1962 SC 50

to certain exceptions, any land transferred by a person holding land in excess of the ceiling area between the 18th December, 1957 (the date of publication of the Kerala Agrarian Relations Bill) and the date of the publication of the Kerala Land Reforms Bill, 1963 (here we think that ceiling means the ceiling area under the Act, for it does not appear there was any ceiling area during the period in question) is to be regarded as still held by him for the purpose of fixing the extent of land to be surrendered by him and such surrender is to be made out of the land still held by him. This can lead to absurd results. For example, supposing a person holding land just one cent in excess of the ceiling area had transferred some lands between the dates mentioned and bought the lands now held by him, possibly at a higher price, he will have to surrender all his land for the nominal compensation provided by Section 88. No doubt, absurdities like this can only be attacked under Articles 14, 19 or 31 which are not available in the case of a legislation protected by Article 31-A, but, there is the second proviso to sub-clause (a) of clause (1) of the article which enjoins the payment of compensation not less than the market value for the acquisition of any land within the ceiling limit under the law for the time being in force. The effect of the explanation is to offend this proviso since it means that even land held by a person within the ceiling limit applicable to him under the Act (the law for the time being in force within the meaning of the article) can be taken away for the nominal compensation payable under Section 88, by the fiction of regarding lands disposed of by him within the dates mentioned as if those lands were still held by him although the transfer remains untuoched, in other words, as if the ceiling limit for such a person is different from the ceiling limits for persons who had not disposed of land between the relevant dates. That is not so. The ceiling limits imposed by the Act are the same for all, but, in the case of a person who has so disposed of land, that land is to be regarded as still held by him (although, in fact, it is not) for the purpose of calculating the extent of the land to be surrendered by him, and the surrender is to be made out of the land still held, even if its effect be to leave him with land less than the ceiling limit, indeed with no land at all. If a fiction by which land not held by a person could be taken

into account for the determination of the excess land to be surrendered by him, and he could be forced to surrender land actually held by him although it is within the ceiling limit without payment of the market value thereof, were permitted, the proviso in question could easily be rendered nugatory. That would be to mock the proviso.

52. The attack on behalf of the Devaswoms on Sections 65 to 67 and 72-N which merely afford them an option which they need not make if they do not wish to, and on the notification under Section 72 which, by notifying the date thereunder as the very date on which the new Section 65 came into force, deprived the Devaswoms of the opportunity of making the option -under the proviso to Section 65 the option has to be made before the date notified under Section 72 -was given up at the hearing. We are also told that the date for making the option has been extended by an order issued under Section 128.

53. It is said that the ceiling fixed by the Act is too low and makes for fragmentation, which is the very antithesis of agrarian reform rather than for an economic holding. This is a matter which is essentially for the legislature to decide and the Courts will not ordinarily interfere with the judgment of the legislature. We do not think that it can be said that the ceiling is so low that it hinders rather than furthers agricultural development.

54. Sections 75 to 80-G deal with the rights and liabilities of kudikidappukars. The definition of, "kudikidappukaran' in Section 2 (25) of the amended Act is in substitution of the definition in the original Act and so are most of the provisions conferring rights on kudikidappukars. It would therefore appear that these provisions cannot have the protection of Article 31-B of the Constitution but that rights already accrued to persons under the provisions of the orginal Act will not be affected by the replacement of those provisions in the amended Act, the replacement being a repeal (accompanied by a re-enactment) attracting Section 4 of the (Kerala) Interpretation and General Clauses Act (Section 6 of the Central Act). This, however, is not a question that falls for decision and we are not here concerned with the rights accrued under such provisions of the original Act as have been replaced or otherwise repealed.

55. The principal objection taken to the provisions relating to kudikidappukars is that, having regard to the definition of, "kudikidappukaran", the rights will be available even to persons who have no connection with agriculture, in occupation of huts on land which is not agricultural. The conferment of rights on such persons would not be agrarian reform, and, therefore, the provisions cannot have the protection of Article 31-A. But, in no case before us is it alleged that there is any such person claiming or likely to claim the benefit of the provisions in question. In fact, as we have said, all the lands with which these petitions are concerned are agricultural lands constituting estates, and, to deny the protection of Article 31-A to any particular provision it must be shown that that provision is not a measure of agrarian reform. As we have already remarked, the mere possibility of the provisions in question being applicable to cases not falling within Article 31-A is no ground for denying the protection of that article in respect of the cases falling within its ambit.

56. It is pointed out that the proviso to Section 2 (25) makes a kudikidappukaran even of a trespasser so long as he was in occupation on the 16th August, 1968 -the Bill of the amending Act was published on the 15th August -and continued to be in occupation till the commencement of the amending Act, namely, till the 1st January, 1970. And that would be so even if the

landowner has obtained a decree for possession against him. To encourage trespass by conferring rights on trespassers, even on trespassers against whom there is a decree for possession, cannot, it is said, be regarded as a measure of agrarian reform. That might well be so, but, we are not called upon to consider the validity of the proviso in question since, so far as the cases before us are concerned, the application of the proviso is a mere theoretical possibility. In none of the cases is it said that there is any person claiming the benefit of the proviso against the petitioner concerned, and the challenge to the proviso must be left to be decided in a case where the question actually arises.

57. Generally speaking, it might be said that a kudikidappukaran is a hutment dweller in permissive occupation of the land on which his hut stands and who holds no land on which he could erect a homestead. Three cents of land in a city or major municipality, five cents in any other municipality and ten cents in any panchayat area or township (it is said that there is no place in this State which is not comprised within a city or a municipality or a panchayat or a township) is regarded as the minimum land required for the purpose of erecting a homestead and it is only if the person concerned holds lands in excess of these limits that he is disqualified. It would, however, appear from Explanation I to the definition in Section 2 (25) that the total extent of all the land held by a person, not necessarily land contiguously situated, is to be taken into account for the purpose of the disqualification, the conversion being made on the basis that three cents of land in a city or major municipality is equivalent to five cents in any other municipality and to ten cents in a panchayat area or township.

58. Kudikidappus are mainly a feature of the coconut gardens in the coastal areas of the State and are largely confined to the Cochin and Travencore areas. As we have seen, the occupation originates in permission, and, although in most cases the permission might, in some measure, be prompted by charitable considerations, it is never wholly so. Some benefit in return, other than spiritual, is always expected. In some cases, the kudikidappukars are agricultural labourers who were in the earlier days, expected to work for the holder of the land for a lower wage than the prevailing wage, and in all cases they are expected to keep watch over the land and prevent theft or trespass. In the case of coconut gardens, the very existence of these dwelling houses in the midst of the gardens is beneficial to the trees in the immediate vicinity of the houses and increases their yield. So far as agricultural land is concerned, it seems to us that there is in all cases some connection between the existence of a kudikidappu therein and the cultivation of that land so that the conferment of benefits on kudikidappukars must prima facie be regarded as a measure of agrarian reform.

59. Section 75 of the Act only prevents a kudikidappukaran from being thrown out without good reason -the reasons are specified -while at the same time making provision (albeit cumbrous and largely impracticable) for shifting the kudikidappu and seems to us to come within the ambit of agrarian reform. Indeed, the section has not been seriously attacked. Nor has Section 76 which provides for the discharge of arrears of rent due from a kudikidappukaran and imposes a ceiling on the rent for a Kudikidappu (in any case the rent has always been nominal and is rarely collected), or Section 79 which gives the Kudikidappukaran the right to maintain, repair and reconstruct at his own cost, without increasing the plinth area by more than fifty per cent. the hut constituting the Kudikidappu, or Section 79A which secures for the Kudikidappukaran certain customary and other rights for the proper enjoyment of his Kudikidappu, although here, as in other cases, the theoretical possibilities of the mischief that may be worked have been conjured

up. In fact, in none of the cases before us is it alleged that the petitioner concerned is directly affected by the provisions of Sections 76 or 79 or 79A and the validity of these Sections must be left to be decided in a case where such prejudice is alleged and where the Kudikidappukaran concerned has been made a party.

60. The real controversy is centered round Sections 80-A to 80-G which by enabling a kudikidappukaran to buy not merely the site of his hut but also the surrounding land up to an extent of three cents in a city or major municipality or five cents in any other municipality or ten cents in a panchayat area or township for a price which, both with regard to its amount and to the manner and time of its payment, can only be described as nominal, virtually make a gift of the land to the kudikidappukaran. It has been argued that such a transfer of land to a person who had no manner of interest therein (by definition a kudikidappukaran has no interest in the land as such being only in permissive occupation of the site of his hut) cannot come within the ambit of sub-clause (a) of clause (1) of Article 31-A since it involves no acquisition by the State and no extinguishment or modification of any rights in the land constituting the estate. The provision is really for the compulsory acquisition of the land by the kudikidappukaran without payment of compensation and the circumstance that the article expressly provides only for acquisition by the State is a clear indication that acquisition by others is not included within its ambit, even if such acquisition might involve the extinguishment of the rights of the person to whom the land previously belonged. If the extinguishment involved in a transfer of the land from one person to another, namely, the extinguishment of the rights of the original owner, were comprised within the term, "extinguishment" as used in the article, it was unnecessary to have made separate and express provision for acquisition by the State. Therefore, it is said, that extinguishment within the meaning of the article is extinguishment pure and simple and not extinguishment which is only an incident of something else like a transfer or an acquisition. It means a total annihilation of the rights, not the substitution of one person by another in that right. So runs the argument. But, although the argument sounds attractive enough, we are afraid it has to be rejected in view of the decision of the Supreme Court in AIR 1959 SC 459 and AIR 1959 SC 519. In the former, it was held that the transfer of a landlord's right to a tenant was an extinguishment, or, in any event, a modification of the landlord's right in the estate, well within the meaning of these words as used in the article. In the latter, which also deal with compulsory acquisition of a landlord's right by a tenant, it was pointed out that provision for such acquisition was a modification of the owner's rights in the land in that it obliges him to sell the land not at his own price but at the price fixed by the statute, and not anyone he chooses but to the person specified therein, and in accordance with its provisions. A transfer of his rights by the owner of a land to a person like a tenant already having some interest therein stands on no different footing from a transfer to a person having no interest in the land from the point of view of the extinguishment or modification of the rights of the transferor.

61. Although this is not expressly mentioned, we think it is clear that the purpose of the transfer of the land to the landless occupant of the hut is only for purposes connected with agriculture -we are here speaking only of agricultural land. In the case of such land, even if the kudikidappukaran is not an agricultural labourer, the land transferred to him is likely to be used only for purposes of cultivation like growing a kitchen garden as an adjunct to his dwelling house. It is hardly likely to be used in entirety for building purposes (although there might be some little extension of the dwelling house) or for industrial or commercial purposes. Thus, the transfer being of agricultural land to a landless person primarily for agricultural purposes -it would in all probability make for

more intensive cultivation -we do not think that it can be said that it is not a measure of agrarian reform.

62. As we have said, these kudikidappus are mainly in the coconut gardens in the coastal areas, and we are told that there are on the average about four or five kudikidappukars on one acre of land. The result of the provisions in question is not merely that the landholder will lose half his land getting no compensation therefor but that his land will be cut up into bits as has been graphically demonstrated in the sketches produced along with the petition in O. P. No. 371 of 1970. This hardship seems to us very real. The provisions for requiring the kudikidappukaran to purchase some other portion of the land if the portion adjoining his kudikidappu causes inconvenience to the landowner are scarcely workable, and the provision by which the total extent of the land that may be purchased where there are more kudikidappukars than one is limited according to the amount of the land held by the landholder does not afford adequate relief. But, so long as Articles 14, 19 and 31 are out of the way, we are afraid that this hardship can be no ground for striking down the provision in question.

63. Sections 29-A, 29-B, 32 and 125 affect the jurisdiction of the ordinary courts in respect of disputes arising out of claims of tenancy. By Section 29-A, the jurisdiction of a Magistrate to take action under Chapter XII of the Code of Criminal Procedure in respect of a dispute between a person who, claiming to be a tenant, has applied for the preparation of a record of rights or for the determination of fair rent or for the purchase of the right of the landowenr, and any other person claiming to be in possession of the land, is ousted pending disposal of the application, and, if in any proceedings under that Chapter of the Code possession was handed over to the other person and a suit regarding the right to possession of the land was pending on the date of the publication of the Kerala Land Reforms (Amendment) Bill, 1968, the applicant is entitled to continue on the land or obtain possession thereof till the final decision in the suit. What this amounts to is this. If there is a dispute as to possession of the land between a person claiming to be a tenant of the land and another, a Magistrate's power to interfere, even if the dispute threatens a breach of the peace, so long as the person claiming to be a tenant has made certain applications in pursuance of his claim is taken away. A person has only to make an application of the kind mentioned putting forward a claim of tenancy to forcibly trespass on another's land with impunity. To encourage trespass and consequent breaches of the peace under a false claim of tenancy is surely not a measure of agrarian reform and we can think of no reason why disputes regarding possession under a claim of tenancy should, so far as the preservation of the peace is concerned, be placed on a different footing from disputes regarding possession under other claims. In our view, no reasonable classification can be made between threats to the peace or to peaceable possession of property arising out of a disputed claim of tenancy and such threats arising out of some other disputed title. We consider this section to be bad for offending Article 14 -It cannot have the protection of Article 31-A -and it must be struck down accordingly.

64. Section 29-B provides for a summary adjudication by the Tahsildar of disputes regarding the right to cultivate land between a person claiming to be a cultivating tenant of the land and any other person preventing or obstructing him from cultivating that land. This is to be done after due inquiry, after notice to the opposite party and is subject to the result of any suit that may be instituted in respect of the land. Pending final decision of such a suit (instituted after the Tahsildar is seized of the dispute) the Court is not to grant an injunction against the applicant before the Tahsildar. We see nothing objectionable in this provision. The bulk of the tenancies

being oral, it is only to be expected that there will be a large number of disputes between the landowners and persons claiming to be tenents with regard to the right to cultivate the land. There will be pretenders coming forward as tenants, and at the same time, landowners falsely denying tenancy. A summary mode of disposing of these disputes pending decision by a Civil Court seems desirable and we have not been told in what way the section is bad.

65. Section 32 says that during the pendency of an application for determination of fair rent before a Land Tribunal no Court shall entertain any suit for eviction of the applicant from the land to which the application relates or pass any order of injunction prohibiting him from entering the land or pass any order staying the proceedings before the Land Tribunal. This section is obviously designed to prevent the institution of suits by landowners as a counterblast to applications by tenants for the determination of fair rent. We take it that the word "eviction" here has not the meaning attached to it by Section 2 (12) of the Act, namely, recovery of possession of land from a tenant, and that the section applies also to suits for recovery of possession on the allegation of trespass. Such a suit implies that the applicant for determination of fair rent is in possession of the land, and, that being so, we can see no objection to a suit for eviction being stayed pending disposal of the fair rent application. While there might be false claims of tenancy there might equally be false denials of tenancy. Under Section 101 (3) of the Act, the Land Tribunal is competent to decide on claims of tenancy for the purpose of disposing of applications for the determination of fair rent. That being so, it is desirable that there should not be parallel proceedings in a Civil Court, although ultimately the dispute might be one for a Civil Court to decide. If suits are allowed pending the disposal of the fair rent application, such suits might be filed by way of harassment and will, in any case, delay the proceedings before the Tribunal.

66. The bar against passing any order staying the proceedings before the Land Tribunal also seems to us unexceptionable. Not so, however, the bar against a Civil Court prohibiting an applicant for determination of fair rent from entering on the land concerned. Such an order would only be passed in a suit where the opposite party satisfied the Court that he is in possession and that the applicant is threatening to trespass on the land. To say that a person in possession who is threatened by such trespass can have no legal remedy so long as the trespasser has made an application for determination of fair rent would be to encourage trespass under the false claim of tenancy. For the purpose of deciding the fair rent application it would not be necessary for the Land Tribunal to pass an injunction against the applicant before it, and there would appear to be no question of the opposite party being able to obtain such an injunction from the Land Tribunal even where the Land Tribunal is authorized to grant injunctions under Section 101 (1) (e) of the Act. There is no reason why a person who is threatened by a trespasser should be deprived of his ordinary legal remedies, merely because the threatened trespass is under a claim of tenancy and we think that in so far as Section 32 bars an order of injunction prohibiting the applicant for determination of fair rent from entering the land it is bad for offending Article 14. As we have remarked, there is no reasonable classification between a threatened trespass under color of tenancy and one under color of some other right and to encourage trespass under claims of tenancy is not a measure of agrarian reform.

67. The Act sets up a special tribunal, namely, the Land Tribunal, to decide certain matters. These matters are specified by the Act itself and are not left to the will and pleasure of any executive authority. That being so, the vesting of exclusive jurisdiction in the Land Tribunal to decide these questions and the ousting of the jurisdiction of the Civil Courts under Section 125 (1) seem to us unexceptionable. So also the provision in sub-section (3) by which questions

regarding the rights of tenants and kudikidappukars including the question whether a person is a tenant or a kudikidappukaran are to be referred by a Civil Court to this special expert tribunal if such a question arises in any proceeding before it and the Court is to decide that question in accordance with the decision of this tribunal although the provision seems to us rather cumbrous and to make for protraction. It is also to be noticed that, under sub-section (6), the decision of the Land Tribunal on the question referred to it can be canvassed in appeal from the decree the Court might pass. However, sub-section (7), the effect of which is to preclude the Civil Court from granting relief by way of injunction or the appointment of a receiver pending the decision by the Land Tribunal, a relief which the Land Tribunal is not in a position to grant, seems to us bad. It is an encouragement to trespass under a claim of tenancy or kudikidappu rights and is not a measure of agrarian reform. It seems to us bad for offending Article 14, since there is no reason why a pretender under such a claim should be in a better position than a pretender under any other claim or why a person resisting such a claim should be in a worse position. Worse still is the provision in the sub-section by which any injunction granted, or appointment of a receiver made, by the Civil Court before the coming into force of the amending Act stands cancelled. This is not merely an encouragement to trespass but is a usurpation of judicial power -see in this connection *Basanta Chandra v. Emperor*[25], and *Shri P. C. Mills v. Broach Municipality*[26],

68. Under Section 73, all arrears of rent accrued due before the 1st May, 1968 and outstanding at the commencement of the amending Act are wiped off except to the extent of one year's rent in the case of a tenant possessing not more than five acres of land, of two years' rent in the case of a tenant possessing more than five acres but not more than ten acres of land, and three years' rent in the case of a tenant possessing more than ten acres. However, when the tenant is in possession of more than fifteen acres and the landlord is a small holder the tenant is liable to pay the entire arrears. This section, it seems to us, cannot get the protection of Article 31-A. Rent yet to accrue is no doubt a legal incident of the property concerned -see Section 8 of the Transfer of Property Act -and the right to receive rent in the future might well be regarded as a right in the estate constituted by the land. But rent in arrear only constitutes a debt, and excepting perhaps to the extent to which it is a charge on the land, is not an interest therein. (See in this connection AIR 1952 SC 252). The effect of Section 73 is not merely to deprive the landlord of the charge conferred on him by Section 42 but to wipe off the debt itself and this debt not being an interest in the land, it seems to us clear that the section cannot have the protection of Article 31-A. That protection is afforded only in so far as the acquisition, extinguishment or modification of rights in an estate are concerned. That, is an essential element of agrarian reform and the so-called incidental or ancillary provisions can get the protection only in so far as they are necessary for effectively implementing the reform

[25] AIR 1944 FC 86

[26] AIR 1970 SC 192

or are otherwise an integral part of the reform. The liquidation of debt due from tenants cannot be said to be necessary for implementing the law relating to the acquisition, extinguishment or modification of rights in estates or an integral part of that law and cannot therefore have the protection of Article 31-A. If it is necessary to rehabilitate indebted tenants by relieving them of their liability on account of arrears of rent, that must, like any other measure for relief of indebtedness, be justified in so far as it affects the property rights of the landlord as a reasonable restriction in the interests of the general public within the meaning of Clause (5) of Article 19.

69. No material has been placed before us to show that that is so. The produce from the land is

not solely of the tenant's own making. The landlord provides the capital asset necessary for the purpose, namely, the land, -before the Act it was not a crime to do so -and it cannot be in the interests of the general public to deprive him of his due share of the produce. Provisions for the fixation of fair rent have been in force throughout the State at least from 1964, and, in the Malabar area, from much earlier. For many years past, seasons have been favourable and yields have been good. The prices of agricultural produce have been high, while rents, even when payable in kind, are commuted into money at rates much less than the prevailing prices, and it is notorious that cultivators of land have been making big profits even after paying rent. The mere fact that since 1957 the legislature has from time to time thought fit to stay proceedings for the recovery of arrears of rent is not enough to show that tenants were not in a position to pay rent, and there is nothing to show that the arrears of rent accrued due are anything more than what the landowner can reasonably ask for his share or the tenant can reasonably be expected to pay. There were statutes in force by which, on the payment of rent for one year or more, the entire arrears could be discharged, and it does not seem to us either a reasonable restriction on the rights of the landlords, or something calculated to further the interests of the general public that persons who declined to take advantage of these statutes and would not pay when they could, should be absolved of the liability to pay their due debts. We hold that Section 73 has not the protection of Article 31-A and is violative of Article 19 (1) (f).

70. We shall now proceed to consider the impugned provisions more or less in the order in which they appear in the Act and state our conclusions. Sections 4, 4-A, 5, 6, 6-A, 6-B, 7, 7-A, 7-B, 7-C, 7-D, 9, 10 and 11 which make certain classes of persons deemed tenants or presumed tenants are attacked on the ground that they confer the benefits of a tenant on money-lenders, trespassers and other pretenders who have no legal interest in the land in question or have no real connection with its cultivation, thus imperiling the rights of the landowners. This, it is said, cannot be described as a measure of agrarian reform and therefore cannot have the protection of Article 31-A. But none of the petitioners who have challenged these provisions has shown with reference to the facts of his case how he is adversely affected by these provisions and in the few cases (only to in fact, O. P. Nos. 209 and 307 of 1970) where private persons have been impleaded as respondents it has not been said what claim they are putting forward and why exactly they have been made parties. The questions raised are not questions that can be decided isolated from the facts of the particular case in which they arise and without the interested persons on the party array. Nor are the petitioners entitled to the relief without showing how they are directly and personally affected by the impugned provisions. In these circumstances we do not think it necessary or indeed proper to express any opinion whatsoever, regarding these provisions and the resolution of the anomalies pointed out such as that while a mere trespasser on land comprised in a private forest land can, if he satisfies the requirements of Section 7-B, become a deemed tenant and get all the benefits conferred on a tenant by Chapter II of the Act, a real tenant of such land is denied the benefit by reason of the exemption in Section 3 (1) (vii) (unless a deemed tenancy also is a lease within the meaning of this clause in which case Section 7-D would serve little purpose) must await a case where the question is properly raised with the necessary persons on the party array.

71. Sections 9-A and 12, as we have said, are only rules of evidence. Under the former, unregistered surrender deeds executed by a tenant before the 19th May, 1967 (the date on which the Kerala Stay of Eviction Proceedings Ordinance, No. 4/67 was promulgated) in respect of land situate in the taluk of Hosdrug or Kasaragod are inadmissible in evidence in any dispute

regarding the possession of the land between the tenant and the landlord. The competence of the State Legislature to enact rules of evidence cannot be questioned, the matter falling, as it does, within Entry 12 of the Concurrent List, and the Act having secured the assent of the President must prevail over the provisions of the Indian Evidence Act. The reason why such a rule was enacted and why it was confined to the taluks of Hosdrug and Kasaragod is explained in the counter-affidavit filed on behalf of the State. It is said that a Special Officer appointed for the purpose had reported that in the areas concerned the landlords had made it a practice to obtain the signatures of tenants by false pretences in order to cook up deeds of surrender, the tenants in these areas being, by and large, persons who had not been awakened to their rights by laws such as the Malabar Tenancy Act. There was also evidence before the Select Committee to the like effect. That being so, we do not see why in these areas a rule insisting on registration as a guarantee of genuineness before a surrender deed can be admitted in evidence should not be made and we see no discrimination, attracting Article 14 of the Constitution, involved in confining the provision to the areas where the abuse was reported to exist. As we have already seen, the allegation of mala fides cannot avail against the Legislature excepting where there is a colourable and covert trespass into a field beyond its competence.

72. Section 12 only enables a person interested in the land to prove the real nature of a transaction notwithstanding that the deed in which the transaction is embodied purports to make out an entirely different transaction. This notwithstanding the provisions of the Indian Evidence Act, in particular, Sections 91 and 92. This is clearly within the competence of the State Legislature and no attempt has been made before us to show how the section is bad.

73. Section 13 confers fixity on tenants while Sections 13-A, 13-B, 13-C and 13-D provide for the restoration of their holdings to certain classes of former tenants, in some cases after the cancellation of Court sales. Sections 15 and 16-A provide for resumption by the landlord in certain cases. None of the petitioners before us has stated how exactly he is aggrieved by these provisions -the real grievance appears to be that deemed tenants who are really not tenants at all are given fixity -and we do not think it necessary to pronounce on them.

74. Section 25A says what shall be the contract rent for the purposes of the Act with regard to deemed tenants who are really not under an obligation to pay rent. Since, for reasons which we have already stated, we are not pronouncing on the provisions regarding deemed tenants we think it unnecessary to pronounce on this Section. Sections 27, 30, 31, 33 and 35 relate to fair rent and its determination and as to the date from which the determination is to take effect, and to the rent payable when fair rent has not been determined. For reasons already stated we do not think it necessary to consider these provisions.

75. Sections 29A and 29B relating to disputes arising out of claims to tenancy have already been considered by us. We have struck down the former but upheld the latter.

76. Section 30 provides for a proportionate reduction of the rent payable by an intermediary to his landlord when the rent payable to him by his tenant has been reduced as a result of the determination of fair rent. Section 30A provides for a similar reduction of the jenmikaram payable by a kanam tenant to his jenmi in the old Cochin area (where the Kanam Tenancy Act applies) when the rent payable by his tenant to the kanam tenant has been reduced. These provisions have been characterised as unreasonable, as indeed they are, in that howsoever low might be the rent at which the owner or jenmi might have leased the land, even if it be only a

fraction of the fair rent, it must suffer reduction as a result of his tenant (whom he cannot stop from doing so) having leased the land at a high rent. And the higher the rent, in other words, the greater the rack-renting by his tenant, the greater the reduction that the innocent landlord must suffer. But, such unreasonableness can be a ground of attack only under Article 14 or Article 19 and these articles are not available against a measure of agrarian reform. The fixing of fair rent as between the ultimate tenant -the cultivating tenant -and his immediate landlord being undoubtedly a measure of agrarian reform, the corresponding adjustment of the rent payable by that intermediary landlord of his landlord can only be an integral part of the reform.

77. With regard to Section 30-A the further argument is advanced that jenmi karam is not a right in land and therefore not a right in an estate. So, interference with the right to jenmikaram does not fall within the ambit of Article 31-A. No doubt the jenmis were originally the absolute proprietors of the land but by the Kanam Tenancy Act the ownership was transferred to the kanam tenant, the jenmi being compensated by the payment of jenmikaram as a charge on the land. The jenmikaram is therefore only the price of the jenmi's right of ownership paid in the shape of an annuity in perpetuity and the charge is no more than an unpaid vendor's lien. After the Kanam Tenancy Act, the jenmi ceased to have any interest whatsoever in the land; the kanam tenant became the full owner; and that is why Section 2 (40) of the Act defines "owner" as including a kanam tenant as defined in the Kanam Tenancy Act but not the jenmi. The jenmi is neither a landowner nor a landlord within the meaning of the Act; and his right to receive jenmikaram is a mere money claim not amounting to a right in the land though charged on it and quite rightly does not vest in the Government under Section 72.

78. We see considerable force in the submission; but, we are afraid, it is not borne out by the terms of the Kanam Tenancy Act. Both the long title and the preamble to that Act say that the Act is designed to confer full proprietary rights on kanam tenants subject only to the payment of janmikaram. The proprietary right of the kanam tenant is therefore qualified by his obligation to pay jemnikaram to the jenmi who was the full owner, and this right to jenmikaram, it seems clear, is a vestige of ownership still residing in the jenmi. Jenmikaram -see the definition in Section 2 (13) -is compounded of the michavaram (which is indisputably residuary rent -see Section 2 (6)) and the fractional fee (which is renewal fee -see Section 2 (1)) and the fact that it is in lieu of all claims of the jenmi in respect of the holding does not mean that it is not itself a claim in respect of the land constituting the holding. Indeed, Section 3 (1) which runs thus makes it clear that the right to receive jenmikaram is a right in the land since it says that that is the only right in the land that the jenmi retains :

> "(3). (1) From and after the commencement or this Act, the jenmi shall not have any right, claim or interest in any land in a holding except the right to receive the jenmikaram thereon and the kanam-tenant shall be deemed to be the owner of the land subject only to the payment of the jenmikaram".
> xx xx xx

79. Jenmikaram thus being in the nature of rent and the right to receive it being a right in land, Section 30-A, we should think, comes within the scope of Article 31-A. By reason of Section 72-R, the obligation to pay Jenmikaram devolves on the cultivating tenant (where there is one), the right of the landlord kanam tenant vesting in the Government under Section 72. It can hardly be

denied that reduction of jenmikaram is a measure of agrarian reform.

80. By Section 45-A rent paid or deposited after the 19th May, 1967 (the date on which the Kerala Stay of Eviction Proceedings Ordinance 4 of 1967 came into force) and before the commencement of the amending Act towards rent accrued due before the 1st day of May 1966 is, notwithstanding any contract or judgment, decree or order of any Court or Land Tribunal, to be adjusted to the rent accrued due after the 1st May, 1966, and judgments, decrees or orders of Courts or Land Tribunals are to be reopened and modified accordingly. Since under Section 73 rents accrued due before the 1st May, 1968 are to be scaled down, the effect of Section 45-A might be to discharge rent due after the 1st May, 1968. For reasons we have already stated with reference to Section 73, this provision cannot have the protection of Article 31-A and is therefore liable to be struck down for offending Article 19 (1) (f). We order accordingly.

81. Sub-section (1) of Section 50-A confers on a tenant entitled to fixity of tenure the right to use his holding in any manner he thinks fit subject to the provisions of any order issued under the Essential Commodities Act, 1955. All the rights of the landlords in respect of lands held by such a tenant having vested in the Government by reason of the notification under Section 72 of the Act -as we have already remarked it is the ownership of the land and not merely the right to receive rent that has so vested -none of the petitioners can have any interest entitling him to complain against this provision so long as the provision for vesting is upheld. Therefore, we think it unnecessary to say anything about this provision.

82. Sub-section (2) of Section 50-A says that notwithstanding anything contained in any law or contract or in any judgment, decree or order of Court, where the tenant in respect of a nilam is a varamdar and the fishing right of the nilam is exercised by the landlord, such right of the landlord shall cease to exist and the tenant shall be entitled to exercise such rights. Fishing especially prawn fishing, carried on in single crop nilams or paddy lands during the seasons when they are submerged under water and cannot be cultivated with paddy, is a very valuable source of income, the income, in most cases, far exceeding the income from the paddy grown. So long as the land is comprised in an estate, there can be no doubt that the fishing rights are rights in an estate within the meaning of Article 31-A. The varamdar, strictly speaking, is only a licensee for the cultivation of a particular crop, but he is to be deemed a tenant by reason of Section 10 of the Act. Even so, his tenancy does not comprise fishing rights -see *Dudachan v. Sreenivasa Kini*[27], - and, fishing not being an agricultural operation, the conferment of such rights on a varamdar although he be a cultivator, cannot be regarded as a measure of agrarian reform. It is as if mining rights were conferred on him. Therefore, this provision cannot have the protection of Article 31-A and no attempt having been made to justify the deprivation of the landlord of these rights under Article 19 (5), it follows that the provision is bad for offending Article 19 (1) (f). Accordingly, we strike down this provision, but might add that this cannot in any way affect the vesting of the landlord's rights in the Government if they have so vested under Section 72. That the income derived from fishing might not be taken into account in determining the compensation payable for the vesting cannot affect the provision for vesting so long as it has the protection of Article 31-A.

83. Section 51-A which prohibits a landlord from entering on a land abandoned by a tenant on pain of the penalty provided by Section 51-B, and Section 52 which gives the tenant certain rights in respect of timber trees in the holding, are no longer of any consequence, the right of the

landlord having vested in the Government under Section 72. Any right the landlord has in respect of the trees can now only enter into the compensation payable to him for the vesting.

84. Sections 53 to 64 which provide for the purchase of the landlord's rights by cultivating tenants and Sections 65 to 71 making special provisions for a landowner who is a religious, charitable or educational institution of a public nature giving such institutions the right to choose whether the land should be vested in the Government instead of being purchased by the tenant in consideration of the payment of an annuity in perpetuity by the Government, or in case the land is purchased by the tenant to choose whether it should be paid such an annuity by the Government instead of the purchase price, are no longer of any consequence since by reason of the notification under Section 72 all the rights of the landlord have vested in the Government.

85. Sections 72, 72-A, 72-F, 72-G, 72-H, 72-1 and 72-J providing for the vesting of the rights of the landlords in the Government and for the determination and payment of compensation therefor have already been considered and upheld by us. With Sections 72-B, 72-C, 72-D, 72-E, 72-K, 72-L and 72-M dealing with the assignment of the land vested in the Government to the cultivating tenants and the recovery of the price therefor we are not concerned. Section 72-N, making special provision

[27]1969 Ker LT 915

regarding institutions which have opted for annuity instead of the purchase price, we have already said it is unnecessary to consider, while Section 72-R which requires the cultivating tenant to pay jenmikaram under the Kanam Tenancy Act where the right, title and interest of the kanam tenant have vested in him or in the Government only transfers the liability from the kanam tenant who has disappeared to the cultivating tenant who has taken his place. Section 72-O(1) which says that any amount paid by way of rent by a tenant to his quondam landlord after the rights of the landlord have vested in the Government shall be adjusted towards the compensation payable by the Government to the landlord under Section 72-H, due credit being given to the tenant towards the price payable by him for the assignment of the land to him, seems to us unexceptionable. Section 73 which provides for the discharge of arrears of rent we have already pronounced void. Although Section 74 which prohibits the creation of future tenancies has been attacked in some of the petitions, no arguments have been addressed to us regarding this section and we are not pronouncing on it.

86. Sections 75 to 85 dealing with the rights and liabilities of kudikidappukars have already been upheld by us, but we might mention that we are not pronouncing on the validity of Section 76 since no arguments have been addressed to us regarding this section.

87. The impugned provisions of Chapter III which provides for the restriction on ownership and possession of the land in excess of the ceiling area and the disposal of excess lands have already been dealt with and we have upheld those provisions with the exception of the Explanation to sub-section (1) of Section 85.

88. Prima facie Sections 106 and 106-A which make special provisions regarding leases for commercial or industrial purposes and buildings used by kudikidappukars for commercial or industrial purposes would appear to be outside the scope of agrarian reform and therefore not entitled to the protection of Article 31-A. But here, as in the case of many of the other provisions which have been assailed, no petitioner has made out how he is aggrieved and therefore we think

it unnecessary to say anything about the validity of these sections.

89. Section 108 which only says that, unless otherwise specifically provided for the provisions of Section 5 or the Limitation Act shall apply to all proceedings under the Act has also been signled out for attack in one of the petitions but for what reason we have not been told and are unable to discern. So also with regard to Section 111A which only makes provision for the obvious, namely, that where a mortgagee has been converted into a tenant and has been given fixity the mortgagor need not repay the mortgage money.

90. Regarding Sections 109A, 112, 114 and 120, no arguments have been addressed to us and we do not pronounce on them.

91. Section 125 has already been upheld by us with the exception of sub-section (7) thereof which we have declared void.

92. In the result we declare the following provisions of the Act void; Section 29-A, Section 32 in so far as (and only in so far as) it bars a Civil Court from prohibiting a person who has made an application for determination of fair rent from entering on the land to which the application relates so long as the application is pending, Section 45-A, sub-section (2) of Section 50-A, Section 73, the Explanation to sub-section (1) of Section 85 and sub-section (7) of Section 125. For the rest we dismiss the petitions but make it clear that this dismissal involves no pronouncement regarding provisions which we have not expressly considered. We make no order as to costs.

Mathew, J.

93. In AIR 1982 SC 723 the Supreme Court held that the provisions of the Kerala Agrarian Relations Act, Act 4 of 1961, are unconstitutional in their application to the ryotwari lands situate in Hosdrug and Kasaragod. Thereafter, the Kerala High Court declared that Act as null and void in its application to the ryotwari lands in the Malabar area of the State. (See *Govindaru Namboodiripad v. State*[28], The Kerala Legislature then passed Act 1 of 1964, a comprehensive legislation dealing with land reform. It received the assent of the President on 1-4-1964 and was included in the IXth Schedule. The provisions of Act 1 of 1964 were amended by Act 12 of 1966 and Act 9 of 1967. Act 35 of 1969, hereinafter called the amending Act, further amended the provisions of Act 1 of 1964. The petitioners challenge the constitutional validity of several of the provisions of the amended Act (for short the Act).

94. In the light of the decision of the Supreme Court in 1968-2 SCWR 735 : AIR 1969 SC 168 it must be taken as settled that the provisions of the amending Act would not get the protection of Article 31-B of the Constitution. So the main point for consideration in these writ petitions is whether in view of Article 31-A of the Coastitution any of the provisions of the Act can successfully be impugned for the reason that it violates the fundamental rights of the petitioners under Articles 14, 19 or 31.

95. Article 31 as originally framed provided that no properly shall be acquired by the State except by law providing for compensation for such acquisition. After the Constitution came into force various State Governments enacted measures of land reform compendiously known as

Zamindari Abolition Acts. The validity of these enactments was questioned in the various High Courts, and they took different views as regards the validity of the provisions of those enactments. Appeals were preferred against these decisions to the Supreme Court, and whilst to put an end to the controversy, passed the Constitution (First Amendment) Act of 1951. The amendment enacted two new articles, namely, Articles 31-A and 31-B. Article 31-A provided that no law for acquisition by State of any estate (the expression 'estate' is defined in the Article) or of any rights therein or any modification or extinguishment of any right 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 the provisions of Part III of the Constitution. Article 31-B validated retrospectively 13 Acts and Regulations specified in the IXth Schedule to the Constitution, which, but for such a provision would have been liable to be impugned under Article 13 (2). The validity of this amendment was challenged

[28]1962 Ker LT 913 : (AIR 1963 Ker 86 FB)

before the Supreme Court in *Sankariprasad v. Union of India*[29]. A Constitution Bench unanimously took the view that the word 'law' in Article 13 (2) must be taken to mean law made in the exercise of the ordinary legislative power of Parliament and not amendment to the Constitution, made in the exercise of its constituent power.

96. In *State of West Bengal v. Bella Banerjee*[30], the Supreme Court decided that compensation payable for property compulsorily acquired under Article 31 (2) must be the just equivalent of what the owner has been deprived of and that the issue regarding compensation is justiciable. To get over the difficulty supposed to be created by this decision the Constitution (Fourth Amendment) Act was passed on 24-7-1955. By a major change to Article 31 (2) the fourth amendment provided that compensation should be paid for land compulsorily acquired, that the question of compensation should be left to be determined by the legislature, and that it will not be open to the courts to go into the question whether the compensation provided by law is adequate. The amendment made further alterations in Article 31-A whereby certain type of laws were protected from attack under Articles 14, 19 and 31. It was after this amendment that the Supreme Court held in Kunhikoman's case, AIR 1962 SC 723 that the ryotwari lands in Malabar area were not 'estates' within the meaning of Article 31-A (2) (a) and that the Kerala Agrarian Relations Act, Act 4 of 1961, was not protected from attack under Articles 14, 19 and 31. The Parliament then passed the Constitution (Seventeenth Amendment) Act on 20-6-1964 enlarging the definition of 'estate' in Article 31-A (2) (a) so as to cover all lands held under ryotwari settlement as well as other lands in respect of which provisions are normally made in land reform enactments. The validity of the Seventeenth Amendment was questioned before the Supreme Court in *Sajjan Singh v. State of Rajasthan*[31], The Court following its earlier decision in Sankariprasad's case, 1952 SCR 89 : AIR 1951 SC 458 held by a majority that the word 'law' in Article 13 (2) does not include a law passed by Parliament in the exercise of its constituent power taking away or abridging the fundamental rights guaranteed by Part III of the Constitution. The validity of the three aforesaid amendments was challenged in the Supreme Court in AIR 1967 SC 1643. The Court by a majority said that the word 'law' in Article 13 (2) is not confined to law made by Parliament in the exercise of its legislative power, but would include constitutional laws made in the exercise of its constituent power. The majority overruled the decisions in Sankariprasad's case, 1952 SCR 89 : AIR 1951 SC 458 and Sajjan Singh's case, 1965-1 SCR 933 : AIR 1965 SC 845 holding the contrary view. But they adopted the device of prospective overruling and limited the effect of the overruling to the future. The majority laid down the following propositions :

(1) The expression 'law' as defined in Article 13 (3) includes not only the law made by Parliament in exercise of the ordinary legislative power but also an amendment of the Constitution made in the exercise of its constituent power.

(2) An amendment of the Constitution, being a law within the meaning of Article 13 (3), would be void under Article 13 (2) if it takes away or abridges the rights conferred by Part III of the Constitution.

(3) The Constitution (First Amendment) Act, 1951, the Constitution (Fourth Amendment) Act, 1955, and the Constitution (Seventeenth Amendment) Act,

[29]1952 SCR 89 : AIR 1951 SC 458 [31]1965-1 SCR 933 : AIR 1965 SC 845

[30]1954 SCR 558 : AIR 1954 SC 170

1964, abridge the scope of the fundamental rights and are therefore void under Article 13 (2) of the Constitution.

(4) Parliament will have no power from the date of the decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.

(5) On the application of the doctrine of 'prospective overruling' the decision of the Court will have only prospective operation and hence the aforesaid three Amendment Acts will continue to be valid. (Mr. Justice Hidayatullah would invoke 'acquiescence' to validate these amendments.)

97. Tested in the light of the majority decision there is no substance in the contention of some of the petitioners that the Seventeenth Amendment has to be treated as invalid from the date of the decision in Golaknath's case, AIR 1967 SC 1643. (See *Narayanibai v. State of Maharashtra*[32],.) When it is remembered that what was overruled with prospective effect in Golaknath's case, AIR 1967 SC 1643 is the principle laid down in Sankariprasad's case, 1952 SCR 89 : AIR 1951 SC 458 and Sajjan Singh's case, 1965-1 SCR 933 : AIR 1965 SC 845 that Parliament has power to amend Part III of the Constitution in such a way as to take away or abridge the fundamental rights, it would be easy to detect the fallacy of the argument that as Subba Rao, J., applied the doctrine of prospective overruling, the first, fourth and seventeenth amendments and the laws which they protect would be valid upto 27-2-1967 and void thereafter.

"The odd thing is that though Mr. Justice Subba Rao invoked the theory he did not apply it. For, had he done so, the first, fourth and the seventeenth amendments and the laws which they protect would have been valid upto the 27th February, 1967, and void thereafter. But he held that the three amendments and the laws they protect were valid for all time." (See 'Position of the Judiciary in the Constitution of India', page 141, by H. M. Seervai.)

Whether you believe religiously like Blackstone that the law declared by Courts has a platonic or ideal existence before its declaration, or hold like Holmes that the common law is not a brooding omnipresence in the sky and that Judges do make law, prospective overruling is not the substitution of one doctrine for an older and similarly rigid doctrine. It is mainly the enrichment

of an existing and rather complex practice with regard to the effect of a new judicial decision by the addition of an alternative discretionary device to be employed in appropriate cases. It is an instrument to be used. And the justification for employing the device is nowhere better stated than by Chief Justice Hughes in *Chicot-County Drainage Dist. v. Baxter State Bank*[33], He said that the actual existence of the law prior to the declaration of its unconstitutionality is an operative fact, and may have consequences which cannot justly be ignored, that the past cannot always be erased by a new judicial declaration, and that the effect of a subsequent ruling overruling a previous case may have to be considered in various aspects, such as justifiable reliance on overruled case, ability to effectuate the new rule adopted in the overruling case without giving it retrospective effect, and the likelihood that retrospective operation of the overruling decision will

[32]1970-1 SCWR 100

[33](1940) 308 US 371

substantially burden the administration of justice. All cases where facts had occurred prior to the critical date, that is, all completed cases and also pending cases including the case in which the new rule is announced are governed by the old rule. Only future cases, viz., cases whose facts occur after the critical date will be governed by the new rule. This is the strict version of prospective overruling and it is this version that Subba Rao, J., adopted and applied in Golaknath's case, AIR 1967 SC 1643. (See the discussion of the question with reference to the case law on the subject in the annotation to Linkletter case, (1965) 14 Law Ed 2d 601 at p. 992.)

98. Article 31-A, as it stands, provides that no law providing for acquisition of any estate or any interest therein or the modification or extinguishment of any rights in an estate shall be deemed to be void on the ground that it violates the fundamental rights under Articles 14, 19 and 31. And it is clear from the decisions of the Supreme Court that the Article is attracted only when the law is one for agrarian reform. In AIR 1960 SC 1080 the Court by a majority held that the Madras Marumakkathayam (Removal of Doubts) Act, 1955, which deprived a sthanee of his properties and vested them in the tarwad, contravened Article 19 (1) (f) and was not protected by Article 31-A and that Article 31-A saved laws for agrarian reform only, and does not enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. In AIR 1965 SC 632 the Court held that the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, as amended by Act 27 of 1960, was protected by Article 31-A, as the general scheme of the Act was definitely agrarian reform, and under its provision something ancillary thereto in the interest of rural economy had to be undertaken to give full effect to the reform. In *P. V. Mudaliar v. Spl. Dy. Collector*[34], the Court held that the Land Acquisition (Madras Amendment) Act, 1961, providing for acquisition of lands for housing scheme was not a law with reference to any agrarian reform and was not protected by Article 31-A

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99. That the lands involved in these petitions are 'estates' within the meaning of Article 31-A has been practically admitted by counsel appealing in the cases. But counsel for some of the petitioners contended that land must be held or let for purposes of agriculture in order that it may come within the definition of 'estate' in Article 31-A. It was said that clauses 2 (a) (i) and (ii) must take their colour from clause (2) (a) (iii), and therefore, unless the type of land mentioned in clauses 2 (a) (i) and (ii) is held or let for purposes of agriculture, the land would not be 'estate' within the meaning of Article 31-A. Reliance was placed upon the ruling in AIR 1967 SC 661 in support of this contention. Clause 2 (a) (iii) of Article 31-A is as follows :

"any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;"

The argument in the Supreme Court case was that forest land, even if not held or let for purposes of agriculture would be 'estate' within the meaning of the Article. The Court negatived the contention by observing :

[34] AIR 1965 SC 1017

"according to the learned counsel for the State any waste land or forest land would fall within clause (a) (iii). He says that it is not necessary that it should be held or let for purposes of agriculture or for purposes ancillary thereto. In other words, he would re-write clause (a) (iii) as follows. ..... We are unable to read clause (a) (iii) in this way. It seems to us that if this was the intention, clause (a) (iii) would have been split up and waste land, forest land and land for pasture would have figured separately in a separate clause. There are vast areas of forest land and waste land in India and it is not to be expected that these would be included in the definition indirectly by expanding the word 'land'. If this was the intention at least the word 'including' would have been omitted and substituted by 'any'. Further the whole object of Article 31-A is to carry out agrarian reforms and it is difficult to see how agrarian reforms can be furthered by the acquisition of every parcel of forest land or waste land."

But in paragraph 29 of the same ruling it is observed :

"Mr. A. K. Sen further urges that the acquisition of the estate was not for the purposes of agrarian reforms because hundreds of square miles of forest are sought to be acquired. But as we have held that the area in dispute is a grant in the nature of jagir or Inam, its acquisition like the acquisition of all Jagirs, inams, or similar grants, was a necessary step in the implementation of the agrarian reforms and was clearly contemplated in Article 31-A." Therefore, if the land in question in these cases falls within clause (2) (a) (i) or (ii) and if its acquisition is necessary to implement agrarian reform, the question whether it is held or let for purposes of agriculture may not be material. The argument that jenmom land in order that it may come within the purview of the definition of 'estate' must not be in the direct possession of the jenmi has no substance. Whether agrarian reform can be had in respect of lands other than agricultural land is another matter.

Therefore, the further question for consideration is whether the Act is a law for agrarian reform. To decide this question it it necessary to examine the relevant provisions of the Act. The Act is called the Kerala Land Reforms Act. Section 2 of the Act deals with the definition of the terms used in the various Sections. Chapter II deals with tenancies. Section 3 exempts leases of lands vested in government or any local authority, leases granted for industrial purposes, leases granted by an officer of the court, leases of private forests, etc. Sections 4 to 11 make certain persons deemed tenants, and bring them within the definition of the term 'tenant' in Section 2 (57),

Section 12 states that notwithstanding anything contained in any contract or law, any person interested in any land shall be entitled to prove the nature of the real transaction. Section 13 confers fixity of tenure on the tenants and deemed tenants except to the extent that resumption is permitted by Sections 14 to 22. Sections 18 to 24 deal with resumption of land from tenants and the restoration of land wrongly resumed. Section 27 makes provision for fixation of fair rent. Section 31 makes provision for determination of fair rent by the Land Tribunal. Sections 53 to 64 provide for the purchase of the landlord's right by the cultivating tenant. Sections 65 to 71 lay down special provisions for religious, charitable or educational institutions of a public nature, where in respect of land owned by such institutions an annuity in perpetuity from the government instead of the purchase price is payable. Section 72 concerns the vesting of the landlord's right in the government. It says that all the right, title and interest of the land-owner or the intermediaries in respect of the holding held by a cultivating tenant entitled to fixity of tenure, and in respect of which certificates of purchase under Section 59 have not been issued, shall vest in the government free of all encumbrances created by the landowner. Section 72-A deals with compensation to be paid to landlords for vesting of their rights in the government. Section 72-B concerns the cultivating tenant's right to get assignment of the land vested in the government under Section 72. Section 72-D provides for the purchase price which the cultivating tenant shall be liable to pay to government. Section 72-K provides for the issue of certificate of purchase by the Land Tribunal. Section 73 is concerned with the dischrge of the arrears of rent. It says that notwithstanding anything contained in any contract, judgment, decree or order of any Court or tribunal, if a tenant pays towards arrears of rent accrued due before the 1st day of May, 1968 and outstanding at the commencement of the amending Act, the amounts specified in the table appended, the arrears shall be deemed to be wiped off. Section 75 deals with rights and liabilities of kudikidappukars. It says that no kudikidappukaran shall be liable to be evicted from the kudikidappu except on the grounds specified therein. By Section 78 the right of the kudikidappukaran is made heritable, but not alienable except in certain cases. That a kudikidappukaran shall have the right to purchase his kudikidiappu, and the land adjoining thereto is provided in Section 80-A. The procedure for purchase of kudikidappu and the adjoining land by the kudikidappukaran is prescribed by Section 80-B. Section 80-C provides for the deposit of the purchase money by kudikidappukaran for issue of certificate of purchase. Chapter III is concerned with the restriction on ownership or possession of land in excess of the ceiling area and the disposal of excess lands. Section 81 provides for the exceptions to that Chapter. Section 82 defines the ceiling area of land to be owned or possessed by a person or a family. Section 83 provides that no person shall hold any land in excess of the ceiling area with effect from such date as may be notified by government in the gazette.

Section 84 makes null and void certain voluntary transfers effected after the publication of the Land Reforms Bill 1963 in the Gazette, otherwise than by partition or on account of natural love and affection, and so on. Section 85 concerns the surrender of land in excess of the ceiling area on the date notified under Section 83. Section 86 makes provision for vesting of the surplus land in Government. Section 87 provides for surrender of excess land obtained by gift etc. Section 88 provides for compensation of excess land surrendered to the Government. Sections 91 and 92 concern payment of compensation to the landowner by the Land Board, the mode of payment, and the discharge of encumbrance on the land. Section 95 provides for assignment of land, which vests in the government. Section 96 states that the Land Board shall after reserving in each village the lands necessary for public purposes, assign on registry the remaining lands vested in the government under Section 86 or 87 to the landless agricultural labourers and others. Section 97 provides for the payment of the purchase price of the land assigned by the government under

Section
96. Chapter IV is concerned with miscellaneous matters, such as constitution of the Land Tribunal, the powers of the Land Board and the Land Tribunal, etc. Section 125 bars a Civil Court from taking cognisance of any matter which is directed to be decided by the Land Tribunal or the Land Board under the provisions of the amending Act. It also says that no order of the Land Tribunal or the appellate authority shall be questioned in any Civil Court except as provided in the amending Act, and that if in any suit or other proceeding any question regarding the rights of a tenant or a kudikidappukaran arises, the Civil Court shall stay the suit or proceeding and refer such question to the Land Tribunal. Sub-section (7) of Section 125 provides that no Civil Court shall have power to grant injunction in any suit or other proceedings referred to in sub-section (3) restraining any person from entering into or occupying or cultivating any land or kudikidappu or to appoint a receiver for any property in respect of which a question referred to in that sub-section has arisen, till such question is decided by the Land Tribunal. Section 129 provides for the making of rules by the government.

100. Even after India attained independence the problem of solving the poverty of the millions remained. Given the fact of mass starvation of millions of human beings, the political and spiritual ideals embodied in the Constitution have the character of will o' the wisp. To contemporary consciousness it has become an axiom that there can be no freedom without a certain minimum of economic competence. Only when men are alive, and can hope to be alive tomorrow, can liberty have any meaning. This is not to say that the struggle for conditions of economic and agricultural self-sufficiency could ever be allowed to take priority over the struggle for more intangible hopes of men's personal self-fulfillment. Where fundamental absolutes of human existence are at stake, there can simply be no question of priority of some over others. It only means that in particular contexts, fundamental freedoms and rights must yield to material and practical needs. This is probably the reason why Article 31-A has taken away the fundamental rights conferred by Articles 14, 19 and 31, when the legislation is one for agrarian reform. The economic level at which men can really begin to comprehend and enjoy their fundamental rights is perhaps indefinable; but the evidence suggests that it is at any rate some distance above bare subsistence. It may be that the vital need is to vest the plot of land in its own tiller-farmer, so that progress can be spurred by his pride in his own small universe. Or it may be, as several recent studies have provocatively implied, that the need is rather to entrench and consolidate vastly larger holdings, vesting substantial acreage in owners with the will to implement the available technical advances through large-scale rationalization of effort. These are questions on which judges have not the ultimate say. This is not to say, judges can afford to profess a high-minded ignorance of economic matters. But it is not within the province of a Court to decide whether it is better to promote social justice by a scheme of distribution of property than maximise production, or what are the claims of justice on the side of an owner when his ownership itself must in the interests of social justice be compulsorily transferred to others, or what principles of justice should govern the assessment of compensation when a person's property is acquired, or what happens if individual justice demands more compensation than available resources can bear, yet social justice demands that ownership be shifted anyhow.

101. Agrarian reform comprises an integrated scheme of measures designed to eliminate the obstacles to the economic and social development of the rural area. It is designed to provide for the ownership of land by its tiller, for improvement of employment conditions, opportunities for agricultural labour, extension of agricultural credit, reduction of rural indebtedness, and fiscal

and financial policy in relation to land reform including tax measures to promote improved land utilization and distribution. A scheme for agrarian reform generally provides for limitation of ownership or possession of land to a certain maximum area and the acquisition of the surplus for distribution among the tenants and the landless agricultural workers. The pattern of agrarian reform varies from region to region according to the stage of agricultural development of the people. There is no set definition of what constitutes measures of agrarian reform. In 'Agricultural Legislations in India', Vol. VI, published by the Government of India, stress is laid on the importance of improving the conditions of agricultural workers, tenants, small and medium farmers towards economic development and raising standards of living, human dignity and freedom, and social and political stability. The means for achieving the objectives are stated to be security of tenure, opportunity for the cultivators of land to acquire ownership, organization of land holdings into farms of efficiency size preferably into family-sized holding either by dividing unduly large holdings or by combining fragmented units. It is trite saying that India lives in villages and a scheme to make villages self-sufficicient cannot but be regarded as part of the larger reforms which consolidation of holdings, fixing of ceilings on lands, distribution of surplus lands and utilising of vacant and waste lands contemplate.

102. In Kochunny's case, AIR 1960 SC 1080, Subba Rao, J., speaking for the majority, said that Article 31-A deals with a tenure called 'estate' and provides for its acquisition or the extinguishment or modification of the rights of the land-holder or the various subordinate tenure-holders in respect of their rights in relation to the estate, and that the article will not enable the State to compel a proprietor to divide his properties, though self-acquired, between himself and other members of his family or create interest therein in favor of persons other than tenants who had none before. He said that such acts have no relation to land-tenure and that they are purely acts of expropriation of a citizen's property without any reference to agrarian reform. The petitioners submitted on the basis of this ruling that there must be a previous nexus between the parties which sounds in the realm of landlord and tenant relationship in order that any legislation affecting that relationship may be said to be agrarian reform. They said that deemed tenancies are created by legislative fiat without any regard to the antecedent jural relationship between the parties and that deemed tenancies are a colorable device adopted by the legislature to achieve its objective under the cloak of agrarian reform. It was said that conferment of tenancy right upon mortgagees, *bona fide* trespassers, or persons let into possession of land by persons having no title to the land, cannot constitute agrarian reform.

103. The first question to be decided in this context is whether the creation of deemed tenancies is a colorable exercise of the power of the State legislature. The doctrine of colorable exercise of power is nothing but an aspect of the competency of the legislature to pass a law. If a legislature has power to pass a law, there can be no question of any colorable exercise of power. Entry 18 in List II of the Constitution provides :

> "Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

If land and rights in or over land are within the legislative jurisdiction of a State, one is unable to see the force of the argument that the legislature cannot create deemed tenancies. If a legislature does not transgress the limits of its power, it is open to it to create any fiction. In *Baily v.*

Alabama[35], Chief Justice Hughes, speaking for the majority, observed :

> "It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions. And the State may not in this way interfere with matters withdrawn from its authority by the Federal Constitution, or subject an accused to conviction for conduct which it is powerless to proscribe."

As the State legislature has power to create rights in or over land irrespective of the question whether there was any antecedent relationship between the parties, it has to be held that the creation of landlord and tenant relationship between mortgagor and mortgagee, between an owner and a trespasser, or between the other persons as provided, is within the jurisdiction of the legislature. And any argument that such a law would violate the fundamental rights under Articles 14, 19 or 31 would be foreclosed if the law provides for acquisition by the State of 'estate' or right therein or modification or extinguishment of rights in an estate, and is one which sounds in the realm of agrarian reform. It is not necessary in these cases to go further and decide whether the provisions as regards the deemed tenancies relate to agrarian reform, as the validity of these provisions has not been challenged by persons directly and personally aggrieved by them, with parties having adverse interest in maintaining their validity on record.

104. The petitioners contended that the right given to kudikidappukars under Section 80-A of the Act to purchase the kudikidappu and the adjoining land would offend the fundamental right of the landowner under Article 19 (1) (f) of the Constitution as that would not be protected by Article 31-A, as Section 80-A is not a provision for agrarian reform. The extent of land which a kudikidappukaran is entitled to purchase under Section 80-A (3) shall be three cents in a city or major municipality or five cents in any other municipality or ten cents in a panchayat area or township. The definition of the term kudikidappukaran in Act 1 of 1964 as it originally stood was different from the one now substituted by the amending Act. The right of permanent occupancy conferred by that Act will enure to every kudikidappukaran who satisfied the definition in that Act. The substitution of the new definition will not take away the right of permanent occupancy which became vested in persons who satisfied the definition of Kudikidappukaran in that Act. What is challenged in these petitions is the right given to persons who satisfy the definition of 'kudikidappukaran' in the Act to purchase the kudikidappu and the adjoining land. The petitioners submitted that many persons who entered upon land without the permission of the owner have been made kudikidappukars by fiction of law and classified along with those who entered upon land with the permission of the landowner, and since no antecedent relationship existed between them and the owner, the conferment of the right to purchase the

[35](1910) 219 US 219

kudikidappu and the adjoining land is virtually the creation of a right in a trespasser to purchase the land on which he has trespassed and also other lands, and that this has nothing to do with agrarian reform. It is said that even if conferment of the right of permanent occupancy on all types of kudikidappukars be deemed agrarian reform, the provision of the Act giving them the right to purchase the adjoining land, let alone the Kudikidappu, can never spell in the realm of agrarian reform. It may be mentioned at this stage that since no case of a trespasser made kudikidappukaran by virtue of the proviso to Section 2 (25) is involved in these petitions, it is not

necessary to consider the question whether the right conferred on him will be protected by Article 31-A.

In this connection, it might be useful to trace the genesis of the protection given to kudikidappukars by the component parts of the Kerala State before the State was formed. By Proclamation 18 of 1122, the Government of Cochin sought to prevent the eviction of kudikidappukars. The Malabar Tenancy Amendment Act 1951 gave protection from eviction to holders or ulkkudi or kudikidappu in the Malabar area. Permanent right of occupancy in respect of their kudikidappu was conferred on kudikidappukars by the Travencore Prevention of Eviction Act 22 of 1124. The Travencore-Cochin Prevention of Eviction of Kudikidappukars Act, Act 13 of 1955, conferred on every Kudikidappukaran the right of permanent occupancy in his kudikidappu and provided that it is only in specified cases that he can be evicted. The Kerala Agrarian Relations Act, Act 4 of 1961, and the Kerala Land Reforms Act, 1963, Act 1 of 1964, conferred right of permanent occupancy on kudikidappukars as a part of agrarian reform. In many cases kudikidappukars were permitted to reside by the landowners in their land in return for their services as watchmen of their garden land and as agricultural labourers. In some cases landowners permitted them to reside on the land out of humanitarian considerations. As already indicated, the permission to reside on the land was given to persons in the former category not as a matter of charity, but as reward for the work done by them for the landowners in watching the property and also for doing sundry works in the property. In ancient days wages paid to kudikidappukars by the landowner were generally lower than wages paid to other labourers. Kudikidappukars are generally speaking agricultural laborers residing in agricultural lands, and they eke out their livelihood by doing more than one kind of work. It is well-known that many persons who reside as kudikidappukars in rural areas work in commercial or industrial establishments in urban areas. For that reason one cannot say that they have ceased to be agricultural laborers. If a person and his family have their habitat in rural area, the fact that all or some of them work in urban area in commercial or industrial establishments throughout the year or for part of it, would not take them out of the category of agricultural workers; and any reform intended to bring about a change in their relation to the landowner cannot be characterized as anything other than agrarian reform.

> "It is necessary to protect the homesteads of families of landless agricultural labour, large numbers of whom belong to scheduled castes and backward classes and who live on land belonging to others. Laws conferring proprietary rights in such cases will have to be passed and enforced where this has not already been done." (See "Fourth Five Year Plan', page 322, published by the Planning Commission, Government of India.)

I do not know why if distribution of surplus land among agricultural labour, who had no previous interest in the land, is agrarian reform, the liberty given to or power conferred on kudikidappukars to purchase the kudikidappus and the adjoining land is not agrarian reform. I think, it is beyond the province of a Court to say that the liberty or power should have been confined to the kudikidappus and should not have extended to the adjoining land to the extent specified. As no case of a non-agricultural worker residing in non-agricultural land in urban area as a kudikidappukaran arises for consideration in these petitions, it is not necessary to express any opinion whether the right which he may claim to purchase the kudikidappu and the adjoining land will be agrarian reform.

105. It was argued for the petitioners that Article 31-A protects only a law which provides for acquisition by State of an estate or right therein or modification or extinguishment of the rights in an estate, and not a law which purports to transfer the rights of a landowner in any part of the land to a kudikidappukaran, as that would be neither modification nor extinguishment of rights in an estate. It is asked, why if acquisition of an estate by the State means something more than the extinguishment of the right of the landowner in the estate, the compulsory transfer of the right of the landowner in an estate to the kudikidappukaran should be considered only as extinguishment or modification of the rights of the landowner in the estate? The question is answered by the decision of the Supreme Court in AIR 1959 SC 459. There the Court said that the provision in the Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956) vesting the right of the landlord in the tenant on the 'tiller's day' would operate as extinguishment or at any rate as modification of the landlord's right in the estate, and was protected by Article 31-A. See also the decisions in AIR 1959 SC 519 and AIR 1960 SC 1008.

106. Although in Kochunny's case, Subba Rao, J., limited the scope of agrarian reform to changes in land tenure or in the relationship of landlord and tenant, that was treated as a special case in AIR 1965 SC 632, where the Supreme Court gave a wide definition to the term agrarian reform as envisaging not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class and concentration of land in the hands of a few, but also the raising of economic standards and bettering of rural health and social conditions. The Court said that provisions for the assignment of lands to village panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds, etc., enure for the benefit of rural population must be considered to be an essential part of the re-distribution of holdings. The Court then observed :

> "No doubt, Kochunni's case considered a bare transfer of the rights of the sthanee to the tarwad without alteration of the tenure and without any pretence of agrarian reform, as not one contemplated by Article 31-A however liberally construed. But that was a special case and we cannot apply it to cases where the general scheme of legislation is definitely agrarian reform and under its provisions something ancillary thereto in the interests of rural economy, has to be undertaken to give full effect to the reforms."

In *Jit Singh v. State of Punjab*[36], a Full Bench of the Punjab High Court had occasion to consider this question, and Grover, J., (as he then was) speaking for the Bench said that although the words 'agrarian reform' are not to be found in Article 31-A, there is no reason to confine them to their literal or narrow meaning, and that if a legislation is meant to improve the standard of living and working in the villages, it would certainly have agrarian reform as its object, not in a narrow or pedantic sense but in a context in which the general good of the village agricultural community would be covered. He further said that there can be no manner of doubt that in the development of agricultural economy it is not only the land reforms strictu sensu which have to play the dominant part but also such institutions and measures as are conducive to the physical, social, educational and moral well-being of the members of the agricultural community.

107. It is clear from the decisions of the Supreme Court that agrarian reform would include all legislations which have as their object the physical, social, educational and economic uplift of the agricultural population. All provisions in such legislations which are ancillary to agrarian reform

would also get the protection of Article 31-A notwithstanding the fact that they are not themselves provisions for agrarian reform. (See the decisions in AIR 1967 SC 930 and AIR 1962 SC 50.) Even if a provision in a law dealing with agrarian reform does not relate to the acquisition of any estate or rights therein or the modification or extinguishment of any rights in an estate, if it forms part of an integral scheme for agrarian reform, that would also get the protection of Article 31-A. (See AIR 1965 SC 632).

108. It is said that agrarian reform must be confined to agricultural land and a legislation like the Act which applies to non-agricultural land also would not be protected by Article 31-A, as the provisions of the Act are not severable or capable of separable application. I think, the provisions of the Act must by the doctrine of separable application be read as applicable to agricultural lands alone. The question of severability falls into two classes. One relates to a situation in which some applications of the same language in a statute are valid and other applications invalid, the other to statutes containing particular language, whether words, phrases, sentences or sections, which is invalid and other language entirely constitutional. These two aspects of the problem will have to be kept separately in dealing with a question of this nature. The first aspect relates to separable application, and the second to the problem of separable language. Cooley in his treatise on 'Constitutional Limitations' 2nd Edn. at page 250 said :

> "A legislative act may be entirely valid as to some classes of cases, and clearly void as to others.....In any such case, the unconstitutional law must operate as far as it can, and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the constitution forbids. If there are any exceptions to this rule, they must be of cases only where it is evident, from a contemplation of the statute and of the purpose to be accomplished by it, that it would not have been passed at all, except as an entirety, and that the general purpose of the legislature will be defeated if it shall be held valid as to some cases and void as to others."

[36] AIR 1964 Punjab 419 (FB)

When a Court is confronted with statutory language applying to situations both within and without the legislative power, the question whether to sustain the valid applications of the law is very similar to that of whether to sustain the constitutional provisions of a statute containing invalid language. But the judicial technique to be applied is somewhat different. When particular words or sections of a statute are unconstitutional, a Court may excise them from the law in order to save the remainder. When statutory language is too broad, however, there is nothing to be severed. The question before the Court in such a case is whether it should construe the language employed as limited to its constitutional applications, in accordance with the maxim that a statute should not be given an unconstitutional construction. In *United States v. Reese*[37], the Court said that if the language of a statute is capable of being applied to a situation which would render it unconstitutional the whole statute must be struck down and that there is no question of separability in application. The Court said :

> "We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there.

> Each of the sections must stand as a whole, or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined, is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.....To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty."

On the other hand, in *The Abby Dodge v. United States*[38], the Court said :

> "While it is true that it would be possible to interpret the statute as applying to sponges taken in local waters, it is equally certain that it is susceptible of being confined to sponges taken outside of such waters. In view of the clear distinction between State and national power on the subject, long settled at the time the act was passed, and the rule of construction just stated, we are of opinion that its provisions must be construed as alone applicable to the subject within the authority of Congress to regulate, and, therefore, be held not to embrace that which was not within such power."

Mr. Justice Holmes in *Hatch v. Reardon*[39], recognizing the difficulty in reconciling the authorities, pointed out that the reasoning of the Reese case, (1874-76) 92 US 214, and similar decisions had not been extended to state tax cases. "Whatever the reason", he said, "the decisions are clear" that the Court will not nullify a state tax statute because of the invalidity of possible applications of the law not before the Court, notwithstanding the seeming logic of the position that it must do so, because, if for any reason, or as against any class embraced, the law is unconstitutional, is void as to all." In the State Freight Tax case, (1872-73) 15 Wall

[37](1874-76) 92 US 214 at p. 221

[38](1911) 223 US 166 at p. 175

[39](1906) 204 US 152

232 at p. 282 the Court held that "state taxes on all sales of stock" could be limited in application to inter-State sales and thus stand. In The Abby Dodge, (1911) 223 US 166 the court held that a federal criminal law prohibiting the landing and selling of certain sponges in any place in the United States should be construed so as to exclude sponges not transported across State lines. In *United States v. Palmer*[40], the Court interpreted the general language of a piracy statute as if it contained a limitation to American vessels. The broad basis of the decision in (1874-76) 92 US 214 followed in Trade Mark Cases, (1878-79) 100 US 82 and Employers' Liability Cases, (1907) 207 US 463 is the supposed inability of the Court to read words into a statute in order to save it when the meaning of the language employed by the legislature is clear, regardless of actual legislative intention on the question of separability. There can be no doubt about the power of the court to construe statutes in a manner which has the effect of adding words of limitation, but this power should only be exercised where necessary to effectuate the clear intention of the legislative body. The maxim that a statute should be interpreted so as to avoid grave questions as to its constitutionality should cause the court to be more receptive to a restrictive interpretation in such cases than in others. It is no answer to say that the limitation which is sought must be made, if at all, by construction, not by separation. If the limitation must be made by construction, the ordinary rules of construction which make the intention of the legislature controlling should be applied. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor" per Venkatarama Iyer

J., in 1957 SCR 930 at p. 950 : (AIR 1957 SC 628 at p. 636). But the discussion of the question of intention does not satisfactorily explain the decisions reached, for it glosses over the difference between what the legislature intended when the law was passed and what it would have intended if it had known that certain applications of the statute were invalid. The test for severability clearly must be whether the legislature would have intended the valid parts or applications of a statute to stand if it had known when the law was enacted of the invalidity of the remainder; or more accurately, since presumably the legislative body would not have enacted the statute in a form known to be invalid, would it have passed the law at all with the constitutional defects removed? Difficult problems of statutory construction generally arise because the legislature has not thought of the particular situation which has come before the court, and accordingly had no real intention as to how the law should be construed with respect to it. When the problem is one of separating valid and invalid applications of statutory language, no difficulty can generally arise as to whether the valid application standing alone can be given legal effect, and accordingly the intention of the legislature would appear to be the only standard remaining to guide the court in determining such questions. In 1941 FCR 12 : AIR 1941 FC 72 the question arose with reference to the Hindu Women's Rights to Property Act 18 of 1937. The Central legislature passed the Act and had conferred on Hindu widows certain rights over properties which devolved by intestate succession and survivorship. The subject of devolution was within the competence of the centre under Entry 7 in List III. That was limited to property other than agricultural land, which was a subject within the exclusive competence of the Provinces under Entry 21 in List II. The Act dealt generally with property, and the contention raised was that being admittedly incompetent and ultra vires as regards agricultural lands, it was void in its entirety.

[41](1816-19) 3 Wheat 610 : US 1818

The Federal Court held following the decision in *Macleod v. Attorney-General for New South Wales*[42], that a legislature must be presumed to know its limits and must be held to have intended to enact only laws within its competence, and that accordingly the word 'property' in the Act concerned must be construed as property other than agricultural land, and in that view the legislation was wholly intra vires. The decision in 1950 SCR 594 : AIR 1950 SC 124 concerned the validity of Section 9 (1-A) of the Madras Maintenance of Public Order Act 23 of 1949, which authorised the Provincial Government to prohibit the entry and circulation within the State of a newspaper "for the purpose of securing the public safety or the maintenance of public order". Subsequent to the enactment of the statute the Constitution came into force, and the validity of the impugned provision depended on whether it was protected by Article 19 (2) which saved 'existing law in so far as it relates to any matter which undermines the security of or tends to overthrow the State'. It was held that as the purpose mentioned in Section 9 (1-A) of the Madras Act was wider in amplitude than those specified in Article 19 (2), and as it was not possible to split up Section 9 (1-A) into what was within and what was without the protection of Article 19 (2), the provision must fail in its entirety. To the same effect is the decision in *Chintaman Rao v. State of Madhya Pradesh*[43], In *State of Bombay v. F. N. Balsara*[44], the question was as to the validity of the Bombay Prohibition Act. Sections 12 and 13 of that Act imposed restrictions on the possession, consumption and sale of liquor, which was defined in Section 2 (24) of the Act as 'including' "(a) spirits of wine, methylated spirits, wine beer, toddy and all liquids consisting of or containing alcohol, and (b) any other intoxicating substance which the Provincial Government may, by notification in the Official Gazette, declare to be liquor for the purposes of this Act". The Act was attacked in its entirety as violative of the rights protected by Article 19 (1) (f); but the court held that the impugned provisions were unreasonable and therefore void in so far as medicinal and toilet preparations were concerned, but valid as to the rest.

Then the contention was that "as the law purports to authorise the imposition of a restriction on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, and it is not severable." The contention was rejected and it was held that "these items being thus treated separately by the legislature itself and being severable, and it not being contended, in view of the directive principles of State policy regarding prohibition, that the restrictions imposed upon the right to possess or sell or buy or consume or use those categories of properties are unreasonable, the impugned sections must be held valid so far as these categories are concerned." This decision, it has been thought, is a clear authority applicable even when the partial invalidity of the Act arises by reason of its contravention of the constitutional check. In AIR 1957 SC 628, Venkatarama Aiyar, J., distinguished these cases by saying that the provisions impugned in these two cases were on their own contents unseverable. I think that unless otherwise expressly provided the provisions of the Act have to be read as being confined in their operation to agricultural lands. Besides, there is no specific case for the petitioners that lands involved in these petitions are not agricultural lands. They should not, therefore, be allowed to urge

[42]1891 AC 455

[43]1950 SCR 759 : AIR 1951 SC 118

[44]1951 SCR 682 : AIR 1951 SC 318

about the invalidity of the possible application of the provisions of the Act to non-agricultural lands and nullify them in respect of their application to agricultural lands. That apart, considering the exceptions to the chapters dealing with tenancies and ceiling provisions, it is difficult to see that the provisions of the Act apply to any land other than agricultural land as the concept of agricultural land is so wide that it would practically take in all types of land which are not dealt with in the exceptions.

In *Court of Wards, Paigah v. Commissioner, Wealth Tax*[45], a Full Bench of the Andhra Pradesh High Court said that what is agricultural land has to be understood according to ordinary notions of commonsense and in the sense in which it is understood in ordinary parlance, and that if so understood, agricultural land is any land which is either cultivated or which is fit for cultivation. The Court further said that it is the inherent quality of the land that has to be taken into consideration in determining whether it has the characteristic of agricultural land or not, and that if a land is fit for carrying on agriculture, in the sense of being tilled and ploughed without any further necessity for undertaking extensive or expensive measures for converting the basic characteristic of the land and making it fit for cultivation in the above sense, it can be termed as agricultural land. The Court concluded that every land which is presently or prospectively capable of cultivation can be said to be agricultural land, and that if it is shown that the land is actually cultivated either presently or in the immediate past or if it is shown that it is lying fallow, but is capable of being cultivated, so long as the land has not been actually diverted to purposes other than agricultural purposes by construction of buildings thereon and other operations which render the land itself incapable of being cultivated without undertaking some other operations, for making it fit for carrying on agricultural operations, it can be said to answer the description of agricultural land in its widest significance.

109. Some of the petitions are by or on behalf of religious institutions entitled to the protection of Article 26 of the Constitution. In these petitions the main point for consideration is whether by virtue of the provisions of Section 72 of the Act which provides for acquisition by government of the rights of landlords, the lands of a religious denomination or a section thereof in the possession of tenants, could be acquired by the State. It is contended that the provisions of

Section 72 violate the fundamental right of the religious denomination concerned under Article 26. Article 26 provides :

> "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -
> (a) to establish and maintain institutions for religious and charitable purposes;
> (b) to manage its own affairs in matters of religion;
> (c) to own and acquire movable and immovable property; and
> (d) to administer such property in accordance with law."

In AIR 1954 SC 282, B. K. Mukherjea, J., said that the right to manage its own affairs in matters of religion is given by clause (b), that clauses (c) and (d) of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law; and so the administration of its

[45] AIR 1969 And Pra 345 (FB)

property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. He further said that clause (b) confers a fundamental right which no legislature can take away, whereas the right conferred by clause (d) can be regulated by laws which the legislature can validly impose. He was therefore of the view that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the Article applies. In AIR 1954 SC 388, the Supreme Court observed that in regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away, but that as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property in accordance with law, which means that the State can regulate the administration of trust properties by means of laws validly enacted. Mr. V. K. K. Menon appearing for some of the petitioners, submitted that since the fundamental right to own property under clause (c) of Article 26 is subject only to the law relating to public order, morality and health, it cannot be made subject to a law for agrarian reform, as that law has nothing to do with public order, morality or health. In AIR 1952 SC 252, it was contended that the properties held by the institutions in question there had been dedicated for public purposes, that the income of the properties was being used for feeding sadhus and for other charitable purposes and that any reduction in the income would adversely affect the institutions, and therefore, the properties could not be acquired under the power of compulsory acquisition of the State. The Court repelled the argument and said that a charity created by a private individual is not immune from sovereign's power of compulsory acquisition for public purposes, and that the vesting of the properties in the State under the provisions of the Act in question there would not in any way affect the charity adversely because the net income that the institutions are deriving from the properties has been made the basis of compensation awarded to them. Das J., said that the acquisition of the property belonging to religious institutions will only change its form, namely, from immovable property into money. In *Suryapal Singh v. U. P. Govt*[46]*.,* the court said that Article 26(c) confers on every religious denomination the right to own and acquire property, but that does not prevent the property of a religious denomination from being acquired by the authority of the law. In *Chintamoni Prathihari v. State of Orissa*[47]*,* the court said that a village granted for the maintenance of the deity of Shri Jagannath Mahaprabhu could be acquired under the provisions

of the Estates Abolition Act, that that would not interfere with the fundamental right under Article 26 of the Constitution, and that the question was concluded by the decision of the Supreme Court in AIR 1952 SC 252 while dealing with the decision of the Allahabad High Court in AIR 1951 Allahabad 674. But the question here is, can a State acquire the property of a religious denomination in pursuance of a law which does not provide for compensation at all or provides only for illusory compensation, if the law is protected by Article 31-A? The question, in other words, is whether clause (c) of Article 26 is subject to a law other than a law relating to public order, morality or health? The right of a religious denomination to administer its property is expressly made subject to other laws. Can we say that the right to own and acquire property is also subject to the other relevant laws despite the fact that it is not expressly made subject to those laws? The Bombay

[46] AIR 1951 All 674

[47] AIR 1958 Ori 18

High Court in AIR 1970 Bombay 23 considered the question whether Sections 32 to 32-R and the proviso to Section 88-B (1) of the Bombay Tenancy and Agricultural Lands Act, 67 of 1948, violated the fundamental right of religious institutions under Article 26 (c). The court said that if the property of a religious denomination is held subject only to laws relating to public order, morality or health, it would lead to several anomalies. The court observed :

> "Let us first consider restrictions on the acquisition of property. Parliament may, for the purpose of stabilizing the country's currency, authorize the Central Government to put restrictions on the acquisition of gold by any individual or group of individuals. Stability of the currency of the country, although undoubtedly in the interests of the general public, is not in the interests of "public order, morality and health". It would follow, if our interpretation of Article 26 (c) is incorrect, that Parliament cannot make a law authorizing the Central Government to restrict the acquisition of gold by any religious denominations or any section thereof. To take a simpler example, it is provided by law that immovable property exceeding a certain value cannot be acquired except by a registered instrument. This requirement is a restriction on the right to acquire immovable property and is clearly in the interests of the general public. Since the restriction cannot be said to be in the interests of public order, morality or health, it cannot be imposed on the right of religious denominations to acquire immovable property. Similar instances can be given of restrictions which are imposed on the ownership of property. Municipalities are usually authorized by law to call upon the owners of dilapidated buildings to repair them or to pull them down. Such a restriction is in the interests of the general public, but is not necessarily in the interests of public order, morality and health. If our interpretation of Article 26 (c) is not correct, municipalities would be unable to call upon religious denominations to repair or pull down dilapidated buildings owned by them. Again, land legislation often authorizes State Governments to take over the management of agricultural lands which are allowed to remain fallow for a number of years or to impose a regulation that a certain proportion of agricultural lands shall be utilized for the production of food-grains. It could not have been the intention of the makers of the Constitution that the right of religious denominations to own and acquire property should not be subject to such reasonable restrictions in the interests of the general public."

The learned Advocate-General submitted that the framers of the Constitution intended that the right of religious denominations to own and acquire property should be subject to the general law, and referred to the genesis of Article 26 in its present form. In Shiva Rao's "The Framing of India's Constitution -A Study" at page 262 it is stated :

> "The committee (the Advisory Committee) adopted a compromise by accepting a suggestion made by Rajagopalachari, that the clause might be retained but with the qualification that the right of religious denominations to own, acquire and administer property would be subject to the general law."

This suggestion was accepted by the Drafting Committee. In the Drafting Committee no change was made to the Article. (See pages 10 and 330 of "the Framing of India's Constitution -Select Documents, Vol. III, Clause 21, by Shiva Rao). Clause 21 of the draft of the original Constitution provided :

> "Every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion and, in accordance with the provisions of law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes." (See page 332 of the above volume.)

Then at the suggestion of Shri N. Gopalaswami Ayyangar, Clause 21 of the Draft Constitution was further revised by the Committee as shown in Appendix B to the minutes. (See page 350 of the same volume). Appendix B reads as follows :

> "Every religious denomination or any section thereof shall have the right -
> (1) to establish and maintain institutions for religious and charitable purposes;
> (2) to manage its own affairs in matters of religion;
> (3) to own and acquire movable and immovable property; and
> (4) to administer such property in accordance with law."

The words "public order, morality and health" were inserted at the suggestion of Pattabhi Sitaramayya. (See page 42 of Shiva Rao's The Framing of India's Constitution -Select Documents'. Vol. IV). The contention of the learned Advocate-General is that the omission of the words 'in accordance with law' in clause (c) is a draftman's error. The contention appears plausible. In view of the manifest absurdity that would otherwise result, I think, it is permissible to read the words 'in accordance with law' appearing in clause (d) as applicable to clause (c) also notwithstanding the insertion of the word 'to' before the word 'administer' in clause (d). It is said that even if the right to own and acquire property is not a matter of religious practice, ownership of property is necessary for a religious denomination to establish and maintain charitable and religious institutions, and therefore, a law which provides for acquisition of property with no compensation or with illusory compensation would conflict with clause (a) of Article 28. He takes away your life who takes the means of your life. The right to maintain religious or charitable institutions would be rendered nugatory if the property, the income from which is necessary to maintain them, is acquired without just compensation. There is great force in the argument. But the question is, does the Act by any of its provisions interfere with right of any

religious denomination to establish and maintain religious institutions ? The Act does not contain any provision which in any way interferes with that right. Indirect or consequential effect is not the same thing as the subject-matter of the law. It is a fundamental principle of constitutional law that every State must possess the power of taxation and eminent domain. Every student of constitutional law is well aware that constitutional lawyers classify the State's sovereign power into three categories, namely, the power of taxation, the power of eminent domain, and the police power. These are distinct categories of sovereign powers with different connotations sub serving different needs of the society and the State. If the contention urged by the petitioners is accepted, the result would be that no law can impose a tax on the properties of a religious denomination, because clause (c) is not subject to a law other than a law relating to public order, morality or health. The power of eminent domain, which is inherent in every sovereign State, must be capable of being exercised against every property held by any person in the State. The power of acquisition or requisition in Entry 42 of List III could have been exercised as against the property of a citizen even if Article 19 (5) were absent. In other words, even if the fundamental right under Article 19 (1) (f) were couched in absolute terms, the power of State to acquire the property of a citizen would have remained unaffected. Being a fundamental attribute of sovereignty of State, one cannot imagine that the framers of the Constitution intended to divest the State of that attribute by implication in the case of property owned by a religious denomination. Just as the property of a religious denomination is held subject to a law imposing a tax upon it, so also is that property subject to the eminent domain of the State. A guarantee that religious denominations will have the fundamental right to own and acquire property does not mean that the right is absolute.

> "The truth is, there are two sides to private property, the individual side and the social side. The social side of property finds illustration in the right of eminent domain and in the right of taxation. If there were no such thing as the social side of private property, how could the right of taxation exist ? Take whatever theory you please. Suppose you say that the right of taxation is payment for protection. I say, I do not want any protection, and if my right in private property is an absolute right, is not that sufficient, provided, furthermore, that I ask no privileges ? The fact that I do not want protection does not give me exemption, and it shows at once that there is another side to private property than the individual side. So also with the right of eminent domain. It is utterly incompatible with the absolute right of private property. Moreover, this social side of private property is not to be regarded as something exceptional.....The social side limits the individual side, and as it is always present there is no such thing as absolute private property. An absolute right of property, as the great jurist, the late Professor Von Ihering says, would result in the dissolution of society." (See 'Property and Contract in Their Relation to the Distribution of Wealth', by Richard Theodore Ely, Vol. I, Book I, Part I, Chapter V.) Entry 42 in List III gives power to the State to acquire property. That power is subject to the limitation in Article 31 (2), which provides that 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 fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given. But if the law provides for

acquisition of an estate or rights therein or modification or extinguishment of the rights in an estate, and is one for agrarian reform, it need not satisfy the conditions for acquisition of property specified in Article 31 (2). The limitations on the power of acquisition imposed by Article 31 (2) would not apply to such a law, because of the provisions of Article 31-A. Though the right to acquire and own property in Article 26 is expressly made subject only to law relating to public order, morality and health, it is either necessary to read clause (c) in the manner indicated, or to imply the right as subject to other relevant laws. It was said that the word 'acquisition' in Entry 42 of List III carries with it the obligation to pay just compensation, and therefore, even if Article 31 (2) is not available to test the validity of the law, the law must provide for just compensation. It is, no doubt, true that under the English common law the power of acquisition of a State has never been exercised without providing for payment of compensation. See the speech of Lord Reid in *Burma Oil Co. Ltd. v. Lord Advocates*[48], That does not affect the question here. The Supreme Court has held in AIR 1969 SC 453 that the word 'acquisition' in the Entry does not carry any implication as regards the obligation to pay compensation. And it cannot be otherwise in view of the specific provision in Article 31 (2).

110. Under Section 73 all arrears of rent accrued due before the 1st May, 1968 and outstanding at the commencement of the Act are wiped off except to the extent of one year's rent in the case of a tenant possessing not more than five acres of land, of two years' rent in the case of a tenant possessing more than five acres but not more than ten acres of land, and three years' rent in the case of a tenant possessing more than ten acres. But when the tenant is in possession of more than 15 acres and the landlord is a small-holder, the tenant is liable to pay the entire arrears. The contention of the petitioners was that arrears of rent became the property of the landlord, that they no longer touch or concern the estate from which the rent issued, and therefore, they cannot be deemed to be rights in an estate. In AIR 1952 SC 252 it was held that arrears of rent do not constitute rights in an estate. In that case B. K. Mukherjea, J., said :

> "The arrears of rent whether merged in decrees or not, which were due to the landlord for a period anterior to the date of notification under Section 3 (1) of the Act, were undoubtedly the property of the landlord, irrespective of his interest in the estate or tenure which is the subject-matter of acquisition. Such arrears could not vest in the State as a normal result of acquisition of any estate or interest therein, and it is conceded by the learned Attorney-General that Article 31-A of the Constitution has no application so far as these arrears of rent are concerned. The arrears of rent, therefore, are the subject-matter of separate and independent acquisition under the Bihar Land Reforms Act, if the word 'acquisition' can at all be appropriate to cases of this description."

The petitioners, therefore, contend that the remission, even partial, of arrears of rent which accrued due, will not get the protection of Article 31-A and must be justified as a reasonable restriction of the fundamental right of the landlord to own property; and as no facts and circumstances which compelled the legislature to give the remission are placed before the Court, the provision must be struck down. In the original counter-affidavit filed on behalf of the State,

no facts and circumstances are stated to show that the reduction in the arrears of rent payable by the tenant is a reasonable restriction upon the landlord's fundamental right. But in an additional counter-affidavit filed on behalf of the State it is averred that the tenants were finding it difficult for a long time past to discharge arrears of rent and that there have been various legislations giving them relief either by way of stay of recovery of the arrears

[48]1965 AC 75

or by way of reducing the quantum of the arrears recoverable. It is further stated that in order to implement the main provisions of the Act, it is necessary that the tenants who would become the owners of the holding should begin with a clean slate. Section 73 is the culmination of a series of legislative attempts to relieve the indebtedness of tenants arising from arrears of rent. There is a presumption that the legislature understands the needs of the people, and that the provisions of a legislation are designed to meet their needs. It is only in very extraordinary circumstances that a court will pronounce a legislation regulating the rights of property as unreasonable. The provisions in Part TV of the Constitution envisage the scheme of a Welfare State. Whether those provisions sketch a socialistic pattern of society is doubtful, if the word 'socialism' has any meaning in the English language. "A strange way of dealing with the subject of socialism is to use the word which has clearly defined meaning in the English language in a totally different sense. For individuals to use words in a sense peculiar to themselves is not helpful in the commerce of ideas. A person who declares himself to be an engine driver and then adds that his engine is of wood and is drawn by bullocks is misusing the word 'engine driver. " said Jawaharlal Nehru. (See the passage quoted at page 134 of The Political Philosophy of Jawaharlal Nehru' by M. N. Das).

> "The source of the propositions in Part IV of the Indian Constitution is very obvious. The ghosts of Sidney and Beatrice Webb stalk through the pages of the text. Part IV of the Constitution expresses Fabian socialism without the socialism, for only 'the nationalization of the means of production, distribution and exchange' is missing; but nationalization for the Fabians was a means to an end and not the end itself; the end is quite adequately expressed in the Constitution. It is true that others besides the Webbs have expressed some of these ideas. Articles 38 and 39 of the Constitution seem to be based on Article 45 of the Constitution of Eire, which in turn comes from the Papal Bulls. Even so, the slight changes of language are significant. The references to charity, private ownership, free competition and the control of credit have been removed. The Papacy has been insistent upon private enterprise; the Fabians regarded public ownership as essential; the Indian Constitution leaves the question open." (See 'Some Characteristics of the Indian Constitution' by Sir Ivor Jennings, page 31.)

Article 39 says that the State shall in particular direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood, that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, that operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. In considering the reasonableness of the provisions of Section 73, it is legitimate to look to these provisions in Part IV. This is not to say that these directive principles can be invoked to destroy the fundamental rights which alone are made justifiable in the Constitution. But they can be invoked to give purposive content to the

restriction which Part III imposes upon the fundamental rights guaranteed. The ideas and values embodied in Part IV are also intended to give a purposive direction to the Court in giving content to the concept of reasonableness and public interest.

Hidayatullah, J., said in Golak Nath's case, AIR 1967 SC 1643 that the right to property embodied in Part III is the weakest of the fundamental rights. This means that even among fundamental rights there is a hierarchy. The concept of double standard or preferred freedom has been evolved in American judicial review to give effect to this scale of values. Basically the concept means in the context nothing but that in exercising the power to review legislation which touches the rights guaranteed in Part III, the Judge should not give equal weight to all the fundamental rights, that generally personal rights will be preferred to property rights, and that an alleged infringement of personal right should be weighed in the scale of a bullionist by courts, whereas an alleged infringement of property right need be weighed in that of a butcher. When it is said that personal rights should be preferred to property rights ft should not be understood that a simple preference of personal rights is what is indicated, because there is no black and white distinction between personal rights and property rights. In other words, it would not follow that all personal freedoms or rights stand on one footing for which any impingement, however trivial, will be struck down, or that all property rights stand on another footing for which any infringement, no matter however savage, will be approved. Even the distinction between personal and property rights has been said to be illusory. "Why property itself is not a personal right nobody took the time to explain" said Learned Hand. (See 'Chief Justice Stone's Conception of the Judicial Function in 'Spirit of Liberty' by Learned Hand, page 152). Justice Frankfurter while refecting the distinction went on to say that "those liberties of an individual which history has attested as the indispensable conditions of an open as against a closed society come to this Court with a momentum for respect, lacking when appeal is made to liberties which derive merely from shifting economic arrangements." (See *Kovack v. Cooper*[39],). Chief Justice Stone in his famous footnote to *U.S. v. Carolene Products*[40], has given a justification for the double standard and its basis. That case held that regulatory legislation affecting ordinary commercial or monetary transaction is not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge or experience of the legislatures. In the foot-note the Chief Justice said that there is very narrow scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution (American), such as those of the first ten amendments. The distinction, according to Chief Justice Stone, is not between property and personal rights, but between those lights which are fundamental for functioning of democratic political process and those which are not. According to him, the idea is that there must be a reasonable degree of judicial tolerance for legislation which does not directly tamper with necessary social and political environments for representative Governments; and a high degree of judicial vigilance against legislation which does directly so tamper. The justification for giving personal rights precedence is because unless personal rights are given precedence the human personality will not be able to attain its full development. Every human being by virtue of the very fact that he is a human being has got an absolute right to live, to express himself by speech, and to pursue his own pleasures, his own truth, his own salvation. These rights must stand relatively high in any democratic system; and in so far as legislature tries to pass an

[39](1948) 336 US 77 at p. 95

[40](1937) 304 US 144 at p. 152

enactment to abridge or take away these rights, the Court will be vigilant to see whether there is

an unlawful abridgement of the rights. If the ultimate object of our Constitution is to protect and extend man's chances of self-fulfilment and self-expression including political expression, we must recognise property rights upto a point, for, without property it is impossible for a man to be a dignified human being. But beyond that point when it becomes an instrument of power over others, there is no reason why any precedence should be given to it. As Professor Morris Ginsberg put it :

> "The root of the difficulty ..... is that in most of the discussions the notion of private property is used too vaguely. It is necessary to distinguish at least three forms of private property : (i) property in durable and non-durable consumer's goods; (ii) property in the means of production worked by their owners; (iii) property in the means of production not worked or directly managed by their owners, especially the accumulations of masses of property of this kind in the hands of a relatively narrow class. While the first two forms of property can be justified as necessary conditions of a free and purposeful life, the third cannot. For this type of property gives power not only over things, but through things over persons. It is open to the charge made by socialists again and again that any form of property which gives man power over man is not an instrument of freedom but of servitude." (See 'Justice in Society', page 101, by M. Ginsberg.)

Article 19 (1) (f) gives a citizen the right to acquire, hold and dispose of property. Property is nothing but a basis of expectation, the expectation of deriving certain advantages from a thing which we are said to possess in consequence of the relation in which we stand towards it. Whether Article 19 (1) (f) guarantees concrete or abstract rights of property or both, strictly speaking property is the right and not the object over which the right extends.

> "Whatever technical definition of property we may prefer, we must recognize that a property right is a relation not between an owner and a dung, but between the owner and other individuals in reference to things. A right is always against one or more individuals". (See "Property and Sovereignty' -'Readings in Jurisprudence' by M. R. Cohen, page 26).

Take the concept of arrears of rent. It is undoubtedly the property of landlord. Is it a concrete right? Probably not. It is not a right to any specific thing. It is merely a right as against a tenant. A regulation affecting that right is not to be struck down merely for the reason that the policy pursued by the Legislature does not appear palatable to the Court. A State legislature is entitled to its own standard of public welfare. The day is gone when a Court would strike down a law regulating property or business because they are improvident or out of harmony with a particular school of thought. The Court cannot profess ignorance of the change in the concept of property. Although the Court has no will of its own and must give effect to the will of the law, the Court must be aware of the great changes in society, when called upon to interpret a law for governance of its economic life. Das, J., said in *The State of West Bengal v. Subodh Gopal Bose*[41],

[41] AIR 1954 SC 92

> "It is futile to cling to our notions of absolute sanctity of individual liberty or private

property and to wishfully think that our Constitution-makers have enshrined in our Constitution the notions of individual liberty and private property that prevailed in the 16th century when Hugo Grotius flourished or in the 18th century when Blackstone wrote his Commentaries and when the Federal Constitution of the United States of America was framed. We must reconcile ourselves to the plain truth that emphasis has now unmistakably shifted from the individual to the community."

The statute or a provision in the statute may be far from the best solution of the conflict with which it deals, but if it is the result of an honest effort to embody that compromise or adjustment that will secure the widest acceptance and would avoid resentment, then the statute or the provision must be upheld. In a democracy the majority is entitled to embody its will in a legislation. 'For a Judge to serve as communal mentor' as Learned Hand said, 'appears to be a very dubious addition to his duties and one apt to interfere with their proper discharge'. A Court is not the organ intended or expected to light the way to a saner world, for, in a democracy the choice is the province of the political branch, i.e., of the people striving however blindly or inarticulately towards their own conception of the Good Life. Justice Holmes said :

"It is a misfortune if a Judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong. I think that we have suffered from this misfortune, in State Courts at least, and that this is another and very important truth to be extracted from the popular discontent. When twenty years ago a vague terror went over the earth and the word socialism began to be heard, I thought and still think that fear was translated into doctrines that had no proper place in the Constitution or the common law. Judges are apt to be naif, simple-minded men, and they need something of Mephistopheles. We too need education in the obvious -to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with short of revolution by the orderly change of law," (See 'Holmes, Collected Legal Papers, 1920', page 295.) A court should not, by its moralistic fiat override the pragmatic adjustment made by the people in choosing their way of life. In a judicial scrutiny of a provision alleged to infringe fundamental rights, it is necessary to remember that the fundamental rights are "the precipitates of old, unhappy, far-off things, and battles long ago, originally cast as universals to enlarge the scope of victory, to give it authority, to reassure the very victors themselves that they have been champions in something more momentous than a passing struggle. Thrown large upon the screen of the future as eternal verities, they are emptied of the vital occasions which gave them birth, and become moral adjurations, the more imperious because inscrutable, but with only that content which each generation must pour into them anew in the light of its own experience." (See 'Spirit of Liberty' by Learned Hand page 155.) Legislation is ultimately a matter of compromise between contending political parties. When seen from the shining cliffs of perfection the legislative process of compromise appears shoddy indeed. But when seen from the practical point of view as the only alternative way of life, the compromises of legislation appear but another

name for what we call civilization." (See The Legislative Way of Life by T. Smith, Page 91).

With this background let me examine the question whether the reduction in arrears of rent payable by a tenant to a landlord is a reasonable restriction upon the fundamental right of the landlord to hold property. The court can take judicial notice from the various legislations which have been passed before the Act that the consistent legislative policy was to give relief in one form or other to tenants from their hardship arising out of their indebtedness from arrears of rent. This policy was bom out of a conviction that the tenants were unable to discharge their indebtedness on this score. I doubt whether we can say with the materials placed before us that the economic condition of the tenants was or is not as assumed by the legislature. Recovery of arrears of rent due from tenants was stayed by Act 1 of 1957 (see Section 4 of that Act). It was provided by Section 84 of the Agrarian Relations Act, Act 4 of 1961, that all arrears of rent due from 1957 will be deemed to be discharged if the amount specified in column 2 of the table thereto is paid within one year of the commencement of that Act. By Section 6 of Act 7 of 1963 recovery of arrears of rent due before the 31st December, 1963 was stayed. Section 73 of Act 1 of 1964 provided for discharge of arrears of rent on payment of the amount specified in column 2 of the table thereto within the time prescribed in column 3 of the table. By Section 5 of the Act 9 of 1967 recovery of arrears of rent which accrued before 1-4-1966 was stayed. By Section 5 of Act 5 of 1969 recovery of arrears of rent accrued due before 1-5-1966 was stayed. The benefits given to a tenant by the Act would prove illusory if the whole debt on the score of arrears of rent is allowed to stand. The whole idea behind the provision is that a tenant should be allowed to start anew without being handicapped by the burden of heavy agricultural indebtedness. And as to the question whether the reduction in arrears of rent to the extent indicated in the table appended to the section is justified in the circumstances, I think, that is a matter which must be left to the legislature. Relief of agricultural indebtedness is part of agrarian reform. Although arrears of rent may not constitute rights in estate, there is no reason why the section should not get the protection of Article 31-A, if remission of agricultural indebtedness is an integral part of agrarian reform. (See paragraph 11 of the judgment in AIR 1965 SC 632). Therefore, I hold that if Section 73 does not obtain the protection of Article 31-A, it is a reasonable restriction upon the right of landlord to hold property. The section is therefore valid.

111. It was submitted that Section 72-A and Section 88 are bad as they provide for only illusory compensation. Section 72-A says that compensation in accordance with the rates specified in the schedule should be paid to the landlords by the State for acquisition of their right, title and interest in the holdings. Section 88 provides for the rate of compensation payable to the landowner in respect of the surplus lands surrendered to the State on account of the provisions relating to ceiling. The compensation provided in both these cases might be inadequate or even illusory; but if the sections relate to acquisition of estate or rights therein or the modification or extinguishment of rights in estate, Article 31-A would bar an attack upon them for the reason that they violate the fundamental rights under Articles 14, 19 or 31. That vesting of the rights of the landlord in government and the acquisition of surplus land beyond the ceiling area for distribution among landless agricultural labourers pertain to agrarian reform cannot be disputed in view of the rulings of the Supreme Court in AIR 1959 SC 459, AIR 1959 SC 519, *Ajit Singh v. State of Punjab*[42], Counsel contended relying upon certain observations of the Supreme Court in AIR 1955 SC 504 that just compensation must be provided in the law even if the law is one

for acquisition of estates or rights therein. I do not think, the decision can afford any assistance to the petitioners. A careful reading of the decision would show that even if the law makes no provision for compensation it will not be invalid as offending Article 31 (2) if the legislation is protected by Article 81-A. The Court said :

> "It was held by this Court in *State of Bihar v. Kameshwar Singh*[43], and *Visheshwar Rao v. State of Madhya Pradesh*[44], that an objection to the validity of an Act relating to acquisition of property on the ground that it did not provide for payment of compensation was an objection based on Article 31 (2), and that it was barred when the impugned legislation fell within Articles 31 (4), 31-A and 31-B."

Das, J., said in Kameshwar Singh's case AIR 1952 SC 252 :

> "In any event the Act cannot, for reasons stated by me in my judgment in the Bihar appeals, be questioned on the ground of absence of public purpose or of compensation."

It has, therefore, to be held that this contention has no substance.

112. By Section 84 all voluntary transfers except those specified in the section made after the date of publication of the Kerala Land Reforms Bill 1963 in the Gazette by a person owning or holding land in excess of the ceiling area shall be deemed to be transfers calculated to defeat the provisions of the Act and invalid. Such a provision is necessary to implement a legislation for agrarian reform. In AIR 1959 SC 475, the Court said in dealing with a corresponding provision in a legislation for agrarian reform, that provisions for cancellation of instruments already executed are not novel or unknown to law, that the Insolvency Acts provide for setting aside transfers made by insolvents under certain circumsances, and that the provision for cancellation in question in that case is not an independent provision, but one ancillary in character and enacted for carrying out the objects of the Act more effectively. The Explanation to Section 85 says that where any land owned or held by a family in excess of the ceiling area was transferred by such family or any member thereof or by such adult unmarried person, as the case may be, after the 18th December, 1957, and on or before the date of publication or the Kerala Land Reforms Bill 1963, in the Gazette, otherwise than in favor of the persons and institutions specified therein, the extent of land owned or held by such family or adult unmarried person shall be calculated for purposes of fixing the extent of land to be surrendered under this section as if such transfer had not taken place, and such family or adult unmarried person shall be bound to surrender an extent of land which would be in excess of the ceiling area on such calculation, or where such family or person does not own or hold such extent of land the entire land owned or held by the family or person. Although I entertain

[42] AIR 1967 SC 856, AIR 1967 SC 930 and AIR 1967 SC 1776 [44] AIR 1952 SC 252

[43] AIR 1952 SC 252

considerable doubt as regards the effect of the impact of this Explanation upon the 2nd proviso to sub-clause (1) of Article 31-A, I am inclined to agree with the view expressed by my learned brothers in their judgment.

113. The contention that "the ceiling limit applicable to him under any law for the time being in force" in the second proviso to clause (1) of Article 31-A is the ceiling fixed by Act 1 of 1964 is

not tenable in view of the fact that Section 83 of Act 1 of 1964 imposing a ceiling limit was not brought into force, although Section 82 specifying what is the ceiling area was brought into force by the notification dated 25-3-1964. So when the amending Act came into force there was no ceiling limit applicable to any person. (See 1970-1 SCWR 306 : AIR 1970 SC 398.)

114. Section 96 of the Act says that the Land Board shall, after reserving in each village the lands necessary for public purposes, assign on registry the remaining lands vested in the Government under Section 86 or 87, as specified in the section. It was argued that reservation of land for public purpose has no relation to agrarian reform, but is a colourable device for acquiring property for public purposes not relating to agrarian reform without paying the compensation as provided under Article 31 (2). But if the provision is read as providing for reservation of land for public purposes in relation to agrarian reform, it would be immune from attack. I think, it is permissible to read the provision in this restricted manner. It is a general rule of construction that a word or expression though wide in its natural and ordinary connotation must be restricted to the purpose of the statute as evidenced by the context. Besides, the rule governing the separability of two sections of a statute in principle is applicable where a single section of a statute attempts or purports to cover two entirely distinct and separable classes of cases, one properly and the other improperly, and that it may be upheld as to the class which constitutionally may be thus covered, even though condemned as to the other.

115. Some of the petitioners contended that fishing right is not a right in an estate, and the provision of Section 50-A of the Act vesting the fishing right in varamdars is violative of the fundamental right under Article 19 (1) (f) or Article 26. Right to fishing is a right in land. See *Ananda Behera v. State of Orissa*[45], The right to fishing will pass to a lessee as part of the right to enjoy the land. But a varamdar is not a lessee, and so it is contended that as no fishing right passed to the varamdar, the vesting of the right in the varamdar, not being agrarian reform affects the fundamental right of citizens to hold and of religious denominations to own property. If the provision for vesting the fishing right in the varamdar is bad, the only effect would be that the landlord would continue to own the fishing right, and it will vest in the government as part of the right, title and interest of the landlord, and would pass to the varamdar as tenant if he exercises his right to purchase the right, title and interest of the landlord. Vesting of the right, title and interest of the landlord in the government and the subsequent purchase of them by a tenant would be part of agrarian reform. Therefore the question whether the provisions of Section 50-A would offend the landlord's fundamental right to own or hold property is largely academic.

116. Mr. Rama Shenoi, appearing for some of the petitioners, contended that the

[45] AIR 1956 SC 17

provisions of Section 125 barring the jurisdiction of Civil Courts to entertain suits for deciding any matter or question which is required by the Act to be decided by the Land Tribunal or the authorities under the Act, are bad. The contention of Mr. Shenoi was that the rule of law demands that the established Civil Courts must ultimately decide all questions of fact and law, when a person's right to property or person is in question. The rule of law sometimes means a preference for decision of Judges of regular Courts rather by executive or administrative officers. John Dickinson said :

> "In short every citizen is entitled, first to have his rights adjudicated by a regular common law Court and secondly, to call into question in such a Court the legality of any act done

by an administrative or executive official." (See 'Administrative Justice and Supremacy of Law', page 35).

In *St. Joseph Yards Co. v. United States*[46], Justice Brandies said :

> "The Supremacy of law demands that there shall be opportunity to have some Court to decide whether an erroneous rule of law was applied and whether the proceedings in which facts were adjudicated was conducted regularly."

But there are several decisions of the Supreme Court of America where it has been held that the established Civil Courts can be prevented from reviewing question of law. For instance, see *Chicago and Southern Air Lines Inc., v. Waterman Steamship Corpn*[47]., and *Keim v. United States*[48], I think, it is open to the legislature of a State having power to enact a law on a subject to enact a provision making findings on questions of fact by an agency other than a Court, final. And so long as the jurisdiction under Article 226 cannot be taken away by a law passed by a State Legislature, I do not think it open to any person to complain even if the Land Tribunals or other agencies are invested with exclusive jurisdiction to decide all questions of law arising in the process of adjudicating on the right of the parties under the Act. It is not clear how the setting up of a tribunal for adjudicating rights and liabilities arising out of provisions of the Act is violative of the fundamental right of the petitioners either under Article 14 or 19. It is open to a State Legislature to exclude the jurisdiction of the established Civil Courts by a special law as is clear from Section 9 of the Code of Civil Procedure . I am in full agreement with my brothers in holding that the provision in sub-section (7) of Section 125 denying power to Civil Courts to grant injunction in any suit from entering into, occupying or cultivating any land or kudikidappu or to appoint a receiver of any property, is bad as offending Article 14 and that the provision by which all injunctions granted and appointment of receiver made before the amending Act would stand cancelled is an usurpation of judicial function by the legislature and therefore, bad. I also agree that Section 29-A and the bar against a Civil Court prohibiting an applicant for determination of fair rent from entering the land concerned in Section 32 are bad for offending Article 14. In the result, I agree with the conclusions of my learned brothers on all points except as regards the validity of Section 73. I hold that Section 73 is valid. BY COURT Judgment in accordance with the decision of the majority.

Order accordingly.

[46](1935) 298 US 38

[47](1948) 333 US 103

[48](1889) 177 US 290