BOMBAY HIGH COURT

Parashram Damodhar Vaidya

Vs.

State of Bombay

Special Civil Appln. No. 2523 of 1956

(Shah and Gokhale, JJ.)

21.02.1957

JUDGMENT

Shah, J.

1. The petitioner, a resident of village Pali in the district of Thana, is a landlord owning 135 acres of Kharif lands and 70 acres of Warkas lands in the villages of Bhisegaon, Tighar, Nangurle, Venagaon, Parada, Dahigaon, Sapele, Vave, Vavaloli, Tambus and Avalas in Karjat Taluka, of Kolaba district. The petitioner pays Rs. 990/-as assessment and local fund cess for the aforesaid lands. In this application the petitioner contents that Bombay Act 13 of 1956, which purports to amend the Bombay Tenancy and Agricultural Lands Act, 1948, is invalid. The petitioner urges that when Bill No. 34 of 1955, which subsequently was published as Act 13 of 1956, was submitted to the President for his assent, the President suggested certain alterations, but the bill was not returned to the Legislature of the State of Bombay and was published as an Act : and as the provisions of Article 201 of the Constitution of India were contravened the Bill was not validly enacted as law. He also contends that the Bombay State Legislature was incompetent to enact Act 13 of 1956, and submits that in any event Sections 5, 6, 6A, 7, 8, 9, 17A, 29A, 31A, 31B, 31C, 31D, 32 to 32R, 34, 63A and 84C are inconsistent with the Constitution and hence void. It is finally urged that Sections 7, 32H (2) and 88D delegate legislative authority to the Government and are on that score void.

2. In order to appreciate the contentions raised by the petitioner, it may be necessary to give a short resume of the agrarian legislation enacted by the Legislature of the Bombay State since the year 1938. In 1938 the Bombay Legislature passed the Bombay Small Holders Relief Act 8 of 1938 with the object of giving protection to agricultural debtors against execute on of decrees passed against them and also to tenants against eviction by landlords. The Act also placed restrictions upon transfers by small holders of their lands and dwelling houses and provided for suspension of rent and payment of interest in case land revenue was suspended wholly or

partially.

3. In 1939 the Bombay Legislature passed the Bombay Tenancy Act which conferred protection upon tenants against evict on by landlords and converted all subsisting contractual tenancies for less than ten years into tenancies of a duration of ten years. The Legislature restricted the rights of the landlords to obtain possess on of land by surrender, and conferred upon all persons who had been continuously in possession of land for six years preceding the 1st of January, 1938 and had cultivated the land personally, the status of protected tenants even if they had been evicted after 1-4-1937. The Act also provided that the Government may, by notification in the official Gazette, fix minimum rates of rent payable by the tenants in any areas specified in the notification, and provided a bar to eviction of tenants from dwelling houses and conferred a first option of purchasing the site on which the tenant had built a building and also the trees planted by the tenant.

4. The next step was taken when the Legislature passed the Bombay Tenancy and Agricultural Lands Act 1948. The Government took upon itself the power to fix the maximum rent which may be chargeable as equivalent of crop-share and the Act provided for fixation of reasonable rent. It restricted the right of landlords to terminate contractual tenancies notwithstanding any law, agreement or usage or even decrees or orders of the Court. Power was also conferred upon the Government to take over management of estates held by landlords where the lands were neglected on account of disputes between the landlords and their tenants or for ensuring full and efficient use of the lands. Transfers of lands to non-agriculturists were severely restricted and tenants in possession of lands were given priority in purchasing lands from their landlords at prices fixed by the tribunal appointed in that behalf. The jurisdiction of the Civil Courts to entertain suits in matters which were entrusted for decision to the Mamlatdar or the Revenue Courts was expressly excluded. Restrictions were also placed upon the rights of the landlords to terminate tenancies, contractual as well as protected. Protected tenancies could only be terminated if the landlord required the lands *bona fide* for personal cultivation or for a non-agricultural use and the enforcement of that right even was made subject to other restrictions.

5. By the impugned Act 13 of 1956 the Legislature has sought to confer occupancy rights upon all tenants subject to certain exceptions. The Act has been passed with the object of ensuring an equitable distribution of land by removing intermediaries between the actual cultivator and the State and by introducing peasant proprietorship. With that end in view, provision has been made for compulsory purchase of land by tenants on what is called the Tillers' Day and stringent provisions have been made which prohibit termination of tenancies by landlords in those cases where the tenancies continue to subsist even after the Act comes into operation. Evidently for the last nearly twenty years the Bombay Legislature is enacting from time to time legislation with the object of improving the economic and social conditions of the peasants and for ensuring full and efficient use of land for agriculture and for doing away with absentee landlordism. Act 13 of 1956 marks the culmination of the pattern of this social reform.

6. Several important changes have been made by the Bombay Tenancy and Agricultural Lands (Amendment) Act 1956 in the law governing the relations of landlords and tenants and in the matter of recovery of rent by landlords and tenants and incidental matters. Before the amendment of the Act no rates of rent were required to be fixed by the Mamlatdar for a village or a group of villages but the Mamlatdar was competent in individual cases, only where there was dispute between the parties about rent and an application was made in that behalf, to fix reasonable rent. By the amending Act it is provided that rent shall be payable annually and in cash only and that in no case it shall exceed five times the assessment; payable or leviabls in respect of the land or Rs. 20/- per acre, whichever is less. Section 9 of the Act provides for fixation of rates of rent for different classes of lands in each village or group of villages. Prior to the amendment it was the duty of the occupant in the case of unalienated land, and the superior holder in the case of alienated land, to pay land revenue and Khatas were prepared under the Land Revenue Code only in respect of occupants and superior holders of land. Under Section 10-A of the Bombay Tenancy and Agricultural Lands Act, 1948, the dirty to pay land revenue and irrigation cess and also the local fund cess is imposed upon the tenant: thereby the primary liability to pay the assessment is shifted from the occupant to the tenant, and Section 136 (1) of the Land Revenue Code has been amended to effectuate that purpose. By Section 4-B of the Act it is provided that no tenancy of any land shall be terminated merely on the ground that the period fixed by agreement or usage for its duration has expired. This provision has the effect of making all tenancies quasi-permanent. Again, all tenancies are made heritable, whether they be contractual or protected. Under Section 15 the tenant's right to surrender his tenancy has been affirmed, but safeguards have been enacted to prevent securing of surrenders from tenants by force, or by practicing fraud, coercion, or undue influence. Every surrender is required to be verified before the Mamlatdar in the manner prescribed by the Rules. The right of the landlord to terminate the tenancy is further restricted. It is enforceable only where the tenant has failed to pay the rent for any revenue year or has done any act which is destructive or permanently injurious to the land or has sub-divided or sub-let the land or has failed to cultivate personally or has used the land for purposes other than agriculture. In respect of tenancies other than permanent tenancies the right of the landlord to terminate tenancies for personal cultivation and for any non-agricultural purpose is further restricted by several conditions imposed by Sections 31 to 31B. Amendments of the most vital importance have been made by the enactment of Sections 32 to 32B, which provide for compulsory purchase of land by tenants and for machinery for effectively, securing that object. It is provided that all tenants who cultivate personally on 1st April, 1957, the lands held by them will subject to certain conditions and exceptions be deemed to have purchased the lands free from all encumbrances subsisting thereon. On that date the tenants, including sub-tenants of permanent tenants are to be deemed to have purchased the lands held by them as tenants. To this provision there are certain exceptions: viz., where notice has been served for termination of the tenancy before 31st December, 1956 or in cases of tenants who are minors, widows, disabled persons, tenants of lands situate within the limits of municipal corporations, municipal boroughs, municipalities, cantonments or Town Planning Schemes, tenants of lands

belonging to Government, tenants of lands notified by Government as being reserved for non-agricultural or industrial development, tenants of lands held or leased by local authorities or universities in the State or tenants of lands which are the properties of Trusts for educational purposes, hospitals or institutions for public religious worship which satisfy the conditions prescribed in Section 88-B, or tenants of landlords whose annual income including the rent of the land is less than Rs. 1,500/- and whose lease holding is less than an Economic Holding and tenants who have been conferred occupancy rights under any of the Land Tenure Abolition Acts.

7. The compulsory purchase of lands is to be carried out through the Agricultural Lands Tribunal. That Tribunal is to issue, as soon as possible, after the Tillers' Day, notices calling upon all tenants who are deemed to have purchased land, their landlords and other persons interested therein, to appear before it on the dates specified in the notice. On the date fixed the Tribunal will ascertain from the tenant in the prescribed manner whether he is or is not willing to purchase the land held by him as tenant. If the tenant fails to appear on the date fixed or gives a statement that he is not willing to purchase the land, the Tribunal shall make a declaration accordingly in writing. If the tenant is willing to purchase the land, the Tribunal will determine according to the provisions of Sections 32-H and 63-A(3) the purchase price of the land after holding an enquiry and after hearing the parties concerned. The value of the land fixed by taking into consideration all the prescribed factors will be scaled down to the maximum, if it exceeds the maximum, or scaled up to the minimum, if it is less than the minimum.

8. Provision is made in Section 32-K for payment of the purchase price. A permanent tenant has to deposit the entire amount with the Agricultural Lands Tribunal within one year from such date as may be fixed by the Tribunal. A tenant, other than a permanent tenant, can pay the price in one lump sum within one year or the price may be paid with simple interest at 4 1/2 per cent in annual installments not exceeding 12 as may be fixed by the Tribunal. In the meanwhile, payment of rent to the landlord is stopped from the year in which the first installment becomes payable, and if during any year the payment of rent is suspended or remitted, a tenant is not to be liable to pay the purchase price in lump sum or the amount of installments or any interest thereon during that year. The amount of purchase price or installment when not deposited with; interest becomes recoverable as an arrear of land revenue. After the purchase price in lump sum or the last installment of the price is deposited, the Tribunal has to issue a certificate of purchase to the tenant. If the tenant fails to pay the price in lump sum or is at any time in arrears of four installments of the purchase price, the purchase is declared to be ineffective and the land is to be at the disposal of the Collector and any amount paid by the tenant is made refundable to him. When the purchase becomes ineffective the landlord is entitled to receive rent from the tenant for the past years as if the land had not been purchased and the amount of rent so recoverable is to be deducted from the amount, if any, to be refunded by the landlord to the tenant. If the landlord fails to pay to the tenant the amount refundable to him after the above deduction, it is made recoverable as arrears of land revenue and will be paid to the tenant.

9. Provision is made for condonation of default in payment of the installments on the ground that the tenant was, for sufficient reasons, incapable of paying the installments. On the purchase of the land, the land vests in the tenant free from all encumbrances subsisting on the date of the purchase. The Tribunal has been given the power to refer to the Civil Court for determination any question of law regarding the validity of the encumbrance, the claim of the holder of any encumbrance or the amount due in respect of the encumbrance. The entire purchase price, paid by a tenant is payable to the landlord subject to the payment of settled encumbrances except in cases where the purchaser is a sub-tenant of a permanent tenant. In the case of the purchase price payable for the land held and cultivated by a subtenant of a permanent tenant, the landlord is to be paid that much amount which he would have been entitled to receive had the land been purchased by the permanent tenant and the balance of the purchase price payable by the subtenant is to be paid to the permanent tenant. Land purchased by a tenant under the provisions of Sections 32 to 32-Q must be cultivated personally by him and the tenant is liable to be evicted from the land and his land is liable to be disposed of in accordance with the provisions of Section 84-C, if the tenant does not cultivate the land personally or ceases to do so. A tenant cultivating lands leased from more than one landlord is not entitled to purchase all the leased lands, but he is entitled to make a choice in the manner prescribed by the Rules.

10. Lands which are surrendered by a tenant in favor of the landlord but which the landlord is not entitled to retain with him in view of the provision of Sub-Section (2) of Section 15, balance of the land left after purchase of any land by the tenant and after the landlord retains with him as much area thereof as he would be entitled to retain under Section 15 (2), lands which a tenant fails to purchase on the Tillers' Day and which is left after the landlord retains with him as much area as he would be entitled to retain under Section 15 (2), balance of land the purchase of which becomes ineffective because the tenant has failed to pay the purchase price in lump sum or has been in arrears of installments thereof, lands leased after the Tillers' Day and which are not purchased by the tenant within one year from the date of the commencement of his tenancy or which a tenant cannot purchase because of the other land held by him, lands held in excess of the ceiling area by any person on 15th June, 1955, which cannot be regarded as being cultivated personally by reason only of its situation or formation, lands acquired by a landlord by surrender of tenancy from his tenant during the period from 1st January, 1952 to 31st July, 1956, if his holding immediately before the 1st January, 1952 was equal to or in excess of twice the ceiling area and lands acquired by a landlord by surrender of tenancy from his tenant during the period from 1st January, 1952 to 31st July, 1956, which would remain after deducting there from such area of land as would make the total holding of the landlord equal to twice the ceiling area, become available to the Collector for being disposed of.

11. In disposing of the land the Collector has first to determine the price of the land in accordance with the provisions of Section 63-A and then to publish in the village in which the land is situate a public notice requiring the persons included in the priority list mentioned in Section 32-P (2) (c) to intimate to him within one month from the date of publication of the

notice whether they are willing to accept the land. If more persons than one intimate to the Collector their willingness to accept the land, the land is to be sold to the person having the highest priority in the priority list; and if more than one person having the highest priority in the priority list are willing to accept the land, the Collector is entitled to prefer one of them, haying regard to his financial condition, the possession of agricultural implements, any other land cultivated personally by him and other factors which may be relevant.

12. Lands purchased by tenants under Sections 32, 32-P, 32-I and 32-O or purchased under Section 32-P cannot be transferred by sale, gift, exchange, mortgage, lease or assignment or partition without the previous sanction of the Collector. In other words, the lands are deemed to be held on unalienable and impartible tenure. Under Sections 88 to 88C the provisions of the Act or certain provisions thereof are not applicable to lands belonging to Government and lands leased by Government and to areas which the Government may from time to time, by notification in the official Gazette specify and to lands or estates taken under Government management under Chap. IV or Section 65 of the Act, or lands or estates under the management of the Court of Wards, or lands transferred to or by, a Bhoodan Samiti recognised by the State Government and also to lands held or leased by a local authority or a University established by law in the State or lands which are the property of a trust for an educational purpose, a hospital or an institution for public worship. Sections 32 to 32R are also not to apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person, including the rent of the leased lands, does not exceed Rs. 1,000/-. Section 88D enables the State Government by notification in "the official Gazette, notwithstanding anything contained in Sections 88, 88A, 88B and 88C, to direct that any land referred to in those sections shall not be exempt from such of the provisions of the Act from which they have been exempted thereunder.

13. It is evident from the resume of the provisions of the Act that far-reaching changes have, been effected by Bombay Act 13 of 1956 and subject to certain exceptions tenants in occupation of lands are made owners of the lands on payment of price which is not the market value of the lands but such price as may be ascertained by the Tribunal.

14. The validity of the provisions of Act 13 of 1956 has been challenged principally on four grounds : (1) that the Act has not received the assent of the President and has not been validly enacted as law; (2) that the subject-matter of the Act is beyond the competence of the State Legislature and (3) that a majority of the provisions of the Act are inconsistent with the guarantee of right to property conferred by the Constitution and hence are void, and (4) that certain provisions are void as amounting to delegation of the legislative authority of the State Legislature.

15. Article 201 of the Constitution enables the Governor to reserve a Bill for the consideration of the President, and the President may declare either that he assents to the Bill, or that he withholds

his assent. It is open to the President, where the Bill is not a Money Bill, to return it to the House or the Houses of the Legislature of the State together with a message requesting the House or Houses to reconsider the Bill or any specified provisions thereof and, in particular, to consider the desirability of introducing any such amendments as may be recommended by him in his message. When a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of the message. Mr. Jahagirdar says that when the Bombay Tenancy and Agricultural Lands (Amendment) Bill No. 34 of 1955 was submitted to the President for his assent, the President recommended certain amendments, but the Bill was not re-submitted to the Legislature of the State of Bombay and was declared to have been enacted as law and that the procedure followed in not re-submitting the Bill to the Houses of the Legislature of the Bombay contravened the provisions of Article 201 of the Constitution and, therefore, it had not validly become law. In support of his contention Mr. Jahagirdar sought to rely upon certain answers which he says were given on the floor of the Assembly of the Bombay Legislature by a Minister of the Bombay Government. We have not permitted Mr. Jahagirdar to raise this question. The learned Advocate-General has shown us the signature in the original of the President on the Bill which was submitted for his assent. That clearly shows that the Bill was ascented to by the President. It is not, in our judgment, open to the petitioner to contend that when the President signified his assent to the Bill, he made certain recommendations to the State Legislature to reconsider the Bill and to approve of the amendments suggested by him. The President, as is evident from Article 201 of the Constitution, may either assent to the Bill or withhold assent but he cannot in assenting to the Bill recommend that the Bill be reconsidered or certain changes be made therein. We are of the view that the answers alleged to have been given by a Minister of the State Legislature on the floor of the House suggesting that there were some recommendations made by the Government of India, cannot have the effect of invalidating the assent of the President under Article 201 of the Constitution. We have, therefore, not permitted Mr. Jahagirdar to refer to the statements made by the Minister concerned in support of the contention that recommendations were made by the Government of India for altering or amending the Bill. We are concerned with the question whether in fact assent has been given by the president, and, if assent has been given, it is not for this Court to consider whether recommendations to amend the Bill were made by the Government of India and those recommendations were ignored by the Government of Bombay to submit the Bill for considering the recommendations made by the Government of India does not, in our judgment, affect the validity of the Bill which by the assent of the President became an Act of the Bombay Legislature.

16. Under the Seventh Schedule to the Constitution (list II entry No. 18) the State Legislature is competent to enact legislation in respect of "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". It was urged that this entry authorises the State Legislature to enact laws regulating the relation of landlord and tenant and transfer and alienation of agricultural land, but it does not empower the

Legislature to enact laws which in substance extinguish the relation of landlord and tenant and convert tenants into proprietors of the lands cultivated by them. Now reading Article 246 (3) of the Constitution with List II of the Seventh Schedule, the State Legislature has the power under entry No. 18 to legislate in the matter of "land, that is to say, rights in or over land-including the relation of landlord and tenant". In our judgment, the expression "land" in entry No. 18 is wide enough to include legislation concerning rights in or over land that is made clear beyond controversy my the explanatory clause "that is to say rights in or over land". The Constitution has conferred by that entry upon the State Legislatures very wide powers to enact legislation to extinguish, restrict, transfer or convey the rights in lands. Again, by that entry legislation in connection with land tenures including the relation of landlord and tenant or in connection with transfer and alienation of agricultural land may be enacted by the State Legislatures.

17. In *Megh Raj v. Allah Rakhia*[1], their Lordships of the Privy Council to consider the question about the competence of a Provincial Legislature under the Government of India Act, 1935, to enact legislation to create and determine the powers of Courts in respect of land and to give relief to mortgagors by causing the mortgagees to make restitution of mortgaged lands on terms less onerous than the mortgage deeds required. Under List II of the Seventh Schedule to the Government of India Act 1935 entry No. 21 was in material parts identical with entry No. 18 in the II List of the Seventh Schedule to the Constitution. Their Lordships held in that case that under entry No. 21 the Punjab Restitution of Mortgaged Lands Act, 1938, which provided for the restitution of possession of lands mortgaged under the Act to the mortgagors on less onerous terms and for the extinguishment of the mortgages, was intra vires the provincial Legislature. They observed at p. 20 (of Ind. App.) of the report) :

> "As to item 21 "land", the governing word, is followed by the rest of the item, which goes on to say "that is to say." These words introduce the most general concept "rights in or over land." 'Rights in land' must include general rights like full ownership or leasehold or all such rights. "Rights over land" would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters: thus there are the words "relation of landlord and tenant, and collection of rents."

It is evident that the State Legislature is given the power of wide amplitude to legislate in respect of rights in and over land and that power must encompass legislation to restrict of even extinguish subsisting rights in land. Mr. Jahagirdar strenuously contended that the Constitution contemplated by entry No. 18 power to legislate in respect of transfer and alienation of agricultural land and that transfer and alienation could only be by voluntary act and not by compulsion of law. Counsel submitted that Bombay Act 13 of 1956 could not be within the competence of the State Legislature under the words "transfer and alienation of agricultural lands". It is unnecessary for us to consider whether the authority to enact provisions, which provide for statutory conveyance of the interest of the landlords to the tenants in occupation of

lands, may be derived from the words "transfer and alienation" In our view, the legislation is sufficiently covered by the explanatory clause "rights in or over land" if it is not covered by expression "land" itself. We are unable, therefore, to accept the contention of Mr. Jahagirdar that the State Legislature had no power to enact legislation providing for statutory purchase of land by tenants in occupation of lands belonging to the landlords.

18. In our view, the Act cannot also be regarded as infringing the right to property under the Constitution. Article 31 of the Constitution guarantees the right to property. By the first clause it is provided that no person shall be deprived of his property save by authority of law. Under clause (2), which was substituted by the Constitution (Fourth Amendment) Act, 1955, compulsory acquisition or requisition of property is prohibited except for a public purpose and except by authority of law which provides for compensation for the property so acquired or requisitioned. Under clause (2A) a law, which does not provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, is not to be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. Article 31A, which was added by the Constitution (First Amendment) Act, 1951, and was amended by the Constitution (Fourth Amendment) Act, 1955, with retrospective effect, provides inter alia that "notwithstanding anything contained in article 13 no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property ... . 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.") By clause (2) the expression "estate" in Article 31A (1) in relation to any local area, is to have the same meaning as that expression has in the existing law relating to land tenures in force in that area.

19. Before Article 31 was amended by the Constitution (Fourth Amendment) Act, 1955, there was conflict of authority on the question whether clause (1) and the original clause (2) dealt with the same subject-matter. In *Charanjit Lal Chowdhuri v. The Union of India*[2], , it was observed : by Mr. Justice Das at page 924 (of SCR) (at pp 62-63 of AIR) of the report :

("Article 31 (1) formulates the fundamental right in a negative form prohibiting the deprivation of property except by authority of law. It implies that a person may be deprived of his property by authority of law. Article 31 (2) prohibits the acquisition or taking possession of property for a public purpose under any law, unless such law provides for payment of compensation. It is suggested that clauses (1) and (2) of article 31 deal with the same topic, namely, compulsory acquisition or taking possession of property, clause (2) being only an elaboration of clause (1). There appears to me to be two objections to this suggestion. If that were the correct view, then clause (1) must be held to be wholly redundant and clause (2), by itself, would have been sufficient. In the next place, such a view would exclude deprivation of property otherwise than

by acquisition or taking of possession ..... the language of Clause (1) of Article 31 is wider than that of clause (2), for deprivation of property may well be brought about otherwise than by acquiring or taking possession of it. I think clause (1) enunciates the general principle that no person shall be deprived of his property except by authority of law, which, put in a positive form, implies that a person may be deprived of his property, provided he is so deprived by authority of law. No question of compensation arises under clause (1). The effect of clause (2) is that only certain kinds of deprivation of property, namely those brought about by acquisition or taking possession of it. Will not be permissible under any law unless such law provides for payment of compensation. If the deprivation of property is brought about by means other than acquisition or taking possession of it, no compensation is required, provided that such deprivation is by authority of law."

20. This view was not accepted in later decisions of the Supreme Court. In *The State of West Bengal v. Subodh Gopal Bose*[3], a majority of the Court, held that Article 31 protected the right to property by defining the limitations on the power of the State to take away private property without the consent of the owner, and that clauses (1) and (2) of article 31 were not mutually exclusive in scope and content, but should be read together and understood as dealing with the same subject, namely, the protection of the right to property by means of limitations on the State's power the deprivation contemplated in clause (1) being no other than the acquisition or taking possession of the property referred to in clause (2). Mr. Justice Das adhered to his earlier view expressed in Chiranjit lal's case.

21. In *Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd*[4]., it was held again by a majority of the Court that from the language employed in the different sub-clauses of Article 31 it was difficult to escape the conclusion that the words "acquisition" and "taking possession" used in Article 31(2) had the same meaning as the word "deprivation" in Article 31(1) and that Article 31 is a self-contained provision delimiting the field of eminent (domain) and clauses (1) and (2) of Article 31 deal with the same topic of compulsory acquisition of property.

22. The Parliament thereafter enacted the Constitution (Fourth Amendment) Act, 1955, whereby the original clause (2) of Article 31 was divided into two parts. By clause (2) as

[2]1930 SCR 869 [4]1954 SCR 674

[3]1954 SCR 587

amended compulsory acquisition or requisitioning of property could only be had for a public purpose and by authority of law which provided for compensation: and clause (2A) enacted that if a law did not provide for transfer for the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. Again Article 31-A enacted that a law, which provided for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall not be deemed to be void, notwithstanding anything

contained in Article 13, even if it was inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31. Prior to the amendment of Article 31 the State's power to take away the property of a person was comprehensively delimited by that Article and the purpose was not to declare the right of the State to deprive a person of his property but to protect the "right to property" of every person. The right was protected by defining limitations on the power of the State to take away private property without the consent of the owner. The Parliament has by the amending Act enacted that clauses (1) and (2) of Article 31 did not deal with the same subject-matter. That is made clear by clause (2A). Even if a citizen is deprived of his property, it is not to be deemed to be compulsory acquisition or requisitioning of property unless the right of the citizen to ownership or to possession is transferred to the State or to a corporation owned or controlled by the State.

23. Mr. Jahagirdar contended that in so far as Bombay Act 13 of 1956 purported to vest in the State property belonging to the landlords by extinguishing their interest in the land, it was not saved by Article 31A of the Constitution and the Legislature having made no provision for payment of compensation to the landlords, the provision was inconsistent with Article 31 and hence void. The contention has, in our judgment, no force. Article 31A is an exception to Article 31: and even if it be assumed that the provisions relating to extinction of the landlord's interest in land are not protected by clause (1) of Article 31, they are protected from the operation of clause 2 by clause 1 (a) of Article 31A. It was urged by Mr. Jahagirdar that Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, which merely suspended the ownership of the landlords and did not vest it, immediately in the tenants, was not protected under Article 31A of the Constitution. The validity of Sections 32 E. 32 F, 32 G and 32 M which kept the land at the disposal of the Collector, was also challenged on the same ground. Reliance in support of that contention was sought to be placed upon a judgment of the Supreme Court, *Raghubir Singh v. Court of Wards, Ajmer*[5], In that case the validity of Section 112 of the Ajmer Tenancy and Land Records Act 42 of 1950 was challenged before their Lordships of the Supreme Court. By the combined operation of Section 112 of the Ajmer Tenancy and Land Records Act and Regulation 1 of 1882 the Court of Wards could in its own discretion and on its subjective determination assume the superintendence of the property of a landlord who habitually infringed the rights of his tenants. The exercise of that discretion could not be questioned in any manner in a civil court. It was observed by their Lordships of the Supreme Court :

> "When a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no constructor of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by

[5] AIR 1953 SC 373

> making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil court."

It was also observed that the word "modification" in the context of Article 31A of the Constitution meant "a modification of the proprietary right of a citizen like an extinguishment of that right and cannot include within its ambit a mere suspension of the right of management of estate for a time, definite or indefinite."

24. It is true that under Sections 32E and 32M certain land is declared to be at the disposal of the Collector and by section 32P it is provided that

> "where the purchase of any land by a tenant under Section 32 becomes ineffective under Section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F or 32O, the Collector may..... direct that the land be disposed of in the manner provided in sub-section (2)."

Relying upon these provisions it was urged that Article 31A protects the law providing for acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, and that a law which provides merely for the suspension of the rights is not covered by clause (1A) of Article 31A. It was also urged that the whole scheme of Sections 32 to 32R relating to compulsory purchase of land contemplated suspension of the title of the landlord and that provision was not covered by Article 31 A and was void either under Article 31(2) or under Article 19(1)(g) of the Constitution. In support of that contention it was submitted that whereas by Section 32 the tenant is to be deemed to have purchased the land from his landlord free from all encumbrances, the tenant becomes the owner of the land only on payment of the purchase price and on issue of a certificate under Section 32M, and that in the interregnum, i.e., between the date on which the tenant was deemed to have purchased the land and the date on which a certificate of purchase was issued to the tenant, the title was not vested in the tenant and the right of the landlord was suspended. Such a provision it was contended, was inconsistent with the Constitution and void.

25. We are unable to hold that the scheme of Part II of Chapter III of the Bombay Tenancy| and Agricultural Lands Act, 1948, as amended by Act 13 of 1956, is to suspend the title of the landlord without transferring it to the tenant. The words of Section 32 make it abundantly clear that on the Tillers' Day or on such other subsequent day as is referred to in the proviso to Sections 32 and 32F the tenant shall be deemed to have purchased the land from his landlord. That provision appears to have the effect of a statutory conveyance of the land to the tenant.

26. By the operation of Section 10A the liability to pay land revenue and other cesses is imposed upon the tenant and that liability commences from the date on and from which he is deemed to have purchased the land. It is true that in certain circumstances the purchase may become ineffective. If the tenant fails to pay the purchase price in lump sum or in instalments within the given period or where the tenant fails to appear in answer to the notice under Section 32G or

makes a statement that he is not willing to purchase the land, the purchase becomes ineffective. But so long as the purchase has not become ineffective or the tenant has not failed to exercise the right to purchase under Sections 32F and 32O, the title to the land must be deemed to be vested in the tenant and not in the landlord. The assumption underlying the argument of Mr. Jahagirdar that the land remains vested in the landlord or is suspended until a certificate of purchase is issued to the tenant is not justified by the scheme of Sections 32 to 32R.

27. Mr. Jahagirdar contended that Article 32A (1)(a) of the Constitution applies to extinguishment or modification of rights in any estate and the right of a landlord in agricultural land governed by the Bombay Land Revenue Code is not an estate within the meaning of Article 31A (1)(a). The expression "estate" has been defined, in relation to any local area, as having the same meaning as that expression has in the existing law relating to land tenures in force in that area. Under the Bombay Land Revenue Code the expression "estate" is defined in Section 3(5) as meaning "any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same." Interest of a landlord in land must be regarded as estate within the meaning of Section 3(5) of the Land Revenue Code and therefore, within the meaning of Article 31A (1)(a) of the Constitution. The Constitution has expressly provided that notwithstanding anything contained in Article 13, any law, which provides inter alia for the extinguishment or modification of any right in an estate shall not be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31, and therefore Sections 32 to 32R which provide for extinction of the interest of the landlords and conveyance thereof to the tenants and also the procedure in that behalf cannot be regarded as inconsistent with the Constitution.

28. In the course of his argument Mr. Jahagirdar challenged that in any event Sections 5, 6, 6A, 7, 8, 9, 17A, 29A, 31A, 31B, 31C, 31D, 32 to 32R, 34, 63A. 84-C and 88D are void. It was urged that Section 7 of the Act is inconsistent with the Constitution and hence void. Section 5 prescribes what shall be the ceiling area of land and Section 6 prescribes an economic holding. Section 7 confers power upon the Government to vary the ceiling area and economic holding. In so far as that section is material, it provides :

> " Notwithstanding anything contained in Sections 5 and 6, it shall be lawful for the State Government, if it is satisfied that it is expedient so to do in the public interest, to vary, by notification in the Official Gazette, the acreage of the ceiling area or economic holding, or the basis of determination of such ceiling area or economic holding, under sub-section (2) of Section 5, regard being had to -
> (a) the situation of the land,
> (b) its productive capacity,
> (c) the fact that the land is located in a backward area, and
> (d) any other factors which may be prescribed."

It was urged that this provision arbitrarily enables the State Government to vary the ceiling area and economic holding and that such a power is inconsistent both with Article 14 and with Article 19(1) (g) of the Constitution. It was contended that satisfaction of the State Government is the only test prescribed by the Legislature and in exercising powers under Section 7 it is open to the State Government to perpetrate the grossest discrimination even between individual holders of land. That the provision of Section 7 as it stands enables the State Government to vary the ceiling area and the economic holding even in respect of a single individual, cannot be gainsaid. But the Legislature has prescribed that the State Government may vary the ceiling area and the economic holding, if it is satisfied that it is expedient to do so in the public interest and having regard to the matters specified in that section. By Section 7 it appears that classification is permitted and in making the classification the State Government is required to have regard to the public interest, the situation, the productive capacity and location and other factors of the land. We do not think that such a classification can be regarded by itself as based on no rational principle. That the State Government may possibly misuse the powers is not a ground for declaring a statute ultra vires.

29. We are also unable to agree with the contention of Mr. Jahagirdar that the provision which enables the State Government to vary the ceiling area and the economic holding amounts to delegated legislation. In *Chimanlal Dipchand v. The State of Bombay*[6], it was observed by this Court :

> "It is incumbent upon the Court when a legislation is challenged on the ground that it constitutes delegated legislation, to consider whether in delegating certain power to the Government or to an outside agency the Legislature has divested itself of any essential legislative function. It is also incumbent upon the Court to consider whether the power has been delegated to the Government after the Legislature has laid down the vital policy. Once the policy is laid down and is made clear in the Act itself, it would not be for the Court to consider the extent and the nature of the delegation; that must be left to the discretion of the Legislature. The Court will not and cannot say that the Legislature should have delegated up to this point and not beyond it. The Court cannot say that delegation would have worked out better if the Legislature had kept with itself some of the powers rather than conferring them upon Government or an outside agency. If the delegation does not constitute a delegation of essential legislative functions and if the delegation does not result in the outside agency laying down the policy and not the Legislature, then the delegation must be upheld as within the competence of the Legislature." That was a case in which petitions were filed in this Court under Article 226 of the Constitution challenging the provision of sub-section (2) of Section 6 of the Bombay Tenancy and Agricultural Lands Act, 1948, as being ultra vires the Legislature and also challenging a notification issued by Government under that sub-section. Section 6 of the Tenancy Act provided for fixation of a maximum rent and by sub-section (2) power was conferred upon the State Government to issue a notification to fix a lower rate

of the maximum rent payable by the tenants of lands situated in any particular area or to fix such rate on any other suitable basis as it thought fit. This Court held that this did not amount to delegated legislation. The Legislature has not left the duty and responsibility of legislating on its behalf or to set up a parallel authority to legislate. What it has done is to enunciate the principles on which a distinction in the public interest may be made between persons who are affected by Sections 5 and 6. Such a provision, as we have already stated, does not infringe the equal protection clause. It also does not affect the right of the citizens to acquire, hold and dispose of property. It

[6]56 Bom LR 321

is true that the power to issue a notification may be exercised in favour of a single individual under the authority reserved under Section 7 and may lay the State Government open to a charge of favouritism. But we do not on that account regard Section 7 as ultra vires the Legislature. No argument was advanced before us in support of the contention that Sections 5, 6 and 6A were ultra vires, and we are unable to uphold that plea.

30. Then the validity of Sections 17A and 17B was challenged. We will deal with the contentions advanced in this behalf when we deal with the cognate provisions of Section 32 and the succeeding sections.

31. The validity of Sections 31A, 31B, 31C and 31D was also challenged. By Section 31 provision is made for termination of tenancy for personal cultivation and non-agricultural purpose by landlords, and conditions are prescribed therein. By Section 31A certain restrictive conditions are placed upon the landlords. They are: (1) that by terminating the tenancy the landlord shall not obtain possession of land in excess of the ceiling area : (2) that the income by the cultivation of the land is the principal source of the landlord's income for his maintenance; (3) that the land leased stands in the record of rights in the name of the landlord himself or any of his ancestors, or if the landlord is a member of a joint family, in the name of a member of such family : and (4) that if more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies which are the shortest in point of duration. Evidently restriction has been placed upon the landlord in enforcing his right to obtain possession, but it is difficult to appreciate how the imposition of the conditions is inconsistent with the Constitution. The restrictions placed upon the landlord in taking possession of the land held by his tenant are imposed under the law and the provision would be valid under Article 31 (1) and 31A (1) (a) of the Constitution. We are unable to hold that by the restrictions placed upon him the landlord's right to property is affected in a manner inconsistent with the Constitution. There are further restrictions imposed upon the landlord by Section 31B of the Act. It is provided that no tenancy shall be terminated under Section 31 in such manner as will result in leaving with a tenant, after terminations, less than half the area of the land leased to him, or in such a manner as will result in a contravention of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, or if the tenant has become a member

of a co-operative farming society and so long as he continues to be such member. The imposition of these conditions cannot also be regarded as void in view of Articles 31 (1) (i) and for reasons already mentioned this provision also cannot be regarded as ultra vires. By Sections 31C and 31D the landlords are prohibited from terminating tenancies for personal cultivation of land left with the tenant after termination of the tenancy under Section 31 and provision is made for apportionment of land after termination of tenancy. These are incidental provisions made with a view to effectuate the policy of the Legislature that even for his personal cultivation the landlord shall not be entitled to deprive the tenant of all the land so as to take away from the tenant his means of livelihood. These provisions, however stringent they may appear to be, do not, in our judgment, conflict in the right to property guaranteed by the Constitution.

32. Section 32 provides for the compulsory purchase by tenants of lands held by them free from all encumbrances on 1-4-1957. The purchase is automatic and is free from all encumbrances. Where an application made by a landlord under Section 29 for obtaining possession of the land is pending in the Court of First Instance or a superior Court, the tenant is deemed to have purchased the land on the date on which the final order of rejection is passed. We have already dealt with the question of the validity of this provision while dealing with the question whether the Act falls within article 31A of the Constitution. It was urged that in any event this provision purports to take away the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and provides that even if a proceeding is pending in the High Court against the decision of the Bombay Revenue Tribunal, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. That argument, in our judgment, has no force. The Legislature has merely prescribed what shall be deemed in cases when the land is the subjects matter of pending litigation, the postponed date for purchase by the tenant of the land held by him, and the legislature has not sought to restrict the jurisdiction of the High Court. If in an application filed against the order of the Bombay Revenue Tribunal this Court holds that the landlord is entitled to obtain possession, there is nothing in the proviso which suggests that the tenant shall still be deemed to have purchased the land. It is only where a final order of rejection of the application filed by the landlord is passed that the date on which the Mamlatdar or the Collector or the Revenue Tribunal finally passes the order shall be deemed to be the date on which the land shall be held to have been purchased by the tenant.

33. Sections 32A and 32B put certain restrictions upon the tenants in purchasing the lands up to the ceiling area and cannot be regarded as inconsistent with the Constitution. Sections 32C and 32D confer upon the tenants the right to choose the lands to be purchased when the tenant holds land separately from more than one landlord, and enable a tenant even to purchase a fragment notwithstanding the provision of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act.

34. By Section 32F there is a further extension of the period for exercising of the right of the tenant to purchase land under Section 32 when the landlord is a minor, or a widow, or a person

subject to any mental or physical disability or a serving member of the armed forces. That section makes provision for certain exceptional cases and if the main provision contained in Section 32 is not ultra vires, the provision made for exceptional cases cannot also be regarded as ultra vires.

35. Section 32G provides for publication of notice in the prescribed form in each village within its jurisdiction by the Tribunal calling upon all tenants who are deemed to have purchased the lands and all landlords of such lands and all other persons interested therein to appear before it on the date specified in the notice. It then provides for the method of enquiry to be made by the Tribunal and for the determination of the price of the land.

36. By Section 32H (1) the method of fixation of price is prescribed. The price in the case of a permanent tenant who is cultivating the land personally is to be the aggregate of the amount of six times the rent and the arrears of rent, if any, lawfully due: and in the case of other tenants the aggregate of such amount as the Tribunal may determine not being less than 20 times the assessment and not more than 200 times the assessment; the value of any structures, wells and embankments constructed and other permanent fixtures made and trees planted by the landlord on the land and the arrears of rent, if any, lawfully due. In making that calculation, by the Explanation the amount of water rate levied under Section 55 of the Bombay Land Revenue Code is to be excluded. By sub-section (2) of Section 32H the State Government is authorized by general or special order to fix the maxima and the minima for the purpose of sub-clause (a) of clause (ii) of subsection (1) in respect of any kind of land held by tenants in any backward area. It is true that by this section the Tribunal has not to award to the landlord the market value of the land but the price is to be the artificial price dependent upon the rent or the assessment fixed in respect of the land. The Legislature, however, being competent under Articles 31 and 31A to legislate so as even to compel sale of lands at artificial prices, the provision of Section 32H cannot be regarded as ultra vires. The provision of sub-section (2) of Section 32H also cannot and does not amount to delegated legislation for reasons already mentioned by us in considering the contentions raised as to the validity of Section 7 of the Act.

37. In this connection, we may refer to the provision of Sections 17A and 17B. By section 17 the tenant is to be given the first option of purchasing the site of land on which a dwelling house is built at the expense of the tenant or his predecessor-in-title, and the value thereof is to be determined by the Tribunal. By Section 17A if the tenant intends to purchase the site on which a dwelling house is built, he has to serve a notice in writing to the landlord to that effect, and if the landlord refuses or fails to accept the offer and to execute the sale-deed within three months, the tenant may apply to the Tribunal for the determination of the reasonable price of the land which shall not exceed 20 times the annual rent thereof. Under Section 17B the State Government is authorised, by notification in the Official Gazette to direct a record of rights relating to the sites and the houses thereon in villages to be made in the manner prescribed, and on the completion of such record of rights the State Government may specify a date on which the tenants whose

names are entered in such record or their successors-in-title shall be deemed to have purchased the site of such dwelling house free from encumbrances at the price to be fixed by the Tribunal, such price not exceeding 20 times the annual rent for the site. By sub-sections (3) to (8) of Section 17B provision is made for enquiry as to the value of the site. This provision is complementary to the provision contained in Section 32. Whereas under Section 32 the tenants are deemed to have purchased the agricultural lands in their occupation as tenants on the Tillers' Day, by Section 17B(2) the tenants are deemed to have purchased the sites of land on which they have constructed houses free from all encumbrances and at a price to be fixed by the Tribunal subject to the maximum amount specified therein. If Section 32 is not inconsistent with the Constitution, Section 17B also cannot be regarded as inconsistent with the Constitution.

38. Section 17A enables the tenant, even before the issue of a notification and the preparation of a record of rights, to purchase the land or dwelling house by serving a notice upon the Landlord. In effect, the landlord is compelled to sell the site at the instance of the tenant. This provision cannot be regarded as inconsistent with the Constitution having regard to the provisions of Articles 31 and 31A of the Constitution.

39. Section 32-I deals with the right of a sub-tenant under a permanent tenant, and the sub-tenant is deemed to have purchased the land on the Tillers' Day. That provision extends the benefit conferred by Section 32 to sub-tenants, and if Section 32 is not invalid, Section 32-I cannot also be regarded as invalid.

40. Section 32K provides for the mode of payment of the price by the tenant and by Section 32L the price is made recoverable as an arrear of land revenue. Mr. Jahagirdar urged that the Legislature had made a significant distinction between the liability of a tenant and the liability of a landlord. Whereas under Section 32L the purchase price is made recoverable as an arrear of land revenue, by Section 32N, which imposes an obligation upon the landlord to refund to the tenant the amount paid after deducting any rent due to him in the event of the sale becoming ineffective, it is provided that it shall be recovered from the landlord as an arrear of land revenue. We do not think that the difference in the phraseology is intended to make any real distinction. In either, case, the amount due is recoverable as an arrear of land revenue.

41. Under Section 32M it is provided that if the tenant fails to pay the purchase price in lump sum or in installments within the prescribed period, the purchase shall become ineffective and the land will be at the disposal of the Collector under Section 32P. Power is given by sub-section (2) to the Tribunal appointed under the Act to condone default by the tenant in payment of any four installments. Mr. Jahagirdar urged that under Section 32K an ordinary tenant is required to pay the purchase price in 12 annual installments, jurisdiction is conferred upon the Tribunal to condone delay in payment of four installments thereby in substance enabling the tenant to pay the amount within 16 years. It may appear that a provision which enables a tenant to pay the amount of the purchase price due by him in small installments may operate harshly upon the

landlord, but that is not a circumstance which will justify us in holding that the provision of Section 32M is ultra vires.

42. Section 32N enables the landlord to recover the rent from the tenant when the purchase of the land becomes ineffective. Relying upon this provision it was urged by Mr. Jahagirdar that this provision indicated that the landlord's title was not extinguished till payment of all the installments by the tenant and until a certificate of purchase was issued to the tenant. We are, however unable to accept that contention. The mere fact that in recognition of the previous right of the landlord is given the right to recover the rent and to be recognized as owner of the land on the sale to the tenant becoming ineffective does not lead to the inference that so long as the sale has not become ineffective the landlord is the owner of the land.

43. Section 32-O enables a tenant whose tenancy has arisen after the Tillers' Day to purchase the land or such part thereof as will raise his holding to the ceiling area. This is a provision which enables a compulsory purchase to be made by a tenant at his option but cannot be regarded as inconsistent with the Constitution having regard to the provisions of Articles 31 and 31A(1) of the Constitution.

44. Section 32P enables the Collector to resume and dispose of the land which has not been purchased by the tenant, i.e., where the sale has become ineffective or the right of the tenant to purchase the land has not been exercised. That section provides for the procedure to be followed by the Collector in disposing of the land. Under sub-section (2) in directing disposal of the land the Collector is required to make a direction that the land shall, subject to the provisions of Section 15, be surrendered to the landlord. Relying upon that provision also it was contended that a provision for surrender of the land postulated a subsisting relation of landlord and tenant and therefore also the contention that Section 32, notwithstanding the express words used, contemplated only suspension of the right of the landlord and not extinction of the right, was supported. It is true that under sub-section (2) of Section 32P the Collector is bound to make a direction that the land in respect of which the sale has become ineffective shall be surrendered to the landlord. But there is nothing in sub-section (2) which supports the contention that the surrender is to be made by the disqualified tenant as holding the land under the landlord. The provision appears to have been made only with a view to enable the quandam owner of the land to get back the land when the tenant cannot, or is unable to, purchase the land. Under sub-section (4) it is provided that where any land or portion thereof cannot be surrendered in favor of the landlord and no person comes forward to purchase the land at a sale, the land shall vest in the State Government and the Collector shall determine the price of such land and the amount thereof shall be paid to the owner. Under the scheme of Section 32P when the tenant is unable to purchase the land or refuses to purchase the land, it shall be given to the landlord provided his holding does not exceed the ceiling area : if the area of land in the possession of the landlord exceeds the ceiling area, he has no right to take the land by surrender and the lard will be put up for sale; and if at the sale so held no purchasers are forthcoming, the land shall vest in the

Government and the Collector shall determine the price to be paid to the owner. This provision contemplates extinction of the ownership of the tenant if he fails to purchase the land or to pay the price. Such a provision can completely be made under Article 31A(1) (a) of the Constitution.

45. Section 32Q provides for, the determination of encumbrances lawfully subsisting on the land on the Tillers' Day and for satisfaction of those encumbrances. By section 32R it is provided that after the purchase of the land if the purchaser fails to cultivate the land personally he, unless the Collector condones the failure for sufficient reasons, shall be evicted from the land and the land shall be disposed of in accordance with the provisions of Section 84C. These two provisions are also, in our Judgment, not inconsistent with any of the provisions of the Constitution and are not also otherwise void.

46. The next section which was challenged was Section 34. Section 34 renders it unlawful, with effect from the appointed day, for any person to hold whether as owner or tenant or partly as owner and partly as tenant, land in excess of the ceiling area. That restriction, however, does not apply to any person who immediately before the appointed day holds as owner land in excess of the ceiling area but only to the extent he is cultivating it personally. Any land held by such person which, by reason only of its situation or formation cannot be regarded as being personally cultivated, shall be at the disposal of the Collector under Section 32P. Under sub-section (3) if any landlord has acquired, between 1st January 1952 and the date of the commencement of the Amending Act, 1955, any area by surrender from his tenant, and the holding immediately before 1-1-1952 was equal to or in excess of twice the ceiling area, the whole of the surrendered land shall be at the disposal of the Collector. If the holding at the aforesaid date is less than twice the ceiling area, so much of the land surrendered as will make his holding equal to twice the ceiling area may be retained with the landlord and the rest of the land will be at the disposal of the Collector. Evidently this provision expropriates the landlords and the tenants of property in excess of the ceiling area and affects the title of a landlord even retrospectively where he has by surrender obtained possession of land from a tenant after 1-1-1952. But this provision having regard to the language used in Article 31A(1)(a) of the Constitution cannot be regarded as void.

47. By section 35 the provision of Section 34 is made applicable to acquisition of land by gift, purchase, assignment, lease, surrender or any other kind of transfer inter vivos or by bequest except in favor of recognized heirs. That provision also for reasons already mentioned cannot be regarded as invalid or inconsistent with the Constitution.

48. Section 63A provides for fixation of reasonable price of land for the purpose of sale and purchase. It is true that the reasonable price is not the real market value of the land. It is an artificial price fixed by the Legislature for sale of the land. But the Legislature having the authority to enact law for the extinguishment or modification of any right in an estate, the provision which artificially reduces the value of the land for the purpose of sale and purchase cannot be regarded as invalid.

49. Sections 88C and 88D are the other two sections sought to be challenged. By section 88C the provisions of Sections 32 to 32R are not to apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500/-. By this provision the Legislature has prevented the application of the law relating to compulsory purchase by tenants of lands held by them in respect of lands belonging to persons who do not hold land exceeding an economic holding if the income of the landlord inclusive of rent does not exceed Rs. 1,500/-. The Legislature appears to have made a distinction between owners of comparatively speaking small properties and other persons, and the classification appears to be based on a rational basis. The provision cannot, therefore, be regarded as void.

50. Section 88D confers upon the State Government power, by notification in the Official Gazette, to direct that any land referred to in Sections 88, 88A, 88B, and 88C shall not be exempt from such of the provisions of the Act from which they have been exempted under those sections. Now Section 88 exempts lands belonging to, or held on lease from the Government, and any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development and any estate or land taken under management by the State Government under Chapter IV or Section 65 or under the management of the Court of Wards or lands taken under management temporarily by the Civil, Revenue or Criminal Courts by themselves or through the receivers appointed by them till the decision of the title of the rightful holders. Section 88A exempts lands transferred to or by a Bhoodan Samiti recognized by the State Government from the provisions of Sections 1 to 87. Section 88B grants exemption from the operation of the provisions of Sections 3, 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 11, 13, and 27 and the provisions of Chapters VI and VIII to lands held or leased by a local authority, or a University established by law in the State, and to lands which are the property of a trust for an educational purpose, a hospital or an institution for public religious worship if the trust is or is deemed to be registered under the Bombay Public Trusts Act and the entire income of such lands is appropriated for the purposes of such trust. As we have already pointed out, Section 88C exempts from the operation of Sections 32 to 32R lands leased by persons with annual income not exceeding Rs. 1,500/-.

51. The exemptions made by these sections may be regarded as founded on a rational basis. But by Section 88D the Legislature appears to have reserved to the Government the power to direct, by notification in the Official Gazette, that any land referred to in those sections shall not be exempt from the provisions of the Act from which they have been exempted. The Legislature has not indicated either expressly or by implication any principle, which is to govern the State in issuing the notification. It is therefore open to the State Government by issuing a notification to exclude any land, which would otherwise be covered by the provisions of Sections 88 to 88C, even for purposes other than securing the object of the legislature in enacting the Act. In substance by enacting Section 88D, the Legislature appears to have delegated its legislative

authority to the State Government to exempt from the operation of such of the provisions of the Act from which lands have been exempted under Sections 88, 88A, 88B and 88C. Under this delegated power the State Government may either in individual cases or in certain classes, defined or undefined, direct that the benefit of Sections 88 to 88C will not be available. In our view, Section 88D amounts to delegation of the legislative authority of the State inasmuch as the Legislature has not expressly or by necessary implication stated what principles are to govern the State Government in issuing the notification. We, therefore, declare that Section 88D is invalid.

52. Mr. Jahagirdar also contended that Sections 8 and 9 were invalid. By Section 8 provision is made for fixing the maxima and minima of rent payable in respect of any land and by Section 9 the Mamlatdar is given the power to fix for each village, or group of villages, or for any area in such village or group, within his Jurisdiction, the rate of lent payable by a tenant for the lease of different classes of land situate in such village, or group of villages. It is difficult to appreciate how these provisions can be regarded as ultra vires the Constitution. The power to modify the rights of a landlord being conferred by Article 31A (1) (a) of the Constitution and Article 31, these provisions cannot be regarded as invalid or ultra vires.

53. It was also contended that Section 29A is ultra vires the legislature. But Section 29A makes the provision of Section 29 applicable to sites used for allied pursuits as they apply to the sites of dwelling houses of an agricultural labourer or artisan in regard to taking possession of any land or dwelling house under the provisions of the Act. Now the expression, "allied pursuits" is defined in the Act as meaning "dairy farming, poultry farming, breeding of livestock, grazing and such other pursuits as may be prescribed". Evidently the "other pursuits as may be prescribed" would be ejusdem generis. If Section 29, which provides the procedure for taking possession of agricultural land or dwelling house under the provisions of the Act, is not ultra vires, we fail to see how Section 29A can be regarded as ultra vires.

54. We have referred to all the sections which were challenged before us as ultra vires, and, in our view, Section 88D must be regarded as invalid. The remaining provisions are validly enacted.

55. In the view we have taken, the rule is ordered to be discharged with costs, subject to the declaration about the invalidity of Section 88D.

56. As the questions raised by this petition were of unusual complexity, we direct that the petitioner do pay Rs. 1000/- as costs.
Order accordingly.