PATNA HIGH COURT

Kameshwar Singh

Vs

Province of Bihar

Title Suit No. 3 of 1950 and Misc. Judicial Cases Nos. 61, 73, 74, 75 and 60 of 1950

(shearer, Sinha and Das, JJ.)

05.06.1950

JUDGMENT

Shearer Sinha, J.

1.This Special Bench has been constituted to try a suit instituted by the Maherajadhiraja of Darbhanga in the Court of the Subordinate Judge at Laheriasarai which has been removed to this Court to be tried by it in the exercise of its extraordinary original civil jurisdiction. In this suit the plaintiff has asked for a declaration that the Bihar State Management of Estates and Tenures Act, 1949, is an unconstitutional law and for an injunction restraining the defendant from taking possession, through its officers, of his estate. The defendant in the suit, which was instituted prior to the enactment of the Constitution, is the Province of Bihar. Along with this suit, there have been set down for hearing a number of applications under art.226 of the Constitution. These applications are by zamindars who have instituted suits similar to the suit instituted by the Maharajadbiraja of Darbhanga. They too asked for injunctions restraining the State of Bihar or any of its officers from taking possession of their estates, and, on one ground or another, their applications for an ad interim injunction, pending the disposal of the suits, were refused. At a very early stage, we pointed out that, if the suit instituted by the Mabarajaihiraja of Darbhanga was decreed, the State of Bihar would, preen mably, refrain from taking possession of the estates of the petitioners, unless and until the decree had been reversed on appeal, and that, if, on the other hand, the suit was dismissed, the applications under Article 226 of the Constitution would, necessarily, have to be dismissed also. The learned Government Pleader subsequently assured us that the State would take the course which, we had suggested, was proper. In these circumstances we thought it unnecessary to consider what other protection could or ought to be afforded to the various petitioners, and intimated that their applications would be dismissed, but, in the circumstances, without costs.

2. It is unnecessary to set out in more than their broad outlines the provisions contained in the impugned Act. The draftsman apparently took as his model, the Chota Nagpur Encumbered Estates Act, and one somewhat curious result of this is that, while the Act professes 'to provide for the State management of estates and tenures in the Province of Bihar," the management is, in fact, to be vested in a Manager who is to be an officer not below the rank of Deputy Collector.

Although the Manager, being a public servant, may be amenable to the control of the Provincial Government, it is the Manager alone, and not the Provincial Government, who

> "stands responsible in law for fidelity in the discharge of the entire duties of management, disposal, realisation and restoration, with regard to the estate under his care/vide *Flukum Chand v. Ran Bahadur Singh*[1], "

As from the commencement of the period of management, which is to be 20 years, the proprietor is disabled from recovering rent, including arrears of rent, which have already accrued due, and from making a valid lease or a valid mortgage, although not from selling the estate outright or making a gift of it. The Manager is required to pay him a quarterly allowance not exceeding 20 per cent. of the gross annual income in the case of estates yielding an income of not more than Rs. 10,000 and not exceeding 5 per cent. in the case of estates yielding an income exceeding RS.5 lakhs. Although the quarterly allowance to be made to the proprietor is comparatively small, the Manager is, nevertheless, required, at the end of the year, to make over the surplus income to him. The proprietor may, however, have some difficulty in ascertaining what that surplus is or ought to be, as he is not entitled to inspect the accounts until they have been audited, and is then entitled only to inspect them once in the course of every twelve months. He is not free to institute a suit for accounts or, indeed any other suit, and can only bring any grievance which he may have regarding the management or the payments made to him to the notice of an Advisory Committee, and, through the Advisory Committee, to the notice of the Provincial Government. The Manager is empowered to remove mortgagees and lessees in the possession of any part of the estate, and, as a necessary corollary, to ascertain, or rather determine the amounts due to them, and to frame a scheme for the liquidation of the proprietor's debts. The main purpose of the Legislature, in enacting the Chota Nagpur Encumbered Estates Act, was to discharge the liabilities of the disqualified proprietor, and so prevent his estate passing into the hands of other persons whose acquisition of the property was likely to be resented and so cause trouble. From Mr. Reid's Settlement Re. port on the District of Ranohi (pp. 37-38), it appears that, in the earlier part of the 19th century, the raiyats in Chota Nagpur were much attached to their zamindars and that in several instances serious disorders had occurred when the estate of a zemindar was sold for arrears of revenue and a purchaser, who was not known and esteemed in the locality, sought to take possession of it. If, under the Chota Nagpur Encumbered Estates Act, possession was taken of estates, this was not done in exercise of what, to American jurists, is known as the right of eminent domain, but rather in exercise of the police power of the State. It was necessary to deprive the owners of these estates of their right to manage them in order to prevent the disorders that might arise if they were sold up by their creditors. Mr. Lal Narayan Sinha, for the defendant, suggested that the impugned Act could be supported on somewhat similar grounds. The learned Government Pleader drew on our attention to certain recent enactments and, more particularly, to the Bakasht Disputes Settlement Act. It may well be that the impugned Act is part of a scheme for agrarian reform, and that i3 certainly suggested by clause (6) in sub-section (1) of Section 25, under which the Manager is required to expend a certain proportion of the income on the maintenance of irrigation works for the benefit of the tenantry. The enactment, however, with which the impugned Act is most closely connected is one which was not mentioned by Mr. Lalnarayn Sinha, namely the Bihar Abolition of Zamindaris Act, 1948. That is made clear by the comparison of the provisions contained in sub-sections (2) and (3) of Section 5 of the impugned Act and the provisions contained in Sections 5

and 6, Bihar Abolition of Zamindaris Act. Under the former, the Manager is restrained from taking charge of land in the khas possession of the proprietor or of buildings or structures in the possession of the proprietor and used "as golas, factories or mills for the purpose of trade, manufacture or commerce or used for storing grains or keeping cattle or implements for the purposes of agriculture". Under the latter, the proprietor is, when his estate is acquired, to be entitled to retain buildings so used on payment of a fair and equitable ground rent and is to be deemed to be a raiyat with a right of occupancy in land in his khas possession. These provisions, regarding which little or nothing was said in the course of argument, are, in my opinion, of considerable significance. The intention of the Legislature appears to be that, in so far as proprietors and tenureholders derive an income from land which, in the language of economists, is an unearned income, they are to be expropriated, while, in so far as they themselves utilize the land as a means of production and derive an earned income from it, they are to be left in undisturbed possession.

3. The greater part of the lengthy and very able argument which has been addressed to us on behalf of both parties has proceeded on the assumption that, not merely is the impugned Act part and parcel of a scheme which aims at the extinguishment or abolition of one form of property, but is itself an expropriatory measure. Mr. P. R. Das, for the plaintiff, has strongly contended that the word "law" as used in sub-section (1) of Section 299, Government India Act and in clause (1) of Article 31 of the Constitution must be understood as meaning a general law, or, as he put it, lex terrae or the law of the land and as excluding any law passed for the express purpose of depriving an individual or individuals of their rights to property. The learned counsel referred to a passage in Black stone's Commentaries, vol. 1, p. es, in which it was said that

> "a particular act of the legislature to confiscate the goods of Thins, does not enter into the idea of a municipal law"

and to the decision of the Supreme Court of the United States in the *Trustees of Dartmouth College v. Woodword*[2], In that case the plaintiff, in an action to reco. ver some documents from persons who, under an Act of a State Legislature, had been constituted the trustees of certain property complained that he and certain other persons bad been granted a charter by the Crown and that the effect of the Act had been to transfer property, which was vested in himself and these other persons as trustees, to another and different body of persons who had also been constituted trustees under it. The plaintiff succeeded in the action on the ground that, in passing the Act which deprived him and his co-trustees of a vested right, the State Legislature had exceeded its legislative jurisdiction and that, in consequence, the Courts were entitled to treat the Act as a nullity. The impugned Act is not, however, an Act under which the plaintiff, as an individual, has been deprived of his rights, in property. The
Act purports, on the face of it, to affect not merely the plaintiff, but all persons belonging to a particular class, namely, proprietors of estates and tenureholders. As will appear presently, the British Parliament, in enacting sub-section (3) of Section 299, Government of India Act, contemplated the possibility of legislation affecting the rights of this class of individuals in land. It is true that the impugned Act confers very wide powers on the executive and leaves a great deal to their discretion. That discretion does not, however, extend to the making of an order depriving a particular individual of his estate or tenure. The Act may be open to criticism on the ground of the wide delegation of power made to the executive but, as it purports to affect an

entire class of persons, it is, in the ordinary sense in which the term is used, a municipal or civil law, and the Courts are not entitled to disregard it as something done by the Legislature wholly in excess of its jurisdiction.

4. Turning to sub-section (2) of Section 299, Government of India Act, Mr. Das contended that it was proposed to acquire the property of his client and that, as the property was not to be acquired for public purposes and as no compensation was to be paid, the proposed acquisition was unlawful. The learned Government Pleader denied that the property of the plaintiff was to be acquired, although he conceded that possession was to be taken of it, and contended that compensation was, in fact, to be paid and that possession was to be taken for public purposes, Sub-section (2) of Section 299, Government of India Act must be read in close conjunction with sub-section (3) which immediately follows it. It seems clear that, in enacting the former sub-section, the British Parliament had in view a case in which the property of a particular individual or particular individuals was to be acquired by the State. In such a case, it was made a condition prerequisite to the acquisition that compensation, meaning thereby the value of the property in money to the owner, should be paid and that, when acquired, the property should be used for public purposes; that is, that the use to be actually made of it by the State or by the local body or company for which it was acquired should subserve the interests of the community and not those of an individual or a number of individuals. In enacting the latter, the British Parliament would appear to have had in mind a case in which the property of every individual in a particular class or classes was to be acquired or rather a case in which a certain species of property in land was to be extinguished or modified by legis. lative enactment. It is significant that neither the word "compensation" nor the words "for public purposes" appear in sub-s, (3), and it may, I think, well be that the British Parliament was not unmindful of the Irish Land Act of 1923 under which the interest of certain land-holders in Ireland was compulsorily acquired, but payment was not made in money, but in bonds which, incidentally, were subsequently guaranteed by the British Government. That this is the proper construction to be put on sub-section (2) and (3) of section 299, Government of India Act is strongly suggested, to my mind, by what is contained in para.369 of the Report of the Joint Committee on Indian Constitutional Reform. This is as follows:

> "369. We think that some general provision should be inserted in the Constitution Act safeguarding private property against expropriation, in order to quiet doubts which have been aroused in recent years by certain Indian utterances. It is obviously difficult to frame any general provision with this object without unduly restricting the powers of the Legislature in relation particularly to taxation; in fact, much the same difficulties would be presented as those which we have discussed above in relation to fundamental rights. We do not attempt to define with precision the scope of the provision we have in mind, the drafting of which will require careful consideration for the reasons we have indicated; but we think that It should secure that legislation expropriating, or authorising the expropriation of, the property of particular individuals should be lawful only if confined to expropriation for public purposes and if compensation is determined, either in the first instance or on appeal by some independent authority. General legislation, on the other hand, the effect of which would be to transfer to public ownership some particular class of property, or to extinguish or modify the rights of individuals in it, ought, we think, to

require the previous sanction of the Governor General or Governor (as the case may be) to its introduction; and in that event he should be directed by his Instrument of Instructions to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation."

Reference may also be made to paragraph 372 of the Report in which the Joint Committee referred to the possibility of

> "an Indian Ministry responsible to an Indian Legislature wishing to alter the enactments embodying the permanent settlement."

I find myself unable to accept the contention of Mr. P.R. Das that sub-section (3) of Section 299, Government of India Act dealt with nothing more than a matter of procedure. In the Instrument of Instructions to the Governor, the Governor was directed not to withhold his sanction to the introduction of such a bill as is referred to in the sub-section, but in every case to reserve it, if and when it was passed by the Legislature for the consideration of the Governor General. The Governor General was similarly required by his Instrument of Instructions to reserve for the assent of His Majesty any law altering the permanent settlement. Mr. Das contended that, by reason of what was contained in sub-section (2), it was implicit that any bill referred to in sub-section (3), should contain provisions for the payment of compensation. I have no doubt myself that a British Secretary of State would have advised His Majesty to refuse his assent to an Act expropriating proprietors of estates or tenure-holders unless the Act provided for adequate compensation, that compensation not necessarily, however taking the form of immediate cash payments. It is obvious that, if compensation in the form of hard cash had had to be paid to the vast number of proprietors and tenure holders, the repercussions on the economy of the state would have been very serious, whereas, if, instead of money being paid, bonds were issued, the repercussions would, almost certainly, have been much less serious, and, if there was no great danger of the bonds depreciating to any marked extent in the market, the compensation given might have been not inadequate. To sum up, the position under the Constitution embodied in the Government of India Act was that a particular individual or individuals, whose property was sought to be acquired, had their remedy in the Courts. Individuals belonging to a class, whose rights in land were extinguished or modified by the Legislature, would, no doubt, to a certain extent have been entitled to have recourse to the Courts, but the extent to which they would have been so entitled would have depended solely on the provisions contained in the statute extinguishing or modifying their rights, and not on any. thing contained in the Constitution Act itself. Nevertheless, the Constitution Act provided them with a very real and valuable safeguard in that any legislation of this kind had to he reserved for the consideration and assent of His Majesty. In the interregnum which occurred between 15th August 1917, and 26th January 1950, this safeguard, of course, did not exist. Di The Constitution, which the Indian people gave to themselves on 26th January 1950, recognises the sanctity or inviolability of property. Article 19 (1) (f) states:

> "All citizens shall have the right to acquire, hold and dispose of property."

Under the growing complexities of modern life, the right of an individual to acquire, hold and

dispose of property must necessarily be subject to numerous restrictions, ranging, at one end of the scale, from an absolute incapacity in certain individuals to hold certain property, for example, land in certain area in Chota Nagpur, and, at the other, to a provision requiring a resident in a municipal area to obtain the previous sanction of the Municipality before making some quite trifling alteration in his premises. Again the right of an individual to retain his property is always subject to the overriding condition that the state may deprive him of it, permanently or temporarily, in the interest of the community as a whole. The Constituent Assembly recognized the existence of each of these two limitations and embodied the former in Article 19 (5), and the latter in Article 31. These two articles, it is clear, deal with matters which are quite separate and distinct. Clause (1) of Article 31, in terms reproduces sub-section (1) of Section 299, Government of India Act. Clause (2) of does not, in terms, reproduce the provisions contained in sub-section (2) of section 299, but such modifications, as have been made, are purely verbal and clause (2) has precisely the same effect as had sub-section (2) of Section 299. The words "for public purposes" and the word "compensation" which occur in clause (2), as they occurred in sub-section (2) of section 299, must be construed in the manner in which they have always hithereto been construed by the Courts in India and the Courts in Great Britain and in Dominions of the British Commonwealth. In the course of the argument, reference was frequently made to Cooley's Constitutional Limitations. At page 1131, volume II of the 8th edition of this work, there occurs the following passage:

> "it is certain that there are very many cases in which the property of some individual owners would be likely to be better employed or occupied to the advancement of the public interest in other hands than in their own; but it does not follow from this circumstance alone that they may rightfully be dispossessed."

But for the existence of other clauses in Article 31, it is, I think, perfectly clear that a law extinguishing such rights as proprietors and tenure-holders have in land would be a law which offended against clause (2) of Article 31. The clauses in question are clauses (4) and (6) of the Article. These clauses, in fact, proceed on the assumption that an enactment which extinguishes the rights of an entire class of individuals in land is an unconstitutional law. What they do or attempt to do is to prevent the Courts from taking notice of this and pronouncing the law to be an unconstitutional law. On the production of a certificate by the President, the Courts are to refrain from considering and deciding whether or not, on certain grounds, the law is a law, in enacting which the legislature has exceeded its jurisdiction. What exactly is the extent of the restriction or disability imposed on the Courts is a matter with which I will deal more fully later. For the present, I propose to deal with two subsidiary points raised by Mr. P. R. Das. Mr. Das contended that it was an implied condition of the exercise by the President of the power conferred on him by el. (6) of Article 31 that the President should refrain from certifying any law unless that law provided for compensation. The compensation might, Mr. Das conceded, not be compensation in the sense in which the word is used in al. (2), that is, the equivalent in money of the property taken, but might be compensation in the form of bonds. It is not really necessary to decide this point, and I must not be taken as deciding it. In my opinion, the President of the Republic, when invited to certify an Act, is in very much the same position as a British Secretary of State would have been, if called upon to advise His Majesty to assent or withhold his assent to an Act extinguishing or modifying the rights of proprietors of estates in their land. It may be that such considerations as the engagements, which were entered into in 1793, would have weighed with a

Brithish Secretary of State and might not at all weigh with the President of the Indian Republic and that a British Secretary of State might have regarded as not wholly adequate, provisions for compensation which the President of the Indian Republic might regard as sufficient. In each case, however, such a restriction as exists on the exercise of the power is not a legal, but rather a moral and political restriction. The other subsidiary point! taken by Mr. P. R. Das is that the words "it shall not be called in question" are words of futurity and that, as the suit of the plaintiff was instituted prior to the enactment of the Constitution, the certificate is of no avail to the andAn. dant. The decisions on which Mr. Das mainly relied in this part of his argument were *Simithies v. National Association of Operative Plasterem*[3] and *Moon v. Durden*[4], In the former, the Court of Appeal had to construe the words "an action against a trade union . . . . shall not be entertained", and they declined to construe them as if they meant "shall cease to be entertained". In the latter, an action was brought to recover money won on a wagering contract prior to 8th August 1845, on which date a statute was enacted that:

> "All contracts and agreements by way of gaming or wagering shall be null and void and that no suit shall be brought or maintained in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager."

It was held that the action was maintainable, the writ having issued on 12th June 1845. The decision in each case proceeded mainly on the ground that an intention to confiscate vested rights retrospectively could not or ought not to be imputed to Parliament. In my opinion, neither of these decisions is directly applicable. In the one case, the plaintiff was seeking to recover damages in respect of a tort which was not, as it were, legalised by the subsequent enactment, and, in the other, the plaintiff was seeking to recover property which, in the opinion of the Court, the legislature had no intention of confiscating or extinguishing as from a date prior to the date on which the
action was instituted. The intention of the Constituent Assembly was, however, it
appears to me, that certain rights in land should be or be liable to be extinguished with effect from the data of the enactment purporting to extinguish them. The Constituent Assembly cannot possibly have intended that individual proprietors or tenure holders, who had had the foresight or the means to institute a suit, should be permitted to retain their rights, whereas the rights of others, who had not been so fortunately situated, should be extinguished or expropriated.

6. There has been much controversy at the Bar as to whether or not, what is proposed to be done under the impugned Act, amounts to the acquisition of the plaintiff's property. Mr. Das strongly relied on a decision of the High Court of Australia. The Minister of State for the *Army v. Dal ziel*[5], and, adopting the words of Rich J., contended that, once the management of his client's estate had been taken over, nothing would be left to him but "the empty husk of ownership". I find myself quite unable to accept this view. The plaintiff is to remain the owner of his estate and is alone to 6 s competent to sell or make a gift of it, and he is to continue to derive a considerable, although, perhaps, a much reduced, income from it. The learned Government Pleader was, at first sight, on somewhat stronger ground when he contended that possession was to be taken of the plaintiff's property. The words "shall be taken possession of" which occur in clause (2) of Article 31 and which do not occur in sub-section (a) of Section 299 appear, however, to have been inserted as the word "requisition" had been inserted in certain items in the legislative lists and also, perhaps in consequence of the decision of Bhagwati, J. of the Bombay

High Court in *Tan Bug Taim v. Collector of Bombay*[6], The taking of possession contemplated in clause (2) of Article 31 is a taking of possession which entirely excludes the rightful owner. But, under the impugned Act, the manager is no more entitled to exclude the plaintiff than is a manager of an estate, to which the Chota Nagpur Encumbered Estates Act has been applied, entitled to exclude the disqualified proprietor. On the contrary, under the impugned Act it is the proprietor of the estate or the tenure-holder who is entitled to exclude the Manager from part of the property. The impugned Act does, in my opinion, exactly what it purports to do; that is, it deprives the plaintiff of the right to manage his property or rather the greater part of his property. There are numerous instances in which the State or an official or a Court of the State is by law empowered to take possession of and either manage or arrange for the management of property. The earliest enactments on the subject, which I have been able to discover, are Regulation v [e] of 1799, Regulation NTH [7] of 1822 and Regulation v [5] of 1827. More recent enactments are the Chota Nagpur Encumbered Estates Act, the Court of Wards Act the Indian Lunacy Act 1912, and the provisions contained in se. 93 to 10o, Bihar Tenancy Act. In a society in which the right of property in lani is regarded as inviolable or sacrosanct, property so taken possession of is managed in the interests of the owner and as if it were, for all practical purposes, property hell in trust. Under the impugned Act, however, the property of the plaintiff is to be managed to some extent, and, perhaps, largely, in the interests of the tenantry. For instance, 12 per cent. of the gross annual income is to be spent on irrigation works. The plaintiff is also to be given very little say, indeed, in the management of his estate. A comparison of the relevant provisions in the impugned Act with the provisions contained in
Sections 93 to 100, Bihar Tenancy Act, is instructive. When, under the Bihar Tenancy Act, a common manager is to be appointed, the co-sharer landlords are to be consulted, and, indeed, if they can agree, their choice of a common manager is to be res. petted, while they are to be at liberty to inspect the accounts of the common manager and take copies of them whenever they think it necessary or desirable to do so. There are, I believe, more or less 30,000 revenue-paying estates on the tauzi roll of the Collector of Muzaffarpur. We were informed that, so far, notifications have issued bringing no more than a dozen or so of there 30,000 estates under State management. Under Section 33 of the impugned Act, the Provincial Government may, at any time, relinquish the management of an estate or tenure. The conclusion is, to my mind, irresistible and is that the impugned Act is to be used as a device for making the estate of the plaintiff and the estates of the other substantial zamindars the vile corpus of a vast and hazardous experiment. If it is found that the estates can be successfully managed and made a source of revenue to the Provincial Government, other estates will gradually be taken charge of. If, on the other hand, the experiment proves a dismal failure, the estates will be restored to their owners, and the latter will be left to do what they can to rehabilitate themselves. Was the provincial Legislature competent to enact such a law? When this point was put to the learned Government Pleader, Mr. Lalnarayan Sinha relied on the word 'land' in item 21 in List II to the Government of India Act and on the decision of their Lordships of the Judicial Committee in *Megh Raj v. Allah Rakhia*[7], It is true that, in that case, their Lordships pointed out that the words "that is to say," which follow the word 'land' in Item 21, were not words of restriction, but rather words of explanation or illustration giving instances which may furnish a clue for particular matters. It is, I think, not without significance that, among the matters referred to in the item after the words "that is to say," are "the relation of landlord and tenant," "Court of Wards" and "encumbered and attached estates." The instances in which, hitherto, the State'or one of its officers or Courts has taken possession of private property and either managed it directly or arranged for its management will, I think, on examination, be found to come, quite naturally, under one or other

of these or other items in the legislative lists. When, hitherto, private property has been taken charge of by the State, the State has taken charge of it either in order to protect it for the owner or to prevent public disorder. In other words, it has acted in exercise of the police power, and not in exercise of the right of eminent domain. I have already referred to the events which led up to the enactment of the Chota Nagpur Encumbered Estates Act, and I may now refer to Section 93, Bihar Tenancy Apt which provides for the appointment of a common manager

> "when any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue, (a) inconvenience to the public, or (b) Injury to private rights."

The estate of the plaintiff is not, however, to be taken charge of either in order to protect it or to prevent public disorder. It is to be taken charge of in pursuance of a far reaching state policy, and it cannot even be said that raiyats, as a class, are to be benefited, although, of course, the raiyats of the plaintiff may be. It seems to me impossible to say that the subject matter of the enactment is "the relation of landlord
and tenant," still less, that it is "rights in or over land." When the attention of the learned Government Pleader was drawn to the latter words in item-21, Mr.Lalnarayan Sinha said that the right of the plaintiff to manage his property, to collect rent from his raiyats and to make a valid mortgage or lease were taken away by the impugned Act. These, however, are not, strictly speaking, rights in property, but are powers incident to ownership. One may speak loosely of a man's right to make a will, but, in the language of jurisprudence, this is not a right, but a power. The words "rights in or over land" occur in sub-section (5) and the words "rights in land" occur in sub-section (3) of Section 299, Government of India Act. There can, I think, be no doubt whatever that the draftsman used the words "rights in land" as connoting an interest or estate in land, and not a mere power incident to the right of ownership, and used the words "right over land" as connoting an easement, such as a right of way or some other incorporeal right. The learned Government Pleader did not himself rely either on the words "the relation of landlord and tenant" or on the words "rights in or over land," but on the word land" which is, of course, a word of wide import and on the decision of their Lordship of the Judicial Committee in *Megh Raj v. Allah Rakhia*[8], What, however, was really decided there was that mortgages of agricultural land, which were not specifically mentioned in any of the items in the legislative lists, might fairly be regarded as coming within the expression "land" in Item 21. Such transactions were so numerous and of such importance to the community that their Lordships took the view that it could not possibly have been the intention of the British Parliament that neither the Provincial Legislature nor the Central Legislature should be competent to enact such a law as was andal. longed by the plaintiff in that case, waless and until a notification under section 104, Government of India Act had been issued by the Governor-General. When, however, the same process of reasoning is applied to the present case, the conclusion to be arrived at is in my opinion, diametrically the opposite. It has to be remembered that the Constitution embodied in the Government of India Act, 1935, recognized the inviolability of private property including private property of all kinds in land. It is true that sub-section (3) of section 299 of the Act provided for the enactment of legislation extinguishing or abolishing vested rights in land, but use was made of a device which, over a period of more than a century, had been employed with success to control legislative bodies in the British Colonies, to prevent expropriation except on terms which, to put it at the lowest, were just and equitable. Is it to be supposed that, when the British Parliament took steps

to guard against expropriation without or with inadequate compensation, it impliedly assented to proprietors and tenure-holders being deprived of the enjoyment of their property and of a considerable part of the income derived from it over a period of two decades? The idea of taking over and managing the property of the plaint ff in the way in which it is to be managed under the impugned Act would, I feel quite sure, if it had ever occurred to the draftsman of the Government of India Act, have seemed to him as bizarre as the idea of the State taking over a score or so of the best managed coal mines in Great Britain and managing them at the owner's risk for a lengthy period in order to discover whether the nationalization of the coal mining industry was likely to be a feasible and profitable undertaking. I have no doubt that on 15th August 1947, when India became temporarily a Dominion of the British Commonwelth of Nations, the impugned Act could have been put on the statute book. But I have also no doubt that the subject-matter of the impugned Act is not to be
found in any of the items of the legislative lists and that in consequence, neither the Central nor the Provincial Legislature had jurisdiction over that subject-matter unless and until a notification had been issued by the Governor-General under Section 104, Government of India Act. Nor, in my opinion, has the Legislature of the State of Bihar jurisdiction to enact such a law now, as, under Art, 248 of the Constitution, residuary powers of legislation are vested in Parliament.

7. If I had been of opinion that the impugned Act was, at the time it was enacted, a valid law, I should, nevertheless, have been compelled to hold that, on the coming into force of the Constitution, it became void. The Act, it is quite clear, imposes restrictions of the most far-reaching and drastic kind on the power of proprietors and tenure-holders to deal with their property, and it cannot, I think, fairly be said that these restrictions are either "reasonable" or "imposed in the interests of the general public." These latter words are, of course, words of very wide import and, unlike the words "for public purposes," as they occur in clause (2) of Article 31, have not yet received a well settled judicial interpretation. If the object of the impugned Act had merely been to confer power on the executive to take over the management of estates and tenures in order to prevent waste or the disappearance of village papers or the like during some comparatively short interval, which was expected to elapse before the estates or tenures could be acquired permanently by the State, the Act might, possibly, have been supported. But it is impossible to support the Act, as it stands, even if one were prepared to construe the words "in the interests of the general public" as equivalent to "in pursuance of State policy," and such an interpretation is not, in my opinion, justifiable.

8. The learned Government Pleader is much too accomplished a lawyer and much too fair an advocate to have contended that, whatever view we might take as to the real nature of the impugned Act, the certificate granted by the President was an insuperable barrier in the way of the plaintiff. But among laymen, at least, it is commonly believed that any Act aiming, directly or indirectly and immediately or eventually, at the expropriation of proprietors and tenure-holders is non justiciable, meaning thereby, that the Courts are not entitled to consider, and, still less, to decide and say whether it is or not an unconstitutional law. Before the adoption of the Constitution, the legislatures in this and several other States had embarked on legislation which aimed at the extinguishment of the rights or most of the rights in land of proprietors and tenure-holders. In the absence of anything in the Constitution corresponding to sub-section (3) of Section 299, Government of India Act, clause (2) of Article 31 made such legislation void, and, therefore, in order to prevent its being declared void on this ground by the Courts, the Constituent Assembly provided that, on the production of a certificate by the President, the Court

should be bound to decline to enertain any such plea. There are written constitutions, such as those of France and Belgium, in which the Judges are not, or do not feel themselves, at liberty to disregard the Acts of the Legislature. The policy on which, in 1947, the State of Bihar and other States in the Union had embarked was a policy similar to that which had been carried through in several European countries during the third decade of the present century or later, namely, a policy which, in the name of agrarian reform, aimed at confining rights in land as the principal means of production to those who make a productive use of the land and expropriated with compensation, the adequacy of which was the subject of fierce controversy, all who derived from land an unearned income. If the intention of the Constituent Assembly had been to compel the Courts to obey any enactments passed by the Legislature in pursuance of that policy, it could and might, be expected to, have said so. Instead, it merely debarred the Courts from entering into the question of compensation or the propriety of the acquisition. I am not unmindful that the impugned Act was passed before the adoption of the Constitution, and may have been seen by the members, of the Constituent Assembly, or of the circumstance that it has been certified by the President. But I cannot infer from circumstances such as these that the intention of the Constituent Assembly was that the Courts should implicitly obey an Act of this kind. This, in my considered judgment, is not a measure of expropriation in which any question of compensation really arises, but a measure under which the plaintiff's rights in his property are to be subjected to unreasonable restrictions, and moreover, it is a law which the Provincial Legislature never bad jurisdiction to pass. In that view of the matter, this Court is at liberty, and, indeed, is bound, to pronounce it to be an unconstitutional law. For these reasons, I would decree the suit with costs, and would give the plaintiff the declaration and also the injunction for which he asks. As I have already said , the connected applications under Article 226 of the Constitution will be dismissed, but, in the circumstances, without costs. Sinha, J. - This suit and the miscellaneous judicial cases have been heard together, as they raise some common questions of law bearing on the interpretation of the Government of India Act of 1935, as amended by the India (Provisional Constitution) Order, 1947, and the Indian Constitution. The suit as well as the applications for issue of writs of mandamus or other writs are based upon the allegation that the impugned Act, namely, the Bihar State Management of Estates and Tenures Act (Bihar Act xXi [21] of 1949), is ultra vices of the Bihar Legislature, and, therefore, invalid and inoperative. The Act received the assent of the Governor-General on 29th September 1949, and was published in the Bihar Gazette on 17th October 1949. The plaintiff served a notice on the Government of Bihar under section 80, Civil Procedure Code challenging the validity of the Act. On 22nd December 1949, the suit was instituted in the Court of the Subordinate Judge of Darbhanga, and was numbered as Title suit No. 229 of 1949, against the Province of Bihar as it was called before the Constitution came into force. By an order of this Court, dated 11th April 1950, the suit was removed to this Court for trial, and was renumbered as Title Suit No. 3 of 1950. By an order of the Chief Justice, this Special Bench was constituted to hear this suit along with the other oases.

10. The plaintiff, the Maharajadhiraj of Darbhanga, made the following allegations in his plaint. The plaintiff is the owner of extensive landed properties, commonly and popularly known as "Raj Reyasat Darbhanga" which comprises a large number of estates and tenures situate in the districts of Darbhanga, Muzaffarpur, Monghyr, Purnea, Palamau and Bhagalpur in the Province of Bihar and also in some other province. He is also the mortgagee and lessee in. possession of certain estates in the districts of Gaya, Bhagalpur and Champaran. The total amount of annual average gross income from the estates and tenures in his possession in the Province of Bihar, besides his income from lands in his khas cultivation, is said to be about 48: lam of rupees. The

Legislature of Bihar passed: the Act aforesaid which received the assent of the Governor General. In pares. 3 to 9 of the plaint, the salient provisions of the Act are summarized. In Para.10 of the plaint, the plaintiff makes the submissions that, under the provisions of the Act, the Government of Bihar are free to take over the estates and tenures of the plaintiff under the management of the State, and to deprive him of his essential rights of ownership without payment of any compensation to him; that the plaintiff has little prospect of getting any income from his property; that thee plaintiff shall also be deprived, under the provisions of the Act, of his ordinary civil rights of getting redress in the civil Courts against any serious acts of mismanagement of the manager; that the Executive Government have been vested with powers to abandon, compound and compromise claims, pending in civil Courts; that the Act is expropriatory in its nature without making any provision for compensation; that, under the Act, the proprietor or the tenure-holder, though not disqualified by any reason, or under any specific provisions of the Act, has teen deprived of his legal rights incidental to ownership;. that the manager appointed under the Act is vested with many wide powers, and, in many respects, the jurisdiction of the civil Courts has been ousted; that the Executive Government have been vested by the Act with arbitrary and- unlimited powers to deduct cost of management and other expenses from the income of the owner of the property; that the Act does not mention any public purposes for which the management of the estates or tenures is proposed to be taken over; and that the Provincial Government have no right to take over management of the property of a proprietor or a tenure, holder. It is also stated that the proprietor or the tenure holder has been wrongfully deprived, under the provisions of the Act, of his power to mortgage or lease his property. It is also stated that, after the Act received the assent of the Governor-General, a cloud has been cast upon the title of the plaintiff in respect of his landed properties comprising estates and tenures; and that there is an imminent danger of the plaintiff's valuable rights of ownership being infringed and encroached upon by the Government of Bihar. In fact, the Provincial Government have issued a notification under section 3 of the Act in respect of a number of estates in the Province including estates and tenures of the plaintiff, which notification has been published in the extraordinary issue of the Bihar Gazette dated 26th November 1949. The plaintiff further submitted that the Act in question "virtually provides for acquisition of property and is thus a fraud upon the Constitution Act." The Mt is, therefore, ultra vires and the Provincial Government are incompetent to take charge of the plaintiff's properties, and the plaintiff is entitled to continue in possession and control of the properties without any interference by, or on behalf of, the Government. The plaintiff's cause of action is said to have arisen on 29th September 1919, when the Act received the assent of the Governor General, and on 17th October 1919, when it was published in the Bihar Gazette, within the jurisdiction of the Darbhanga Court. It is also alleged that the notice under Section 80, Civil P. C, was served on the Collector, Darbhanga, on 21st October 1919. The plaintiff sought the following reliefs; (1) a declaration that the Act in question is ultra vires of the Provincial Legislature, and is wholly void and inoperative, and that the Government of Bihar are not entitled to take over charge and control of any of the landed properties of the plaintiff; (2) that the plaintiff is entitled to be protected from apprehended action of the Government of Bihar; and (3) an order of injunction restraining the defendant and its officers or agents from taking any action under the provisions of the Act interfering with the possession and control of the plaintiff in respect of any of his landed properties.

11. A written statement was filed on behalf of the Province of Bihar, contending that the plaintiff had no cause of action or right to sue the defendant; that the suit as framed was not maintainable;

that the suit is barred by Sections 42 and 56 (d), Specific Relief Act.; that the notice under Section 80, Civil Procedure Code, was not a notice as required by the section; that the Province of Bihar not being a legal entity or a body corporate, the suit for a permanent injunction did not lie; that the statements contained in para.1 of the plaint were not admitted; and that the properties had neither been specified nor described in the plaint, and hence the suit could not proceed, In para.7 of the written statement, it was contended that the provisions of the Act summarized in paras.2 to 9 of the plaint were within the legislative competence of the Provincial Legislature, and that the defendant was entitled to act in accordance with those provisions. With regard to the allegations in para.10 of the plaint, the defendant submitted that the plaintiff continued to be the owner; that he had not been deprived of his essential rights of ownership, and, consequently, the question of payment of compensation did not arise; that, under the Act, the plaintiff's right of management had been "temporarily suspended"; that the jurisdiction of the Courts has been taken away by the legislature in exercise of the powers conferred under List it Item 22 of Schedule 7, Constitution Act of 1935; that the Act was not expropriatory, as no part of the income of the plaintiff can be appropriated by the defendant under the provisions of the Act; that the entire not income will be paid to the plaintiff; that, under the Act, the proprietor's right of dealing with the property had only been suspended during the period of management, and thus the question of deprivation of rights of dealing with the property of the proprietor did not arise; that the Executive Government have not been vested with arbitrary and unlimited powers in respect of costs of management and other incidental expenses; and that, finally in law, it is not necessary to mention public purpose in the Act itself. It is claimed on behalf of the defendant that it has every right to execute the law as enacted by the legislature. With regard to the allegations in Para ii of the plaint, it is stated that the Act has been enacted by the Provincial Legislature in proper exercise of its legislative powers, and that the defendant has every right to take possession of the property without compensation,

> "inasmuch as the act of management does not and cannot amount to acquisition within the meaning of Section 299 (2), Constitution Act."

It is denied, with reference to the statements in para12 of the plaint, that any cloud had been cast on the plaintiff's title as a result of the enactment in question, and that there is any danger of the plaintiff's valuable rights of ownership being infringed, or encroached upon by the defendant. In para11 it of the written statement, it is repeated that the Act does not provide for acquisition of property. In pare 12, it is denied that the Act is ultra vires and in operative to confer a right on the Government to take over the management of the plaintiff's estate; and that the plaintiff is entitled to remain in possession and control of his properties notwithstanding the provisions of the Act. It is emphasized that the impugned Act is intra vires of the Provincial Legislature, and that the provisions of Section 290 have not been contravened. And, finally, it is contended on behalf of the defendant that the prayer for permanent injunction is misconceived, as the Court had no power to issue an injunction against the Government "which is sovereign in its governmental acts."

12. On 6th February 1950, the learned Subordinate Judge framed the following issues:

> "1. Has the plaintiff any cause of action or right to Sue the defendant?
> 2. Is the suit as framed maintainable?

3. Is the suit barred by Sections 42 and 56 (d) Specific Relief Act?

4. Is the Bihar State Management of Estates and Tenures Act unconstitutional and ultra vires? If any provisions of the Act be unconstitutional, whether the same is severable?

5. Whether the provisions of the Act amount to acquisition or infringement of the right of ownership of the plaintiff?

6. Is the plaintiff entitled to the relief sought for?

7. To what relief, if any, is the plaintiff entitled?

13. During the pendency of the case before us an application for amendment of the plaint was made on the ground that during the pendency of the suit, the Constitution was adopted by the Constitutent Assembly, and came into force on 26th January 1950. Article 19 (1) (f) read with Article 13 (1) of the Constitution- it was contended on behalf of the plaintiff- showed that the impugned Act was void. The defendant also made an application for filing an additional written statement as a consequence of the Constitution coming into force. The following paragraph was sought to be added to the written statement:

> "Having regard to the fact that the the President of India by public notification dated the 11th March 1950, has certified that impugned Act shall not be called in question in any Court on the ground that it contravenes the provisions of clause (2) of Article 31 or has contravened the provisions of sub-section (2) of Section 299, Government of India Act, 1935, the suit is fit to be dismissed."

14. These amendments in the pleadings of the parties, being of a formal nature, were, by their consent, allowed.

15. The other applications were made by a number of proprietors or tenure-holders in the Province for "a writ in the nature of mandamus" or "a writ in the nature of quo warranto" and for information in the nature of quo warranto" or "a writ in the nature of error" and a rule calling upon the opposite party to show cause why they should not be restrained permanently from intermeddling with the petitioners' property. These applications were founded on the allegations that the petitioners were either proprietors of estates or were tenure- holders within the meaning of the impugned Act, which was in contravention of the provisions of the Government of India Act, 1935; that the provisions of the Act, which were summarized, were unconstitutional; and that the Provincial Government had published a notification in the official Gazette, taking over their property for a period of twenty years. They also submitted that the certification of the said Act by the President of the Indian Republic was void, and had not the effect of curing the illegality of the enactment.

16. During the hearing of the case, we informed the parties that we need not go elaborately into the question of the powers of this Court to grant any of the write prayed for in petitions before us, or the limitations on those powers, because, in our opinion, these cases also depended upon the result of the decision of the main question in controversy, namely, whether or not the impugned Act was intra vires of the Provincial Legislature. If the Court took the view that the Act was intra vires of the Provincial Legislature, certainly the petitioners would not be entitled to any relief. If, on the other hand, we took the view that the Act was ultra vires of the Provincial Legislature, the

Provincial Government, in accordance with the established practice, would not try to enforce the provisions of the statute which had been declared void by this Court, and that they would stay their hands until the matter was determined by the Supreme Court, in the event of an appeal from our decision. The learned Government Pleader, who argued the case on behalf of the State of Bihar and the learned Advocate General, who represented the State in some of the other miscellaneous judicial cases, also intimated to us that the State Government would, in the usual course, abide by the decision of this Court until and unless reviewed by the appellate Court. Hence, we did not hear arguments on the powers of this Court to issue any of the writs prayed for in the several applications which have been heard along with the suit. In either view, those applications would be dismissed, and costs would have to be adjusted according to the decision on the main issue before us.

17. Before embarking upon a discussion of the point bearing upon the validity of the Act, it is convenient at this stage to indicate, in brief outline, the nature, scope and purpose of the impugned Act which, as its title indicates, is "to provide for the State management of estates and tenures in the Province of Bihar." The preamble to the Act simply states that "it is expedient to provide for the State management . . . .." Section 3 empowers the Provincial Government, by a notification, to declare that the estates or tenures of a proprietor or a tenure-holder, specified in the notification, shall be placed under the management of the Provincial Government. On such a notification being issued, the estate or tenure is to be deemed to have been placed under the management of the Provincial Government with effect from the date of the commencement of management" which has been defined in the defining Section 2 as

> "the date immediately following the date of the expirations of the period of one month from the date of the publication of such notification in the official Gazettee."

By way of illustration, the following notification issued in respect of the plaintiff's estate may be quoted:

"THE BIHAR GAZETTE (Extraordinary) 25th November1949.

NOTIFICATION.
The 18th November, 1949.

No. 2299.-L.R / Act-60-49-L.R. In exercise of the powers conferred by sub-section (1) of Section 3 of the Bihar State Management of Estates and Tenures Act 1949 (Bihar Act 21 of 1949), the Governor of Bihar is pleased to declare that the estates described in First Schedule and the tenures described in the Second Schedule hereto annexed belonging to proprietor tenure-holder named in the respective schedule shall be placed under the management of the Provincial Government for a period of 20 years and the management of such estates and tenures shall vest in Mr. A. J. Khan, Additional Collector, Darbhanga.

FIRST SCHEDULE.

Name of the Proprietor	**Name of the Districts.**	**Name of the estate, if any**	**Tauzi No. estate.**

Maharajadhiraj Sir Kameshwar Singh Bahadur	Darbhanga.	Darbhanga Raj.	6424

The other definitions of Section 2 are more or less, on the same lines as the definition of those terms in the Tenancy Acts. The consequences of placing an estate or a tenure under the management of the Provincial Government are laid down in Section 4. It is better to quote the necessary portions of the section as follows:

> "(a) the proprietor or tenure-holder shall cease to have any power of management of his estates or tenure;
> (b) subject to the provisions Sections 7, 8, 9, 10, 11 and 12, the Manager shall take charge of such estates or tenures together with such buildings, papers and other properties appertaining to the estates or tenures, as in the opinion of the Manager are essential for the proper management of the estates or tenures ....;

the proprietor or tenure-holder shall be incompetent to mortgage or lease the estates or tenures or any portion thereof or to grant valid receipts for the rents and profits arising or accruing therefrom including arrears of rents and profits .... ;

> (c) all rents and profits arising or accruing from the estates or tenures including arrears of 'rents and profits which were payable to the proprietor or tenure- holder in respect of such estates or tenures on the date of the commencement of management shall be payable to the Manager....;
> Explanation : -For the purposes of clauses (c) and (d), the expression 'arrears of rents' shall include arrears in respect of which suits were pending on the date of the commencement of management or in respect of which decrees whether having the effect of a rent decree or money decree were obtained before the date of the commencement of management and have not been satisfied and are not barred by limitation, and shall also include the costs allowed by such decrees and costs, if any, incurred in the execution of such decrees.
> (e) all hunts and proceedings which may be pending at the date of the commencement of management in any Court in respect of any debts or liabilities of the proprietor or tenure-holder the payment of which is secured by the mortgage of, or is a charge on, the estates or tenures or any portion thereof shall be barred ; and all processes and executions for attachment and sale of such estates or tenures .... shall become null and void ;

(f) the estates or tenures shall not be liable for attachment or sale under processes of any Court except for or in respect of debts due, or liabilities incurred to the Crown."

Sections 8 to 11 deal with subsisting leases of mines or minerals and the appointment of a Mines Tribunal. Section 12 provides for compensation for premature termination of any lease of mines or minerals, and provides for the machinery for determining it. Section 18 empowers the Manager to remove mortgagee, lessees or other persons in possession of any estate or tenure, management of which is vested in him, from possession of the property, and enjoins any such person in possession to give up possession of the estate or tenure to the Manager together with all documents, papers and registers that may be in his possession, Under Section 14, any such person as is dispossessed under the provisions of Section 13 and every creditor holding a mortgage or charge on any estate or tenure placed under the management of the Provincial Government is required to notify his claim in writing to the Manager. In default of notification by the creditor or mortgagee of his claim to the Manager within the prescribed time, the claim shall be barred. Under Section 16, the Manager is constituted the authority to determine the principal amount of such claims and interest, if any, due, and the Manager has been vested with wide powers to scale down the principal or the interest or both. An appeal is provided by Section 27 from an order passed by the Manager, and the order of the Manager or of the appellate Court, in the event of an appeal, has been declared to be final, and such orders are not to be questioned in any Court. Section 18 provides for the preparation of a scheme for liquidation of debts and liabilities of a proprietor or a tenure-holder after they have been determined by the Manager or by the appellate authority, as aforesaid. The him has to be sanctioned, and such claim may be revised and, subsequently, modified, if so thought necessary, by the Provincial Government. Section 24 renders all arrears of rent payable to the Manager recoverable as a public demand. Section 25 lays down the priorities in the manner of disbursement of moneys collected by the Manager, in the following order: (1) payment of Government revenue and cesses and other public demands or rents payable to the superior landlord and all dues of the Crown; (2) payment of all chaukidari taxes, municipal taxes and any other public demand; (3) payment of costs of management and supervision; (4) payment of allowance to the proprietor or tenure- holder at the end of each quarter of the year at rates not exceeding 20 per cent. of the moneys received by the manager; (6) maintenance of buildings in proper state of repairs; (6) payment of costs of irrigation works for the benefit of the tenantry; (7) liquidation of debts and liabilities of the proprietor or tenure-holder; (8) payment of any incidental and unforseen charges connected with the management including the cost of litigation and the amount of compensation referred to in Section 12; and (9) the liquidation of any debts or liabilities of the proprietor or tenure-holder other than those mentioned in item (7). After meeting all these liabilities, if any surplus remains, it shall be paid to the proprietor or tenure-holder at the end of each financial year, subject, of course, to such deductions as may be prescribed. Section 26 empowers the manager to raise loans on the security of the estate under his management in the interest of the proprietor or the tenure-holder and subject to his previous concurrence. Section 29 entitles a proprietor or a tenure-holder to inspect the audited accounts at the end of every year, that is to say, if the accounts have not been audited within the year, he has no rights of inspection of accounts during that year. Sections 30 and 31 bar the jurisdiction of the civil Courts to entertain any suits or proceedings in certain cases. The other provisions of the impugned Act are merely incidental to the general scheme of the Act already indicated.

18. It will thus be seen that there is no provision in the impugned Act for transference of title, either permanently or for a short period, from a proprietor or a tenure-holder, whose property is dealt with by the Act, to the Province or State of Bihar. What is done under the provisions of Section 3 of the Act, is to place the property under the management of the Provincial Government, so long as the notification remains in force. The Provincial Government does not take any benefit out of the property thus placed in its management; nor does it have the use and occupation of the property for any declared public purpose. It was admitted on behalf of of the Government that the provisions of the impugned Act were not meant, either directly or indirectly, to augment revenues of the Government. After the notification under Section 3 of the Act, the proprietor or tenure-holder ceases to have any power of management in respect of his property which vests in the manager. The proprietor or the tenure-holder, as the case may be, even after the vesting of the management in the Provincial Government through the manager, continues to have the power to sell or to make a gift or to exchange or to enter into any other kind of transaction involving an out and out transfer of the property. He is only debarred for the time bring during the period of management from mortgaging or leasing his property or any portion thereof. As a result of the vesting of the management in the manager, a proprietor's or tenure-holder's right of management in all lands in his khas possession, whether homestead or containing buildings, or culturable areas or mines, is not affected. The manager has also been vested with the right to remove mortgagees and lessees from possession of the property, management of which has been vested in the manager as a result of the notification under the Act. All suits and proceedings against property thus vested in the manager by way of enforcing a mortgage or a charge on the property shall be barred, but not proceedings against the person of the holder of the estate or tenure. Hence, the personal liability of a proprietor or tenure holder continues. He may thus be sent to civil prison for non-payment of his debt, though, as a result of the operation of the Act, he may have been deprived of the means to pay his debts. The impugned Act, in terms, speaks of compensation only in Section 12 when any lease of mines or minerals is terminated by the manager. The Act does not make any reference to compensation in cases other than those covered by Section 12, which makes provision for compensation and for determining the amount of compensation. Owners of property like proprietors or tenure-holders or mortgagees and lessees removed from possession under the provisions of the Act, in terms, are not to get any compensation but have to wait for their turn in accordance with the priority of payment laid down in Section 25, as aforesaid. If, due to mismanagement or other reasons, the manager is able to make collections which are just sufficient to meet the charges enumerated in the first three clauses of sub-sections (1) of Section 25, neither the owner of the property nor the encumbrances will get anything so long as collections do not improve. Suits and proceedings on behalf of or against the person whose property has been taken charge of by the manager may be instituted or continued in the name of the manager as representing the proprietor or the tenure-holder concerned, and not as representing the State. Under Section 33, the Government has been empowered to relinquish management of property taken under its management at any time, even before the lapse of the period notified in the notification under Section 3, referred to above. Hence, the idea behind the provisions of the Act appears to be, as contended on behalf of the plaintiff by Mr. P. R. Das, to make an experiment with some of the best- managed estates in the Province, and to collect experience and data with a vie w to the ultimate acquisition of the property by the Government as contemplated in the Ac; which was popularly known as the abolition of Zamindari Act.

19. It will also appear that the Act is based upon, and is analogous to, the provisions of the Chota

Nagpur Encumbered Estates Act (Governor-General's Act, VI [6] of 1876) This Act was passed with a view to safeguarding the interest of a holder of immovable property in Chota Nagpur who may be suffering under a disability, being a minor, or of unsound mind, or an idiot, or of a person who is on the verge of bankruptcy, whose property is under attachment or a proclamation of sale. This Act, apparently, was intended to apply to a special class of people who were, or had proved themselves to be, incapable of properly managing their affairs, and on whose behalf the Government intervened to manage the property through a Manager. But the impugned Act goes much further than the Chota Nagpur Encumbered Estates Act in so far as it does not make any such distinction. For ought we know, the plaintiff's estate in the present case may be one of the best managed estates, and certainly is not in any danger of being sold in execution of any decree, or of being mismanaged as a result of "wasteful extravagance likely to dissipate his property". It was suggested at the Bar on behalf of the plaintiff that his estate is much better managed than it can possibly be by a Deputy Magistrate or any other functionary discharging the duties of manager under the Act. The impugned Act does not make any pretence to a better management of the property than it is under the care and management of the proprietor or tenure-holder directly. It contemplates a maximum allowance of twenty per cent. of gross collections to the proprietor or tenure holder, in the first instance. The Act does not, in terms, contemplate that the estate or tenure taken over by the Government would be managed more efficiently by the manager under the Act. Certainly, it is very difficult to believe that a stranger to the property will be able to manage it better than a normal person who is the owner of the same. Hence, the suggestion made on behalf of the plaintiff in the suit that the impugned Act is not for the benefit of the State, or of the general public, or of the owner of the property, is not wholly unfounded. The Encumbered Estates Act grants complete immunity not only of the property but also of the person of the holder of the property from all processes, executions and attachments for, or in respect of, his debts and liabilities. As already pointed out, the impugned At does not grant that immunity, apparently because, unlike the Encumbered Estates Act, it does not debar the owner of the property from making an out and out transfer of the property. Unlike the impugned Act, the Encumbered Estates Act completely disables a holder of the property for the time being from alienating or encumbering his property in any way, or from entering into say contract, which may involve him in pecuniary liability. It would thus appear that the provisions of the impugned Act, unlike those of the Chota Nagpur Encumbered Estates Act, are not intended for the benefit of the individual owners or holders of property.

20. Having thus reviewed the scheme, purpose and provisions of the impugned Act, the most important question arising for decision in this case is whether the Act is within the legislative competence of the Provincial Legislature. The Act was enacted, and came into force when the Government of India Act, 1935, as amended by the India (Provisional Constitution) Order, 1247, was still in force. The power must, therefore, be found in Section 100 read with Lists II and III in Schedule VII of that Act. Pointed reference was made to Item 21 in List II, (Provincial Legislative List) of sch. vii. Item 21 is in these terms:

> "Land, that is to say, eights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove."

It was also argued that this Item 21 may have to be read along with Item 9 of the same List which relates to "compulsory acquisition of lend". In the pleadings of the parties the position taken by the plaintiff was that the impugned Act had the effect of acquisition of land without making any provision for compensation and without the acquisition being intended for a public purpose. On the other hand, the case on behalf of the Government as disclosed in the written statement is that it was not an acquisition, and that, therefore, the question of compensation was wholly irrelevant. According to the written statement, the impugned Act had only the effect of 'temporarily suspending" the plaintiff's right of management and his right of dealing with the property.

21. In this connection, the question naturally was mooted at great length whether the impugned Act could come within the purview of item 9 relating to "compulsory acquisition of land". This item must be read in the light of the provisions of the Land Acquisition Act (Governor General's Act 1 of 1894) which was in force at the time the Government of India Act, 1935, was enacted by the British Parliament. This Act deals with permanent acquisition of land as also with temporary occupation of waste and arable land. The Land Acquisition Act laid down

> "the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition">."

Throughout the Act, the insistence on acquisition, either permanent or temporary, for public purpose" is emphasised. Section 4, Land Acquisition Act, lays down the rule as regards notification in the Official Gazette of the fact that the Provincial Government was satisfied that a particular piece of land was needed, or was likely to be needed, for any public purpose. Section 6 lays down the necessity for a declaration to the effect that the Provincial Government was satisfied that any particular land was needed for a public purpose, or for a Company, subject to the proviso that the declaration shall not be made unless compensation out of the funds of the Company, or out of the public revenues, has been ensured. But such a declaration that the land is needed for a public purpose, or for a Company, as the case may be, shall be treated as conclusive evidence of such a purpose (S 6 (3)). Section 35, Land Acquisition Act, lays down that, after the Provincial Government has been satisfied "that the temporary occupation and use of any waste or arable land are needed' for any public purpose, or for a Company" the Government may

> "direct the Collector to procure the occupation and use of the same for such term as it shall think fit, no">: exceeding three years from the commencement of such occupation."

Section 40 (1) (b) of the Act again insists on the Provincial Government being satisfied that the acquisition for the Company is "likely to prove useful to the public." The rest of the Act lays down the machinery and the procedure for determining the compensation to be made on account of the acquisition, whether permanent or temporary. Hence, it is permissible to infer that Parliament, when it laid down Item 9 of List 11 dealing with compulsory acquisition of land,, meant it in the same sense in which the Land Acquisition Act aforesaid had uses the expression "acquisition". That it is permissible to do so is clear from the following observations of Lord' Dunedin in the case of *Attorney-General v. De Keyser's Royal Hotel*[9],

> "Now, just as the statutes must be interpreted in views of what the rights and practices antecedent to them had been, so we must look at the Defense of Realm Act its view of the

law as it stood previous to its passing">."

It is absolutely necessary, with reference to the provisions of the Land Acquisition Act, that acquisition of property, either temporary or permanent, must be for a public purpose, and must provide for compensation to the person deprived of his property, either temporarily or permanently. The plaintiff would characterize. the impugned Act as an instance of an attempt by Government to acquire the plaintiff's property, or a certain right in property, without its being meant for a public purpose, and without making any provision for compensation to the party whose property has been so dealt with by the statute. Mr. Das, on behalf of the plaintiff, made repeated references to the provisions of Section 299, Government of India Act, which is in these terms:

> "(1) No person shall be deprived of his property in British Julia save by authority of law.
> (2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorizing the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, of in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.
> (3) No Bill or amendment making provision for the transference to public
> ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature withoutprevious sanction of the Governor General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.
> (4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.
> (5) In this section 'land' includes immovable property of every kind and any rights in or over such property, and 'undertaking' includes part of an undertaking."

22. Mr. P. R. Das's contention is that the plaintiff has been deprived of a very valuable right in property, namely, the right of managing the property as well as he can, and of dealing with his property, without the authority of law which, according to his contention, to be presently dealt with, means "the laws of the land". In this connection, ha made reference to the following passage in Blackstone's Commentaries on the Laws of England by Dr. Herbert Broom, vol. 1, pp. 163-64:

> "The third absolute right, inherent in every Englishman, is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land The Laws of England are, therefore, in point of honor and justice, extremely watchful in ascertaining and protecting this right. Upon this principle the great charter has declared that no freeman shall be disseized, or divested, of his freehold or of his liberties, or free customs, but by the judgment of his peers, or by

> the law of the land. And by a variety of ancient statutes it is enacted, that no man's lands or goods shall be seized into the king's hands, against the great charter, and the law of the land ."

His argument further was that the Land Acquisition Act of 1831 and the other statutes relating to the subject of acquisition, which it replaced, were all in consonance with the laws of England, and specifically provided that such acquisition must be for a public purpose, or a purpose analogous to that, and only upon compensation being made to the party deprived of his property, either temporarily or permanently. Mr. Das's contention further is that "law" within the meaning of sub-section (1) of Section 259, quoted above, can never mean law of a confiscatory nature like the impugned Act applicable to a limited class of persons, but law applicable generally to all citizens of the State, so that the impugned Act, which discriminated against a particular class of persons, and intended to deprive them of their valuable rights in property, is not what is intended by sub-section (1). In this connection, Mr. P.R. Das drew our pointed attention to the following observations in Cooley's Constitutional Limitations, Eighth Edition, Vol. II, p. 737:

> "The words 'by the law of the land', as used in the Constitution, do not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the Constitution into mere nonsense."

In this connection, Mr. Das also referred to the classical words in the submission of Mr. Webster in the Dartmouth College case, 4 U. S. S. C. R. L. Ed. 629 :

> "By the law of the land is most clearly intended the general law ; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land."

23. Sub-section (1) of Section 299, Government of India Act, 1935, though expressed in a negative form, is a positive guarantee of a citizen's right to property, and, to that extent, is a restraint on the power of the State or Government. The positive aspect of the matter is: how far S. no of the Act read with the Lists in Schedule VII confers a right on the legislature to enact a legislation like the impugned Act. If the impugned Act comes within the purview of item 9 of List II of Schedule VII, it is certainly within the legislative competence of the Provincial Legislature. Though Mr. P. R. Das, for the plaintiff, would bring it within the terms of Item 9 of List 11, he would, at the same time, argue that, as it was not justified by the terms of either sub-section (t) or sub-section (2) of Section 299, the Provincial Legislature had acted beyond their competence. On the other hand, the learned Government Pleader,. appearing on behalf of the Government, would bring it within the purview of Item 21, quoted above, standing by itself, or, if necessary, read along with Item 9 of the same List as also items 4, 8, 9 and 10 of List III, part I. The Government Pleader further contended that the opening word "land" in Item 21 must be taken in its widest significance. He relied particularly on the following observations of Lord Wright in the case of *Megh Raj v. Allah Rakhia*[10],

> "... ..Item 21 is part of a constitution and would on ordinary principles, receive the widest construction, unless for some reason it is cut down either by the terms of Item 21 itself or by other parts of the constitution, which has to be read as a whole. 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 of land' must include general rights like full ownership or leasehold or all such rights. 'Bights 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 "

The learned Government Pleader also relied upon the decision of their Lordships of the Judicial Committee in the case of *Jagannath Buksh. Singh v. United Provinces*[11], in which the United Provinces Tenancy Act of 1939 was sought to be declared null and void on the ground that the Provincial Legislature had exceeded its legislative competence. In that case, their Lordships accepted the preamble as clearly stating the
general scope of the Act, namely,

> "to consolidate and amend the law relating to agricultural tenancies and other matters connected therewith."

Their Lordships held that the Provincial Legislature had the necessary power to enact the impugned Act by virtue of Item 21. set out above. The following observations of their Lordships in the course of their judgment indicate the real position vis a vis the impugned statute in that case:

> "The appellant relies on certain express provisions of the Government of India Act. Thus he relies on. Section 299 of the Act, which provides that no person shall be deprived of his property in British India save by authority of law, and that neither the Federal nor a Provincial Legislature shall have power to make any law authorizing the compulsory acquisition of land for public purposes save on the basis of providing for the payment of compensation. But in the present case there is no question of confiscatory legislation. To regulate the relations of landlord and tenant and thereby diminish rights, hitherto exercised by the landlord in connexion with his land, is different from compulsory acquisition of the land."

24. As already pointed out, the impugned Act is a mixture of restraints on the power of alienation of land by a proprietor or a tenure- holder, a suspension of his rights of management, without acquisition of any rights by the government to be exercised for the benefit of the public or for the benefit of any particular section of the public. I will presently show that the pith and substance of the Act in question is of acquisition of any rights in property by the government. Hence, it is difficult to bring this legislation within the purview of the power conferred on the Provincial Legislature by Item 9 of List II, whether it is covered by the power contained in item 21 is another question. As pointed out by their Lordships in the case of *Megh Raj v. Allah Rakhia*[12], the words "that is to Bay" following the opening word 'land" in item 21 are not words of

limitation but of explanation or illustration of the wide meaning which the legislature intended to give to that keyword "land." The explanatory words following the key-word in item 21 may cover most of the provisions of the impugned Act in so far as it deals with collection of rents, transfer or alienation of land, or makes provisions analogous to those of the Encumbered Estates Act, as discussed above. The pith and substance of the impugned Act is to deprive proprietors and tenure-holders of their valuable right to manage their property, irrespective of whether they are "disqualified" persons by reason of minority, or unsoundness of mind, or sex, or other physical defects, or infirmities, rendering them incapable of managing their own property. In other words, even though the provisions of the Court of Wards Act (Bengal Act 9 of 1879), or of the Chota Nagpur Encumbered Estates Act, referred to above, do not justify the taking over of management of property by Government, or an official appointed by Government, owners of property are to be deprived of their right to manage their property, or to dispose of their property to their best advantage. Such wide powers are not, in my opinion, within the contemplation of Item 21 of List II of Schedule 7, Government of India Alt, 1935, as amended.

25. Mr. P. R. Das, on behalf of the plaintiff, laid great stress on the decision of the Australian Court in the case of the *Minister of State for the Army v. Dalziel*[13], In that case, the question arose whether the taking of possession by the Commonwealth for an indefinite period, of the exclusive possession of a certain leasehold interest belonging to the respondent amounted to an acquisition of property within the meaning of Section 51 of the Constitution. During the last Great war, in 1912, the Commonwealth took possession of the respondent's land for the purpose of occupation by the Army authorities. The relevant words of the statute in question were:

> "the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws".

In that case, it was not a point at issue whether the occupation of the property by the Army authorities was for a public) purpose. On the face of it, it would be so. What was in dispute in the case was the question whether temporary occupation of the property, that is to say, for the duration of the War and six months later, could come within the purview of the words "acquisition of property", so as to make it obligatory on the State to make compensation on 'just terms". The learned Chief Justice was of the opinion that it was not. The other four learned Judges were of the contrary opinion. The reasons of the learned Chief Justice for his opinion may be stated thus in his own words:

> "In the present case the Commonwealth has not acquired any interest of any kind in the land. It has not acquired any interest either from the owner of the fee simple or from the tenant. The possession of the Commonwealth may, I think, properly be described as that of a licensee whose rights are defined by the Regulations." (page 282).

The decision of the majority may be summed up in the words of Rich J. as follows:

> "The meaning of property in such a connection must be determined upon general principles of jurisprudence, not by the artificial refinements of any particular legal system or by reference to Sheppar's Touchstone. The language used is perfectly general. It says

> the acquisition of property. It is not restricted to acquisition by particular methods or of particular types of interests, or to particular types of property. It extends to any acquisition of any interest in any property. It authorizes such acquisition, but it expressly imposes two conditions on every such acquisition. It must be upon just terms, and it must be for a purpose in respect of which the Parliament has power to make laws. . . . . Property, in relation to land, is a bundle of rights exercisable with respect to the land. The tenant of an unencumbered estate in fee simple in possession has the largest possible bundle. But there is nothing in the placitum to suggest that the legislature was intended to be at liberty to free itself from the restrictive provisions of the placitum by taking care to seize something short of the whole bundle owned by the person wham it was
> expropriating : "It would, in my opinion, be wholly inconsistent with the language of the placitum to hold that, whilst preventing the legislature from authorizing the acquisition of a citizen's full title except upon just terms, it leaves it open to the legislature to seize possession and enjoy the full fruits of possession, indefinitely, on any terms it chooses, or upon no terms at all. In the case now before us, the Minister has seized and taken away from Dalziel everything that made his weekly tenancy worth having and has loft him with the empty husk of tenancy." (pages 285-86).

It will be noticed that the occupation of property in that case was unquestionably for a public purpose, and the order taking possession was coupled with the direction for giving compensation on certain terms. The only controversy before the Court in that case was whether the taking of property was "acquisition" and whether the terms offered were "just terms", as required by the Constitution. No claim was made in that case on behalf of the Government that they could take possession of the property without any compensation, The real controversy was whether the taking of possession was acquisition within the meaning of the Constitution, so as to make it obligatory on the State to make compensation on "just terms". Hence, in my opinion, the facts of the case in the Australian Court were materially different from the facts before us. In the case before us, it was not claimed on behalf of the Government, in the first instance, that it was a case of acquisition of property for a public purpose. The learned Government Pleader rested his case on the submission that the impugned Act only authorized Government to take possession of a citizen's property within the meaning of Article 31 (2) of the Constitution. A The decision of the House of Lords in the case of *Attorney-General v. De Dayser's Royal Hotel*[14], already referred to, is very instructive on the question of Government's right to take possession of a citizen's property, or to acquire property belonging to an individual, during the exigencies of war. In that case, their Lordships ruled that the Crown is not entitled, either by virtue of its prerogative or under any statute, to take possession of the property of a subject for purposes related to the Defense of the realm without paying compensation for its use and occupation. In that case their Lordships had before them precedents from original records of acquisition of a citizen's property, either permanently or for a temporary purpose, during the exigencies of war, or disturbance of public tranquility, during the course of centuries. Their Lordships found that not a single instance could be pointed out on behalf of the Government, showing that property had been acquired permanently, or occupied temporarily, without compensation being made either by private negotiation or by assessment through the machinery provided by the statute. After reviewing the precedents, Lord Dunedin summarized them in these words:

> "file first period contained instances of the acquired of private property for the purposes of Defense by private negotiation, in all of which, it being a matter of negotiation, there is reference to the payment to be offered for the land taken. With the second period we begin the series of statutes which authorize the taking of lands, and make provision for the assessment of compensation, the statutes being, however, of a local and not of a general character, dealing each with the particular lands proposed to be acquired. The third period begins with
> the introduction of general statutes not directed to the acquisition of particular lands, and again making provision for the assessment and payment of compensation." (Page 524).

Lord Atkinson, in the course of his speech, after referring in great detail to the provisions of the statute under which the property in question had been taken possession of, made the following observations, which are quite pertinent to the point now in controversy before us:

> "There is nothing in the statute to suggest that the liability to pay is to be affected or taken away by the Regulations which may be issued, and if the Regulations purported to do that I doubt if they would not, having regard to the wording of sub-section (2), be ultra vires. Neither the public safety nor the Defense of the realm requires that the Crown should be relieved of a legal liability to pay for the property it takes from one of its subjects. The recognized rule for the construction of statutes is that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation." (page 542).

Lord Parmoor, in the course of his speech, has pointed out the difficulty of drawing a distinction between a permanent acquisition and temporary occupation on the question of compensation and has observed as follows:

> "It is further noticeable that the prerogative right claimed is limited to an entry upon, or to taking temporary possession of, or to the temporary occupation and use of the land, of any subject without payment of compensation. It is not claimed that it can be extended to a case of disseisin. Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown. It is not easy to see what the distinction is between disseisin and an indefinite use and occupation which may extend beyond the estate of any particular owner. The later statute law gives the same claim to compensation to the subject in either case" (p, 569).

Tae noble Lord has further explained, in the following words, the reasons why the statute law made provision for compensation:

> "Statutes which provide rent or compensation as a condition to the right of the Executive to take over the temporary possession of lands or buildings on the occasion of public exigency come, in my opinion, within the category of statutes made for the advancement

> of justice and to prevent injury and wrong. This is in accord with the well-established principle that, unless no other interpretation is possible, justice requires that statutes should not be construed to enable the land of a particular individual to be confiscated without payment. I am further of opinion that where a matter has been directly regulated by statute there is necessary implication that the statutory regulation must be obeyed, and that as far as such regulation is inconsistent with the claim of a Royal Prerogative right, such right can no longer be enforced (p. 576)."

27. I have made these extensive quotations from the decision of the House of Lords to show the course the law has taken in England since early until the enactment of the law similar to the Land Acquisition Act in India, referred to above. The Statute law in England has followed the well-established rule of the common law that a citizen shall not be deprived, either temporarily or permanently, of his property without due compensation being made, and only for the purpose of serving the interest of the community as a whole, and not merely for enabling the Government to follow a particular policy. Hence, under the British common law as crystallised later in statute law, for example, the Act of 1842 (5 and 6 Victoria, Chap. 94), the notion of acquisition or occupation of private property by Government is inextricably interwoven with the two prerequisites of public purpose and making of compensation to the party deprived. In English law, as I know it, one cannot think of acquisition or occupation of a citizen's property by, or on behalf of, the Government for purpose other than a public purpose and without making due compensation in the shape of money as the equivalent of the property taken. The Regulations of the Bengal Code and the Land Acquisition Act, which displaced them, all were based on the British notion of acquisition, as indicated above, and insisted that property of a citizen could be taken possession of or acquired by the Government only for a public purpose and after making due compensation in accordance with well-established principles, besides the statutory solatium as an additional compensation for compulsory acquisition. Hence, when Item 9 of List It of Schedule 7 speaks of "compulsory acquisition of land," it covers the whole field of land acquisition as dealt with by the Land Acquisition Act, referred to above. Sub-section 4 of Section 299, in my opinion, has particular reference to the Land Acquisition Act when it provides that "nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act." For these reasons, in my opinion, when Mr. P.R. Das, for the plaintiff, contended that the impugned Act aimed at acquisition of property without making any compensation and without paying any regard to the question of public purpose, he meant really to say that the impugned Act did not come within the purview of Item 9, referred to above. The learned Government Pleader perhaps realising his difficulties did not primarily rely upon the power of the Provincial Legislature as contained in item 9 aforesaid but relied upon Item 21. But I have already pointed out that the effect of the impugned legislation goes beyond the legislative competence of the Provincial Legislature, in so far as the Government purported to take over management of property of persons who could not, come within the purview of disqualified proprietors within the meaning of Section 6, Court of Wards Act, or of the provisions of the Chota Nagpur Encumbered Estates Act, because the reference to the several constituent parts of Item 21 must be in the context of the existing statute law. The provisions of item 21 of List II do not include the powers to take over management of property of such persons as do not come within any of the disabilities imposed by the Court of Wards Act or the Chhota Nagpur Encumbered Estates Act, as indicated above. My considered opinion, therefore, is that the impugned Act is beyond the powers of the Provincial Legislature as contained in the

Government of India Act of 1935, as amended in 1947 as a result of the Indian Independence Act.

28. I will now examine the position on the assumption that I am wrong in my opinion, that the impugned Act is beyond the competence of the Bihar Legislature with reference to, item 21 read by itself or read in conjunction with item 9 of List II of Schedule VII. If the Bihar Legislature has been empowered by those provisions to make law of the kind under discussion, the next question naturally arises whether the power aforesaid is not subject to the restraint on power contained in Section 299 of the Government of India Act of 1935. As already indicated, sub-s, (1) of Section 299 is a general guarantee of the right of property vested in a citizen of British India. In this connection, reference may be made to the Report of the Joint Parliamentary Committee, Para. 369:

> "We think that some general provision should be inserted in the Constitution Act, safeguarding private property against expropriation, in order to quiet doubts which have been aroused in recent years by certain Indian utterances. It is obviously difficult to frame any general provision with this object without unduly restricting the powers of the Legislature in relation particularly to taxation; in fact, much the same difficulties would be presented as those which we have discussed above in relation to fundamental rights, we do not attempt to define with precision the scope of the provision we have in mind, the drafting of which will require careful consideration for the reasons we have indicated; but we think that it should secure that legislation expropriating, or authorising the expropriation of, the property of particular individuals should be lawful only if confined to expropriation for public purposes and if compensation is determined, either in, the first instance or on appeal, by some independent authority. General legislation, on the other hand, the effect of which would be to transfer to public ownership some particular class of property, or to extinguish, or modify the rights of individuals in it, ought we think, to require the previous sanction of the Governor- General or Governor (as the case may be) to its introduction; and in that event he should be directed by his Instrument of Instructions to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation."

29. It is permissible to refer to the Joint Select Committee Report in this connection: vide the observations of Sir Maurice Gwyer C. J. in *In re Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation*[15] and of Jayakar J. in the same case at p. 107. It would thus appear that Section 299, Government of India Act, was enacted for the first time in Indian constitutional law for safeguarding private property against expropriation. Sub-section (2) of Section 299 elaborates and indicates the limitations to the general provisions in sub-section (1). It lays down that the legislature may make any law authorising the compulsory acquisition for public purposes of any land. etc.,subject to the condition that the law makes provision for payment of compensation for the property acquired either by fixing the amount of compensation or by laying down the principles on which the compensation shall be determined, and the machinery for doing so. Sub-section (3) does not come into the present controversy, because, in my opinion, it does not enlarge the powers of the legislature but only provides an additional

barrier against introduction of expropriatory legislation. Hence, that sub-section need not detain us. I have already indicated that sub-section (4) in meant to have exiting law like the Land Acquisition Act intact. Subsection (6) only defines "land" for the purposes of this section, and gives a wide legal significance to it.

30. It is noteworthy that sub-section (2) of Section 299 assumes that the compulsory acquisition is for public purposes. The only condition precedent prescribed for such acquisition is provision for payment of compensation. Hence, it is not accurate to say that there are two conditions attaching to a compulsory acquisition of land, namely, (1) that it should be for public purposes, and (2) that there should be provision for compensation. The words of sub-section (2), in my opinion do not justify the construction that public purpose is a condition of the acquisition, rather it is inherent in the very notion of acquisition.

31. Is the impugned Act an instance of the exercise by the Provincial Legislature of its "'power to make any law authorizing the compulsory acquisition for public purposes of any land" within the meaning of sub-section (2)? The term "public purpose" has not been defined, and is not capable of an exact definition, and the relevant authority and the Court have got to determine in each particular case whether a particular taking of property is for such a purpose. In this connection, reference was made at the Bar to the decision of their Lordship of the Privy Council in the case of *Hamabai Framjee v. Secretary of State*[16], In this case, the Government had, in terms of a lease and a sanad, the right to resume possession of the land granted, if they desired to use it for a public purpose, of course, subject to giving notice and paying compensation. In pursuance of that provision in the document, Government gave notice of their intention to resume possession with the object of using the land for providing residences to officials. It was argued on behalf of the grantees that public purpose in taking the land should be construed as making the land available to the public at large. Their Lordships of the Judicial Committee repelled that contention, and adopted the language of Batchelor J. that:

> "The phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

Their Lordships further pointed out that, in order to determine whether a particular purpose was a public purpose, the Government are good judges; but they are not absolute judges. Mr. P.R. Das, for the plaintiff, made repeated references to certain observations in Cooley's Constitutional Limitations, Vol. II, Chap. XV, relating to the law of "eminent domain" in order to emphasize that land can be acquired only for public purposes. The author has quoted the following observations at P. 1110 from a decision of an American Court:

> "'Eminent domain' is a right inherent in all sovereignties, and is defined as the right of the nation or the State, or those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership or possession of such property for such use upon paying the owner due compensation to be ascertained according to law."

He also relied upon the following observations of the author at P. 1124:

> "The definition given of the right of eminent domain implies that the purpose for which it may be exercised must not be a mere private purpose; and it is conceded on all hands that the legislature has no power, in any case, to take the property of one individual and pass it over to another without reference to some use to which it is to be applied for the public benefit. 'The right of eminent domain', it has been said, "does not imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation, where the public interest will be in no way promoted by such transfer."

32. Mr. P.R. Das for the plaintiff, contended that the impugned Act does not, in terms, say that the legislation was for a particular public purpose, and that, even construing the provisions of the Act as a whole, there is no indication that it was for a public purpose. On the other hand, the learned Government Pleader contended that it was for a public purpose. He further contended that, though the Act was not in exercise of the State's right of eminent domain as understood in America, or of police powers, it was in pursuance of a policy of the Government to substitute management of estates and tenures by private persons by management of public officers with a view to eliminating conflict between landlords and tenants. He drew our attention to a number of recent legislations to show that the policy of the Government was to grant larger rights to tenants, who cultivate the soil, to reduce, the opportunity of landlords to harass their tenants, and to provide for greater security to tenants in the enjoyment of their lands. He made specific reference to the Bihar Tenancy (Amendment) Act (XIII [13] of 1946), the Bihar Tenancy (Second Amendment) Act (XIV [14] of Ale), the Bihar Bakasht Disputes Settlement Act (XIII [13] of 1947), the Bihar Tenancy (Amendment) Act (XXIII [23] of 1917), the Bihar Privileged Persons Home. stead Tenancy Act (IX [9] of 1948) and the Bihar Private Forest's act (IV [4] of 1948). He contended that the policy lying behind all these Acts would be worked out more effectively if the big estates, to which the impugned Act has been applied in the first instance, came directly under the control and management of the Government through their officers. In my opinion, this argument proceeds upon a confusion between a public purpose and public policy. Public policy in relation to an enactment is a matter entirely for the Government and the legislature to decide, with which the Courts have no concern. But whether a particular piece of legislation is for a public purpose is a matter which is not beyond scrutiny by the Courts, though the Government may be good judges of whether a particular legislation was for a public purpose. The Government Pleader went to the length of contending that there is a strong presumption in favour of the Act being for a public purpose. He did not cite any direct authority in support of this far-reaching contention. He read certain passages from Cooley's Constitutional Limitation, vol. II, pages 1026-33 and 1141-45 as also from Willoughby's Constitution of the United States, vol. III, pages 1875-80 in support of his contention that there is a very strong presumption in favour of the constitutionality of an Act of a legislature which has got plenary powers of legislation in respect of certain specified matters. He also contended that that strong presumption is not rebutted simply by showing that the exact purpose of the impugned Act doss not clearly appear front the provisions of the Act. But, in my opinion, all those observations have no application b the present controversy, inasmuch as they were made with reference to taxing statutes. Taxation is the special power of Government which raises taxes through the legislature, apparently for the purposes of the State. Naturally, in such a legislation, the public purposes being apparent, the party challenging th3 law must clearly make out the invalidity alleged. Mr. P.R. Das, on the other hand, pointed out the difference between a legislation in exercise of the State's power of eminent

domain and that in exercise of its power to levy taxes. He referred to the following observations in Cooley's Constitutional Limitations, vol. II, pages 1119-20:

> "The right to appropriate private property to public uses lies dormant in the State, until legislative action is had pointing out the occasions, the modes, conditions and agencies for its appropriations. Private property can, only be taken pursuant to law: but a legislative Act declaring the necessity, being the customary mode in which that fact is determined, must be held to be for this purpose the law of the land', and no further finding or adjudication can be essential, unless the constitution of the State has expressly required it. When, however, action is had for this purpose, there must be kept In view that general as well as reasonable just rule, that whenever in pursuance of law the property of an individual is to be divested by proceedings against his will, a strict compliance must be had with all the provisions of law which are made for his protection and benefit, or the proceeding will be ineffectual. Those provisions must be regarded as in the nature of conditions precedent, which are not only to be observed and complied with before the right of the property owner is disturbed, but the party claiming authority under the adverse proceeding must show affirmatively such compliance."

If the legislature had said that the impugned Act was for a particular public purpose. or clearly indicated by its provisions that it was meant to be so, prime facie, it would have been taken to be for a public purpose. But the Act read as a whole does not give any such indication. The provision in Section 25 (1) (f), which gives the sixth priority out of the gross collections of the estate to the payment of costs of irrigation works for the benefit of the tenant, in my opinion, only emphasizes the preexisting obligation of the landlord to keep the irrigation works in an efficient state. It is not the key to the legislation, nor could it be said to be the underlying idea behind the Act. I am, therefore, of opinion that the impugned Act, even it was an acquisition of land within the meaning' of Item 9 of List II of Schedule VII, Government of India Act of 1935, was not for a public purpose within the meaning of sub-section (2) of Section 299 of the Act. The impugned Act is, therefore, void on this ground also.

33. Assuming that the impugned Act has the effect of acquisition of property for public purposes, does it satisfy the condition precedent, that is to say, does it "provide for the payment of compensation for the property acquired?" It was argued on behalf of the plaintiff that no compensation is provided for by the statute. The Government Pleader, on the other hand, contended that compensation had been provided for, and he referred to the provisions of Section 25 of the Act, particularly the fourth item providing for the payment of allowance to the owner of the property, and to sub-section (2) of Section 25 which speaks of the payment of the surplus, if any, to the owner of the property at the end of each financial year, subject, though it is, to certain deductions by the Manager. The learned Government Pleader argued, though rather half-heartedly, that, though the payment of the allowance, or of the surplus, is not made compulsory under the Act, and is made dependent upon so many contingencies, still those payments may be justly characterized as compensation. In my opinion, this argument on behalf of the Government is not well-founded, In the first instance, in their written statement, the Government had not claimed that it is acquisition of property that has been effected by the impugned Act, and, therefore, no question of compensation could arise on that pleading secondly, the owner's income

from the property, in a very attenuated form, may be paid to the owner of the property, if the other items of expenditure, which have a higher priority, as indicated in s, 25, have been fully met. Here, I may point out that the whole scheme of the Act has been conceived in such a way as completely to shut out the idea of acquisition of property by Government. It was not a part of the Government's case that the impugned legislation aimed at acquisition of property on payment of compensation. Hence, this argument on behalf of the Government by the learned Government Pleader is against the pleadings. There is no provision in the impugned Act even professing to compensate the owner of property dealt with by the Act. The State undertakes no liability to the owner, even as it takes no benefit for itself, as a result of taking over property. If the provisions of the Land Acquisition Act, which is the existing law on the subject, and which must be looked to for guidance with reference to the law of acquisition of property by the State, were appealed to, the irresistible conclusion would be that no compensation was contemplated by the impugned Act. It must, therefore, be held that, properly speaking, there is no provision in the Act for making compensation to the owner of the property acquired. As result of all these considerations, it must be held that the restraint on power laid down in Section 299, Government of India Act of 1935, stands in the way of the impugned Act being valid. The position, therefore, is that, before the coming into effect of the Constitution on 26th January 1950, the impugned Act was not a valid law; it was ultra vires of the Provincial Legislature.

34. Now, let us turn to a discussion of the position as it has emerged after the Constitution came into force. Mr. P.R. Das for the plaintiff, contended that Article 13 (1) read with Article 19 (I) (f) renders the impugned Act completely void,. even assuming that it was valid before the Constitution came into force. Article 13 (1) is in these, terms:

> "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void."

Article 19 (1) (f) provides that

> "all citizens shall have the right ... (I) to acquire, hold, and dispose of property..."

Both these Articles are contained in Part III dealing with "Fundamental Rights." Mr. Das further contended that Article 31 is an elaboration of Article 19 (1) (f) subject to the words of limitation contained in the other clause of Article 31. Article 31 is in these terms:

> "(1) No person shall be deprived of his property save by authority of law.
> (2) No property, moveable or immovable, including' any interest, in or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provide: for compensation for the property taken possession of or acquired 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.
> (3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President,

has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect -

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make -

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise with respect to property declared by law to be evacuee property.

"(6) Any law of the state enacted not more than eighteen months before the commencement of this constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any Court on the ground that it contravenes the provisions of Clause (2) of this article or has contravened the provisions of sub-section (2) of Section 299, Government of India Act, 1935."

It will be noticed that Clause (1) of Article 31 is practically in the same terms as Clause (1) of Section 299, Government of India Act, 1935. Similar is the ease with Clause (2) of Article 31, except for the addition of taking "possession" before "acquisition", and of "movable" before "immovable", so that, whereas sub-section (2) of Section 299 referred to acquisition of only immovable property, Clause (2) of Article 31 speaks not only of that but also of taking possession of movable and immovable property. This amendment, by way of addition of certain words, as aforesaid, in my opinion, bas been rendered necessary because of the addition or "requisitioning" to "acquisition" both in Item 33 of List I and Item 36 of List II of Schedule VII to the Constitution. It was suggested at the Bar that this addition of requisitioning to the Items of Schedule VII and of taking possession in clause (2) of Article 31 was made as a result of the decision of a single Judge of the Bombay High Court in the case of *Tan Bug Taim v. Collector of Bombay*[17], in which he held that the power of requisition was not included within the specific power of acquisition in the Government of India Act of 1935. However that may be, it is, to my mind, clear 'that the addition of taking "possession" to the power of acquisition vested in Government by Article 31 is consequential upon the addition of "requisition" to the Items aforesaid of Schedule VII of the Constitution. The learned Government Pleader, as already indicated, relied most emphatically on the power of the state to take "possession of property". But taking "possession", under Article 31 of the Constitution, has reference obviously to the power of "requisition" added to the Items of the two Lists in Schedule 7 of the Constitution. But can it be said that the impugned Act has in contemplation requisitioning of property ? All the arguments against holding that the Act empowered acquisition of property apply with greater force to this argument of the Government Pleader. No state of emergency is declared to have

existed to justify such a scheme of general requisitioning of property.

35. It is manifest that, if I am right in coming to the conclusion that the impugned Act was ultra vires of the Provincial Legislature under the Constitution Act of 1935, the same consideration must apply to the new Constitution which came into force on 26th January 1950, subject, of course, to the certification clause, namely, Clause (6) of Article 31 of the Constitution. It was argued on behalf of the Government that, since after the coming into force of the Constitution, the Courts are debarred, by virtue of the provisions of Clause (6) of Article 31, from going into the question of the validity of the impugned Act; as it comes within the purview of Part 1 of Clause (6), as the Act was enacted in October 1949; and was certified by the President on 11th March 1950. The certificate is in these terms :

> 'Whereas the law of the State of Bihar known as the Bihar State Management of Estates and Tenures Act 1949, being Bihar Act 21 of 1949, enacted not more than 18 months before the commencement of the Constitution of India has, within three months of such commencement, been submitted to the president for his certification;

Now, therefore, in exercise of the powers conferred by Clause (6) of Article 31, Constitution of India, I, Rajendra Prasad, hereby certify that the said Act shall not be called in question in any Court on the ground that it contravenes the provisions of Clause (2) of the said Article or has contravened the provisions of sub-section (2) of Section 299, Government of India Act, 1935.Rajendra Prasad, President." The argument of the learned Government Pleader is that, as the certificate prevents the investigation by the Courts of the validity or otherwise of the Act, the Court is not competent to go behind the Act, and pronounce upon its validity. The argument further was that the very purpose of the certification as contemplated in Clause (6) of Article 31 is to cure any illegality that there may be in the Act, and such an illegality, if any, must be there from its very inception. If this Court were to go into the question of the validity of the Act, the argument further is, it will be rendering Clause (6) aforesaid wholly nugatory.

36. Mr. P.R Das, for the plaintiff, answered this contention of the learned Government
Pleader by pointing out that the certification by the President is not, and could not have been, in absolute terms, that is to say, the president has not certified that the impugned Act shall not be called in question on any ground. The certification by the president, the argument is, even if valid, applies to the limited ground, namely, the contravention of the provisions of Clause (2) of Article 31, or the corresponding provisions of sub-section (2) of Section 299, Government of India Act, 1935. Mr. Das further argued that the very fact that the field of certification by the President has been limited by the Constitution makes it clear that it is open to the Court to go into the question whether the President has or has not exceeded the power given to him by the Constitution. Mr. Das argued that it is not a case of the Constitution vesting the President with unlimited power of certification which would have the effect of making it non-justice able.
37. Mr. Das argued that, so far as the suit was concerned, it had been instituted, as already indicated, on 22nd December 1949, before the Constitution came into effect. He contended that the rights of the plaintiff claimed in the suit could not be affected by the Constitution, and, therefore, the certification by the President was of no avail, so far as the present plaintiff is concerned. He made reference to the decisions in the *Midland Ry. Co. v. Annie Pye*[18], and *Moon v. Durden*[19], *Knight v. Lee*[20], *Young v. Adams*[21], *Smithies v. National Association of Operative*

Plasterers[22], *Henshall v. Porter*[23], and other oases. In my opinion, there is no substance in this contention raised on behalf of the plaintiff. Clause (6) itself, in terms, makes it clear that the clause not only applies to the state of affairs at the date of the coming into effect of the constitution but also anterior to that, when Section 299, Government of India Act, was still in force. Furthermore, a Court must have jurisdiction throughout the proceedings until termination of those proceedings by the judgment of the Court. If the Court had jurisdiction to go into the question at the date of the institution of the suit, the jurisdiction will continue until something has happened to take away that jurisdiction. In the present case, the coming into effect of the Constitution has brought into operation Article 31, Clause (6). If this clause has the effect of taking away the pre-existing jurisdiction of the Court to go into that matter, the Court will cease to have jurisdiction to render judgment.

38. But there are other more effective answers to the contention raised on behalf of the Government based on the provisions of clause (6) of Article 31 of the Constitution. The opening words of the clause are "Any law of the State". They are not "Any Act passed by the State". Hence, in order to attract the operation of the clause, the first essential condition is that it must be a valid law of the State. In other words, the certification by the President may cure an irregularity or an illegality in some details of the law in a valid piece of legislation; but it cannot cure a nullity. If the impugned Act was a nullity, the certification by the President could not give life to something which was void ab initio, and a law which is void ab initio is something which was never in existence-see in this connection the following observations of the Supreme Court of America in the case of *Norton v. Snelby County*[24],

> "An unconstitutional Act is not a law; it confers no rights; it imposes no duties; it andfiords no protection; it creates no office; it is, in legal contemplation, as in- operative as though it had never been passed."

The powers conferred by the Constitution on the State of Bihar to legislate are, for the purposes of the present ease, practically the same as those conferred by the Government of India Act of 1935. But the learned Government Pleader wanted to take advantage of the new words which speak of taking "possession". He contended that, though the impugned Act may not have as its objective the acquisition of property, it certainly had the objective of taking possession of estates and tenures. But taking possession occurs in Article 31 (2) which does not contain the power of the State Legislature but is a restraint on that power. The power is contained in the Items in List If, of Schedule VII which, but for the addition of the word "requisition", is in the same terms as in the previous list under the Government of Effie, Act of 1935 "Requisition", as I understand the word, implies the taking of temporary possession of private property by the State for its own purposes of State, like the Defense of the realm, etc., in time of emergency, e. g., war or disturbance of internal peace by revolt or insurrection. We are familiar with the examples of exercise of this power during the last World War, in the shape of the Defense of India Act and Rules framed thereunder, as also the many Orders passed by the Provincial Government. Certainly the term "requisition" cannot apply to the impugned Act, if the term "acquisition" cannot apply to it. Hence, all the considerations, already referred to in relation to the Government of India Act of 1935, apply with equal force to the position as it is now, except for the certification by the President. Now, as already pointed out, the impugned Act is not a law of the State, if it was void ab initio. The conclusion, therefore. is that the certification by the President is

meant to cure an irregularity or an illegality in a certain provision of an Act, which is otherwise good law, but is not meant to cure a nullity. I put the question directly to the learned Government pleader whether he claimed that by virtue of certification by the President under Clause (6) of Article 31 not only the defect of not making a provision for compensation would be cured but also absence of public purpose, and he answered that the certification by the President would cure only the illegality in the matter of compensation, and not the inherent defect of absence of public purpose. Mr. P. R. Das, on the other hand, contended that the certification by the President could cure, if at all, only a defect in the matter of determination of compensation but not a complete want of compensation, because, according to him, the complete absence of compensation would go to the root of the matter, and render the Act a nullity.

39. Mr. Das further contended that the contravention of Clause (1) of Article 31 of the Constitution is not covered by the President's certification. But that clause only lays down the general guarantee of rights to private property, and adds a rider "save by authority of law". Mr. Das's contention has already been noticed that "law" here means not the impugned Act but general law. "Law" in clause (1) of Article 31,as already indicated, must mean valid law. Mr. Das also contended that the impugned Act nullifies a general guarantee of right to property contained in Article 19 (1) (t), and, therefore, is void, as laid down in Article 13 (1) of the Constitution. It was argued on behalf of the Government that Article 31 is in the nature of an exception to the general rule laid down in Article 19 (1) (f). Article 31 cannot be read as an exception to the fundamental rights as declared in Article 19 (1) (f). But certainly the two articles have got to be read together in order to give full effect to the intention of the Constituent Assembly. Article 31 is as much a part of the fundamental rights contained in Part In of the Constitution as Article 19; but, whereas Article 19 comes under "Right to Freedom," Article 31 comes under "Right to Property." Hence, according to the well-established rule of interpretation, where the same statute makes general provisions in respect of a particular subject-matter, and makes specific provisions with respect to special category, the latter must prevail over the general. It is also well settled that different provisions of the same statute, which are apparently inconsistent with each other, should be so construed as to give effect to all the provisions, so as to avoid a repugnancy. Applying these general rules to the provisions of Part III relating to "Fundamental Rights,' containing both Articles 19 and 31, the position appears to be that a citizen may be deprived of his property by the State either taking possession of it or acquiring it for public purposes, if provision is made for making compensation to the person deprived of his property, or for determining the amount of compensation according to certain prescribed rules. But then intervenes clause (6) of Article 31 providing for certification by the President. The terms of the President's certificate have been quoted above. Ac already pointed out those terms are not wide enough to cover each and every contravention of the Constitution but only of clause (2) of Article 31. Hence, if the impugned Act is inconsistent with Article 19 (1) (f), it must be held to be invalid notwithstanding the certification by the President Mr. Das rightly contended that Articles 19 (1) and 31 (1), being in the nature of declaration of guaranteed rights, should not be frittered away unless the words of the statute make it absolutely necessary to do so. He referred in this connection to the following observations of their Lordships of the Judicial Committee of the Privy Council in the case of *James v. Commonwealth of Australia*[25],

> "It is the declaration of a guaranteed right; it would be worthless if the Commonwealth was completely immune and could disregard it by legislative or executive Act. It is

> difficult, if not impossible, to conceive that any one drafting a statute, especially an organic statute like the Constitution, would have written out Section 92 in its present form, if what was intended was a constitutional guarantee limited to the States but ineffective so far as regards the Commonwealth."

In that case their Lordships of the Judicial Committee were considering the validity of a Commonwealth legislation laying down regulations restricting inter-State trade with reference to Section 92, Commonwealth of Australia Constitution Act, 1900, which provides that trade, commerce and intercourse among the States shall be absolutely free. Their Lordships held that that declaration of guaranteed right of absolutely free trade bound not only the States but the Parliament of the Commonwealth of Australia also.

40. It was further argued by the learned Government Pleader that the guarantee of the right of private property contained in sub-clause (f) of clause (1) of Article 19 of the Constitution is subject to the exceptions contemplated in clause (5) of the same
Article, which is in these terms:

> "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as It imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the Interests of the general public or for the protection of the interests of any Scheduled Tribe."

But can it be said that the provisions of the impugned Act impose "reasonable restrictions" on those guaranteed rights? The restrictions imposed by the impugned Act on the right of private property cannot be said to be reasonable, inasmuch as they leave the owner of the property practically without any rights during the period of State management without conferring any corresponding benefits upon him. Another essential ingredient in sub-clause (5) is that the restrictions should be in the interests of the general public or for the protection of the interests of any Scheduled Tribe. The impugned Act does not pretend that it is for the protection of the interests of any Scheduled Tribe. But are the restrictions in the interests of the general public? I have already discussed, at some length, the question whether the impugned Act was intended for a public purpose, and come to the conclusion that it was not so intended. If I am right in that conclusion, it is manifest that the restrictions cannot be said to be in the interests of the general public. Hence, the provisions of clause (5) of Article 19 do not save the impugned Act from being invalid under the general provisions in Article 19 (1) (f).

41. Mr. Das also argued that the certification by the President was a "fraud on power," and made reference to certain passages in Farwell on powers. But, in the view I have already indicated of the effect of the certification by the President, it is not necessary to consider that extreme argument of Mr. Das. I have already held that the certification by the President has not the effect of saving the impugned Act from invalidity, because it was void ab initio both before and after the coming into force of the Constitution. In this view, it is also not necessary to consider the argument of the learned Government Pleader that, if the Act is invalid in certain parts, it could be valid in others. I have already indicated that the whole scheme and purpose of the Act are

vitiated, because the Provincial Legislature acted beyond its legislative competence. In the words of Lord Atkin in the case of *Attorney-General for British Columbia v. Attorney-General for Canada*[26], "the whole texture of the Act is inextricably interwoven," so that it will serve no useful purpose to separate the valid from the invalid.

42. For the reasons given above, I would decree the suit with costs. The declaration and the permanent injunction prayed for are granted. The applications in the several miscellaneous judicial cases will be dismissed but without costs, without going into the question whether the petitioners, or any of them were entitled to any of the writs prayed for.

Das, J.

43. I have had the privilege of discussion with, and the advantage of reading the judgments prepared by my learned brethren, Shearer and Sinha JJ. In a case of so great constitutional importance, it is, for me, a matter of some satisfaction that I have reached the same final conclusion as they have reached, though on somewhat different grounds. The facts having been fully stated by them, I can plunge "in medias res" and proceed at once to the reasons for my conclusions without any prefatory or introductory statement of facts or pleadings.

44. The impugned legislation in this case is the Bihar State Management of Estates and Tenures Act 1949 (Bihar Act 21 of 1949), to be hereinafter referred to as the impugned Act. This Act received the assent of the Governor- General on 29th September 1949, which assent was first published in the Bihar Gazette, Extraordinary, of 17th October 1949.

45. In Title suit No. 3 of 1950, a notification, purporting to be in exercise of the powers conferred by sub-section (1) of Section 3 of the impugned Act, was made on 18th November 1949 and published in the Bihar Gazette, Extra-ordinary, of 25th November 1949. This notification purported to say that the estate, known as the Darbhanga Raj Estate, of which the plaintiff is admittedly the proprietor, was placed under the management of the Provincial Government for a period of twenty years, and the management was to vest in one Mr. A. J. Khan, Additional Collector of Darbanga Similar notifications were issued in respect of other estates or tenures, which are the subject-matter of the miscellaneous cases heard along with the title suit.

46. On the coming into force of the Constitution of India on 26th January 1950, referred to in the Constitution as the commencement of the Constitution, the impugned Act was certified by the President of India in exercise of the powers conferred by clause (6) of Article 31 of the Constitution of India. This certificate was published in notification No. 43/3/50.Judicial, dated 11th March 1950. The certificate repeats the words of clause (6) of Article 31, and states

> "that the said Act (meaning the impugned Act) shall not be called in question in any Court on the ground that it contravenes the provisions of clause (2) of Article 31, or has contravened the provisions of sub-section (2) of Section 299, Government of India Act, 1935."

47. It is now necessary to refer to some of the provisions of the impugned Act in order to get an idea of its nature, scheme and purpose. The Act is described as "an Act to provide for the State

management of estates and tenures in the Province of Bihar", and the preamble merely states that it is expedient to provide for such management. No other indication is given in the preamble as to the purpose of the impugned Act. Section 2 gives the definition of certain terms or expressions used in the impugned Act. One such expression is 'date of the commencement of management". This expression means in relation to any estate or tenure specified in a notification under sub-section (1) of Section 3 the date immediately following the date of the expiration of the period of one month from the date of the publication of such notification in the official Gazette. Section 3 is important, particularly sub-sections (1) and (2). I must read those sub-sections in full:

> "2. (1) The Provincial Government may, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, shall be placed under the management of the Provincial Government, and on the publication of the said notification, the e3titte3 or tenures of such proprietor or tenure-holder shall, so long as the notification remains in force, be deemed to have been placed under the management of the Provincial Government with effect from the date of the commencement of management.
> (2) The notification under sub-section (1) shall-
> (a) specify such particulars of the estates or tenures as may be prescribed ; (b) specify the period for which the estates or tenures dash be placed under the management of the Provincial Government, and (c) vest the management of such estates or tenures in a person who shall be an officer not below the rank of a Deputy Collector (here in after called the Manager)."

The important thing to note about these two sub-sections is that while sub-section (1) states that the estate or tenure shall be deemed to have been under the management of the Provincial Government with effect from the date of the commencement of management, sub-section (2) (c) vests the management of the estate or tenure in a person who shall be an officer not below the rank of a Deputy Collector, to be called the Manager, who will

> "stand responsible in law for fidelity in the discharge of the entire duties of management disposal, realisition and restoration, with regard to the estate under his care" vide *Hukum Chand v. Ran Bahadur Singh*[27]."

48. Section 4 enumerates the consequences of the placing of an estate or tenure under the management of the Provincial Government in six clauses, numbered (a) to (f;the important of these consequences are:(a) the proprietor or tenure-holder shall cease to have any power of management of his estate or tenure ; (b) subject to certain other provisions, the manager shall take charge of such estates or tenures to together with such buildings, papers and other properties appertaining to the estates or tenures as in the opinion of the manager are essential for the proper management of the estates or tenures; (c) the proprietor or tenure-holder shall be incompetent to mortgage or lease the estates or tenures or any portion thereof or to grant valid receipts for the rents and profits arising or accruing there from including arrears of rent and profits which were payable to the proprietor or tenure-holder in respect of the estates or tenures on the date of the commencement of management; (d) all rents and profits arising or accruing from the estates or

tenures including arrears of rents and profits shall he payable to the manager, and the manager shall, upon receiving such rents and profits be competent to grant valid receipts therefore which shall operate as full discharge of dues mentioned in such receipts ; (e) all suits and proceedings which may be pending at the date of the commencement of management in any Court in respect of any debts or liabilities of the proprietors or tenure-holders the payment of which is secured by the mortgage of, or is a charge on, the estates or tenures or any portion thereof, shall be barred ; and all processes and executions for attachment and sale of such estates or tenures or any portion thereof etc., for, or in respect of, any debt or liability of the
proprietor or tenure-holder, whether the payment of such debt or liability is or is not secured by the mortgage of, or is a charge on, such estates or tenures or any portion thereof shall become null and void ; and (f) the estates or tenures shall not he liable for attachment or sale under processes of any Court except for or in respect of debts due, or liabilities incurred, to the Crown. It would appear from the provisions of Section 4 summarized above that certain very important rights of, and incidental to ownership are taken away, e. g., the right to hold and manage the property, the right to mortgage or lease the property (the right to cell or make a gift is apparently not affected) and the right to receive rents and profits, etc. Furthermore, certain liabilities on the estate in the shape of a mortgage or a charge, and other debts and rights arising therefrom in persons other than the proprietor or tenure-holder, are put an end to at least, partially, if not in full.

49. Chapter in of the impugned Act contains special provisions regarding trust estates or tenures, homesteads, lands used for agricultural and horticultural purposes and certain buildings comprised in estates or tenures, which the manager is not authorised to take charge of.

50. Chapter IV gives the manager power to order. the removal of mortgagees and lessees in possession of any estate or tenure. Chapter V provides for the filing of claims by secured creditors and other persons in possession of the estate or tenure, determination of liabilities and preparation of a scheme for their liquidation. Chapter VI deals with filing of claims by creditors other than secured creditors. Chapter VII contains only one section which affords protection from sale for arrears of Government revenue.

51. Chapter viii deals with the management, and some of the provisions in this Chapter must be read in full. Section 22 states that every manager shall manage the property committed to him diligently and faithfully and shall, in every respect, act to the best of his judgment. Section 23 states, inter alia, that every manager shall continue liable to account to the Provincial Government, after he has ceased to be manager, for his receipts and disbursements during the period of his management. Section 25 is important: it shows how the monies received by the manager in respect of the estates or tenures shall be applied, and for what purposes. The scheme of the section is that certain purposes, nine in number, for which the monies received by the Manager can be applied, are mentioned in a particular order. that order gives a priority list which cannot be changed unless the Provincial Government specially otherwise directs. First in the order of priority comes the payment of Government revenue and all ceases and other public demands etc ; second is the payment of chaukidari taxes, municipal taxes, etc ; third is the payment of costs of management and supervision, the rates of such costs to be fixed by rules made under the Act ; fourth is the payment of a quarterly allowance to the proprietor or tenure-holder, the rate of allowance not exceeding twenty per cent of the monies received by the manager, to be fixed by rules made for estates or tenures falling within different income groups;

fifth is the maintenance of buildings in a proper state of repairs; sixth is the payment of costs of irrigation works for the benefit of the tenantry of such estates or tenures at such rates as may be fixed by rules ; seventh is the liquidation of debts and liabilities in accordance with a scheme approved by the Provincial Government; eighth is the payment of incidental and unforeseen charges; and ninth is the liquidation of debts or liabilities other than those mentioned in clause 7. After all the aforesaid disbursements have been made in the order of priority mentioned above any surplus remaining shall be paid to the proprietor or tenure-holder at the end of each financial year. The manager is given power to deduct from the surplus any sum which he may consider necessary to retain as a working balance for the management of the estate or tenure. Section 26 gives the manager power to contract loans on the security of the estate or tenure.

52. Chapter IX provides for an appeal against orders of the manager, and the appeal is to be heard by such authority as may be empowered by the Provincial Government. It is stated that the decision of the appellate authority shall be final and shell not be questioned in any Court.

53. Chapter X provides for the constitution of an Advisory Committee and its functions.

54. Chapter XI seems to bar the jurisdiction of Courts, and states that the declaration of the Provincial Government under sub-section (a) of Section 3 and the order of the manager under sub-section (1) of Section 13 or where an appeal had been preferred, the order of the appellate authority shall not be questioned in any Court and it shall not be lawful for any Court to pass any order or do anything which may in any way interfere or have the effect of interfering with such management by the Provincial Government. Chapter XII deals with suits and appeals by and against a proprietor or tenure-holder during the management of the estate or tenure by the Provincial Government, and Chap. XIII gives the Provincial Government power to relinquish management at any time.

55. In Chap. XIV, Section 34 gives the power to appoint a new Manager, and Section 37 provides for delegation of powers. Chapter XV deals with the power to make rules, and Chap, XVI deals with penalties and amendments.

56. I had failed to notice that Section 29 in Chap. X gives the proprietor or tenureholder a right to inspect the audited accounts of his estate or tenure once a year or cause the same to be inspected at the end of every year. The proprietor or tenureholder has no remedy if the accounts are not audited, and the right to inspect the audited accounts may be rendered illusory if the accounts are not audited every year. If the proprietor or tenure-holder discovers any irregularity or defect in maintaining the accounts or in managing the estates or tenures, he may bring the matter to the notice of the Provincial Government through the Advisory Committee. It is then left to the Provincial Government to take such action as it thinks fit, and the action of the Provincial Government shall not be questioned in any civil Court.

57. The above is a brief summary of the important provisions of the impugned Act in so far as they show its nature, scheme and purpose. The constitutional questions argued before us have a close connection with, and are dependant upon, the nature, scheme and purpose of the impugned Act. These constitutional questions may be thus formulated at this stage; (1) Whether the impugned Act was within the legislative competence of the authority making it; (2) whether the impugned Act was hit by the restrictive provisions in Section 299, Government of India Act,

1935; (3) whether the impugned Act is inconsistent with any of the provisions in Part III of the Constitution of India, dealing with Fundamental Rights, and therefore, void to the extent of such inconsistency under Article 13 (1) of the Constitution; (4) what is the legal effect of the certificate given by the President under clause (6) of Article 31 of the Constitution; and (5) if some of the provisions only are inconsistent with any Fundamental Rights, can the inconsistent provisions be severed from the rest of the impugned Act? The arguments advanced before us for, and against, the impugned Act may be said to fall under the five general questions formulated above, though there are many subsidiary points or topics under each question which will be stated and dealt with at the appropriate stage. The issues framed in the suit, though differently worded, raise in substance the same five questions. In formulating the constitutional questions, I have not been unmindful of the necessity of keeping scrupulously within the domain appropriate to judicial action, and the principle that the Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied", *Ashwander v. Tennessee Valley Authority*[28],

58. For convenience of discussion, I shall take each general question separately and deal with all the topics arising thereunder, and thereafter give my answer to the question. Such an arrangement will, I venture to think, avoid tautology or overlapping, and give point, consistency and logical sequence to the discussion.

59. I proceed now to consider the first question. At the time of the enactment of the impugned Act, the constitution charter was the Government of India Act, 1935, as amended up to that date and as modified, adapted or varied by the Indian Independence Act of 1947, and the India (Provisional Constitution) Order, 1947. The question of legislative competence of the Bihar Legislature which made the impugned Act has, therefore, to be considered with reference to the provisions of the Government of India Act, 1935. Mr. Lalnarain Sinha appearing for the State of Bihar, has addressed us as to the way in which such a question has to be approached. So far back as 1878, in the celebrated case of *Queen v. Burah*[29], Lord Selborne indicated the proper way of approaching such a question. He said:

> "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits whirr, circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation as large, and of the same nature as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates
> no express condition or restriction by which that power is limited (in which
> category would, of course, be included any Act of the Imperial Parliament at variance with it), It is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

Therefore, I would be chary of introducing notions based on general theories and thereby reading more into the terms of the instrument by which the legislative powers were created or restricted, unless the very terms used in the constitutional instrument or charter compel the introduction of such notions or theories. In America, where there are written constitutions, the principle that an Act of the Legislature could be held invalid because in conflict with a law of superior authority was no innovation, when it was first propounded by Marshall C. J. in *Marbury v. Madison*[30], though the decision came at a time when there was much acrimonious controversy between the Federalists and the Republicans as to the appropriate domain of judicial action. It was always recognized that in litigation before a Colonial Court, the contention might be made that an enactment of the local legislature was in excess of its powers and so void. In England, in Dr Bonham's case, 8 Coke's Rep. at p. 118a Lord Coke made the exaggerated claim that

> "the common law would control Acts of Parliament, and sometimes adjudge them to be utterly void ; for when an Act of Parliament is against common right and reason, or repugnant or impossible to be performed the common law would control it, and adjudge such Act to be void."

Lord Coke spoke at a time when the authority respectively of the Ring, the Parliament, and the common law as declared by the Judges was a matter of high controversy, and he was an active participant in that struggle As one writer has put it, "Coke fudged badly in vouching precedent for his bold statement". As we know, history has settled it that the Sing in Parliament is supreme in England, and the Judges must obey the statute But the idea that a statute, contrary to common right or reason, is void, and that it pertains to the Judges to apply the test, entered into the American political heritage and exercised a great influence in the incorporation of constitutional guarantees in a written Constitution and in promoting the practice of judicial review of legislation.

60. There cannot be any doubt, however, that it is the duty of the Court to pronounce on the validity of a law (when such a question really arises for determination), made by a legislature whose powers are created, controlled or limited by a written, constitutional instrument. Writing on the power of the federal judiciary under the Constitution of America, Hamilton wrote in the Federalist (No. 78) :

> "The interpretation of the laws is the proper and peculiar province of the Courts. A constitution is, in fact, and must be regarded by the Judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular Act proceeding from the legislative body. If there should happen to be an Irreconcilable variance between the two, that
> which has the superior obligation and validity ought, of course, to be preferred ; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents."

61. I have made these observations with regard to the method of approach and the nature of our task, because, as will presently appear, there has been much discussion before us as to what the

provisions of Section 299, Government of India Act, 1935, and the Fundamental Rights guaranteed by the provisions in Part III of the Constitution of India really mean. The discussion has ranged over a wide field embracing such topics as principles of natural justice, principles and purpose of legislation, the principles of English Common law, and the principles of economics as to earned and unearned income, etc. Some of these topics really need no consideration, as they fall outside the domain appropriate to judicial action.

62. I would accordingly approach the first question from the point of view expressed and explained in the words of Lord Selborne quoted above. I have already stated what the impugned Act seeks to provide for. One of our main difficulties in this case has been that the impugned Act seeks to provide for so many things by one piece of legislation that it is difficult to classify it under one head or item, either with regard to its nature or its purpose and effect. The impugned Act, amongst other things, provides for: (1) transference of management of estates and tenures from the proprietor or tenure- holder, either to Provincial Government or a 'Manager under the Provincial Government ; (2) taking away the right of the proprietor or tenure-holder to mortgage or lease ; (3) taking 'away the right to realise rents and profits including the right to realise arrears of rents and profits ; (4) barring of suits and proceedings in respect of any debts or liabilities of the proprietor or tenure-holder the payment of which is secured by the mortgage of, or is a charge on, the estates or tenures or any portion thereof ; (5) a declaration of nullity of processes and execution for attachment and sale of such estates or tenures for or in respect of any debt or liability of the proprietor or tenure holder whether the payment of such debt or liability is or is not secured by the mortgage of or is a charge on, such estates or tenures or any portion thereof ; and (6) the prevention of the estate or tenure being sold or attached in respect of any debts or liabilities except for or in respect of debts due, or liabilities incurred, to the Crown.
It has been contended by Mr. Lal Narain Sinha that in pith and substance, the impugned Act merely provides for possession of estates and tenures, and does not amount to a Compulsory acquisition of land. He has referred us to item 21 of List II in Schedule 7, Government of India Act, 1935, and has contended that .that item, supplemented, if necessary, by item 2 of List II and items 4, 8, 9 and 10 of List III, completely covers the impugned Act. It is pointed out that under Section 100, Government of India Act, 1935. the Bihar Legislature had full power to make a law with respect to any of the matters enumerated in lists II and III. It is further pointed out that no question of inconsistency or repugnancy to any existing Indian law or earlier federal law can arise within the meaning of Section 107 Government of India Act, inasmuch as the impugned Act had received the assent of the Governor-General. Mr. P. R. Das, appearing for the plaintiff, has contended that the impugned Act in so far as it acquires rights in or over land is really a piece of legislation authorising compulsory acquisition of land but without payment of any compensation; in other words, his contention is that the impugned Act is really a piece of confiscatory legislation, which takes away every important right of an owner of land except the empty husk of proprietorship, and does not, therefore, come under any of the items in the three Lists of Schedule 7, Government of India Act, 1935.

63. Item 21 of List II reads:

> " 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, alienation and devolution of agricultural land ; land improvement and agricultural loans ; colonization; Courts of Wards ;

encumbered and attached estates; treasure trove."

This item has been the subject of judicial consideration of the highest authority. In *Jagannath Baksh Singh v. United Provinces*[31], their Lordships of the Judicial Committee had occasion to pronounce on the validity of the United Provinces Tenancy Act, 1939, which sought to regulate and secure the rights of the tenants in various respects, and in doing so impugned on the powers which, but for such a measure, the taluqdars might have exercised within their estates. The appellant to the Privy Council, who was a descendant of such a taluqdar, claimed that the impugned Act created rights and interests in land in favour of other persons contrary to the sanad granted to the appellant's predecessor by the Crown, and thus derogated from the terms of the Crown grant. Their Lordships referred to item 21 of List II and said that the enumeration made in that item covered all the subjects in the Act there impugned. They further pointed out that Section 299 had no application, inasmuch as regulating the relation of landlord and tenant, thereby diminishing rights hitherto exercised by the landlord in connection with his land was different from compulsory acquisition of land. In a later decision in *Megh Raj v. Allah Rakhia*[32],, it was observed that the key to item 21 was to be found in the opening word "land". Their Lordships then stated:

> "That word is sufficient in itself to include every form of land, whether agricultural or not...Item 24 is part of a constitution and would, on ordinary principles, receive the widest construction, unless for some reason it is cut down either by the terms of item 21 itself or by other parts of the constitution, which has to be read as a whole. 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 lease-hold or all such rights. Right, 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 '. These words are appropriate to lands which are not agricultural equally with agricultural lands. Rent is that which issues from the land. Then the next two sentences specifically refer to agricultural lands, and are to be read with items 7, 8 and 10 of List III. These
> deal with methods of transfer or alienation or devolution, which may b3
> subject to federal legislation. but do not concern the land itself, a sphere in which the provincial and federal powers are concurrent, subject to the express exception of the specific head of agricultural land which is expressly reserved to the provinces. The remainder of item 21 specifies important matters of special consequence in India relating to land. The particular and limited specification of agricultural land proves that ' land' is not used in item 21 with restricted reference to agricultural land but relates to land in general. Item 2 is sufficient to give express powers to the provinces to create and determine the powers and jurisdiction of Courts in respect of land, as a matter ancillary to the subject of item 21."

Dealing with the question that there was no express provision in the Constitution Act referring by name to mortgages, their Lordships said that a constitution did not generally deal with particular transactions or types of transactions, and in their Lordships' judgment mortgages of land would, as a matter of construction, properly fall under item 21 in so far 83 they are mortgages of land, though in certain respects they would include elements of transfer of property and of contract. In *Ten Bug Taim v. Collector of Bombay*[33], a single Judge of the Bombay High Court had occasion to consider item 21 of List II in connection with an order of requisition made by the Collector of Bombay in respect of a property known as the Deanraj Mahal. The view there taken of item 21, particularly of the expression "that is to say", occurring in the item was different from that of their Lordships of the Judicial Committee; but it is only fair to add that this Bombay decision was earlier in time than the decision in *Megh Raj v. Allah Rakhia*[34],

64. Looking at the question merely from. the affirmative point of view and ignoring for the time being the restrictive provisions of Section 299, it seems to me that item 21 of list II, supplemented by item 2 of that List and items, 4, 8, 9 and to of List III, would cover most of' the provisions of the impugned Act. With regard to unsecured creditors, whose right to bring suits and obtain decree, etc., is affected by some of the provisions of the impugned Act, it may be necessary to fall back upon another item of List II, namely, item 27 which, amongst other subjects, mentions money lending and money-lenders. It is worthy of note that compulsory acquisition of land is an item by itself in List II. It is item 9 in that List;Whether the impugned Act merely provides' for taking possession of estates and tenures for a public purpose without acquiring them, as contended by Mr. Lalnarayan Sinha, or whether. it provides for compulsory acquisition of land without payment of compensation and without:. a public purpose, as has been argued by Mr. P.R. Das, is a question which I shall presently consider when I come to the negative aspect of the question, with particular reference to the, restrictive provisions in Section 299, Government India Act, 1936. Solely from the affirmative; point of view, I do not think it matters whether the impugned Act provides for mere taking of possession or for compulsory acquisition without payment of compensation. The impugned legislation would, in either view, be covered by the: various items already referred to in List II and List III.

65. The second question brings us at once the negative aspect, namely, the restrictive provisions in Section 299, Government of India Act, 1935. I am reading Section 299:

> "299. (1) No person shall be deprived of his property in British India save by authority of law.
> (2) Neither the Dominion nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purpose of any laud, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which,, and the manner in which, it is to be determined.
> (3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue shall be introduced or moved in the Dominion Legislature without the previous sanction of the Governor-General, or in a Chamber of a

Provincial Legislature without the previous sanction of the Governor.
(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.
(5) In this section 'land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking."

66. There has been an elaborate and interesting discussion as to the meaning of the expression "save by authority of law" occurring in sub-section (1) of Section 299. Mr. P.R. Das has contended that the expression has the same meaning, which expressions like "due process (or course) of law" and "the law of the land" have in the State Constitutions of America or the Constitution of the United States. Dr. Cooley in his well-known Treaties on Constitutional Limitation (Vol. II, page 736, 8th Edition) has quoted the definition given by Mr. Webster in the Dartmouth College case 4 wheat. 591: 4 L. ED. 629, which stated:

> "By the law of the lard is most clearly intended the general law; . . . the meaning is that every citizen shall bold his life, liberty, property and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land."

Commenting on this Dr. Colley observed:

> "The words 'by the law of the land' do not mean a statute passed for the purpose of working the wrong. . . . Nor do they mean anything which the legislature may see fit to declare to be such ; for there are certain fundamental rights, which our system of jurisprudence has always recognized, which not even the legislature can disregard in proceedings by which a person is deprived of life, liberty or property" (Colley's Constitutional Limitations, Vol. II, 8th Edn,, pp 737-38)."

Mr. P. Des's contention is that the word "law" in the expression "save by authority of law" does not mean the particular enactment in question, but the general law, the "law of the laud" including the entire body of statute and common law. It is further contended that under the common law of England, where a statute authorises the compulsory acquisition of property, it is the invariable practice to provide for the payment of compensation. Furthermore, it is an established rule of construction that express words are required to authorise the taking of property without payment of compensation. Mr. P.R. Das has argued that these principles of the common law of England are applicable to India as rules of justice, equity and good conscience. Mr. Das has cited a large number of decisions in support of his contentions. *Attorney General v. De geyser's Royal Hotel Ltd*[35]*., Attorney-General v. Horner*[36]*, Golonzal Sugar Refining Co. Ltd. v. Melbourne Harbour Trust Commissioners*[37]*, Newcastle Breweries v. The King*[38]*, Western Countries Rly. Co. v. Windsor and Annapolis Rly. Co*[39]*., Waghela Bijsanji v. Masluddin*[40]. and *Maharaja of Jeypore v. Rukmini Pattama devi*[41]*,*

67. In the view which I take of Section 299, it is unnecessary to embark on an investigation of the common law of England on this subject or to apply the principles of that common law on the

basis of justice, equity and good conscience. That in my opinion, would be reading something more into the words of Section 299, and I propose to interpret Section 299 confining myself to the words used therein without reading anything more into the words. The word "law" in sub-section (1) must, at least, mean "valid law". Sub-section (1) of Section 299 has taken the shape of a general declaratory statement, in the negative form, which must surely mean that no person shall be deprived of his property by a mere executive, administrative, or prerogative act. If the executive takes the property of any person, it must be prepared to justify that act under the authority of a valid law. Sub-section (2) is clearly a restrictive clause on the power of legislation. Part 1 of the sub-section states, inter alia, that neither the Dominion nor a provincial legislature shall have power to make any law authorizing the compulsory acquisition for public purposes of any land (I am omitting portions which are not relevant for our present purpose), unless a particular requirement is fulfilled ; the second part of than sub-section contains the requirement, the requirement being the payment of compensation, either by fixing the amount or specifying the principles and the manner in which the compensation is to be determined. If this requirement is fulfilled, then and then only the law authorizing compulsory acquisition for public', purposes of any land etc, can be made and will be valid. The effect of the two parts of the sub-section read together is clearly this: it is not open to any legislature to make any law authorizing the compulsory acquisition of land unless the following two conditions are fulfilled. The. first or rather inherent condition is that the compulsory acquisition must be for public purposes. It is true that sub-section (2) of Section 299, as worded, does not, strictly speaking, make 'public purposes' a condition precedent, but rather assumed that compulsory acquisition can be for public purposes only; it makes 'public purposes' inherent in compulsory
acquisition. Regulation I [1] of 1824 perhaps the earliest regulation relating to acquisition of property by Government: recognized the principle that such acquisition is made 'for purposes of general convenience to community or arrangement of public utility.' In the Land Acquisition Acts which followed, right up to Act 1 of 1894, the same principle finds recognition Section 299 (2) must be construed in the light of the then existing state of the law in this country. It was, perhaps, this historical background which the Joint Parliamentary Committee had in mind when it said:

> "We think that some general provision should be inserted in the Constitution Act, safeguarding private property against expropriation in order to quiet doubts which have been aroused in recent years by certain Indian utterances. It is obviously difficult to frame any general provision with this object without unduly restricting the powers of the Legislature in relation particularly to taxation; in fact, much the same difficulties would be presented as those which we have discussed above in relation to fundamental rights. We do not attempt to define with precision the scope of the provision we have in mind, the drafting of which will require careful consideration for the reasons we have indicated ; but we think that it should secure that legislation expropriating, or authorizing the expropriation of, the property of particular individuals should be lawful only if confined to expropriation for public purposes and if compensation is determined, either in the first instance or on appeal, by some independent authority. General legislation, on the other hand, the effect of which would be to transfer to public ownership some particular class of property, or to extinguish or modify the rights of individuals in it. ought, we think to require the previous sanction of the Governor General or Governor (as the ease may be)

> to its introduction; and in that event he should be directed by his Instrument of Instructions to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interest will be adversely affected by the legislation."

68. The second condition is that it must provide for compensation and either fix the amount of compensation or specify the principles on which the payment of compensation is to be determined. Sub-section (3) in my opinion, relates to a procedural matter, and provides as additional safeguard in respect of any proposed legislation for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue. I do not think that sub-section (3) is in derogation of sub. s. (2). Sub-section (3) covers, perhaps, a wider field, and applies also to proposed legislation which merely modifies rights in land without acquiring them. But if any law authorizes compulsory acquisition of land or of any right in land, that law must provide for compensation in accordance with the provisions of sub-section (2). I do not think that sub-section (3) affects that position, Sub-section (4) saves any pre-existing law, such as the Land Acquisition Act of 1894. Sub-section (5) is important, as it explains what is meant by the expression "land" in Section 299. The word "land" includes immovable property of every kind and any rights in or over such property.

69. If the view which I have taken of Section 299, Government of India Act, 1935, be correct, then it follows that the validity of the impugned Act depends on (i) whether it authorizes compulsory acquisition of any right in land ; (ii) whether such acquisition was for a public purpose ; and (iii) whether it provides for compensation. On each of the aforesaid three questions, there has been a controversy. The third question is, I think, easy of solution. The only payment which the impugned Act provides for is the payment of a quarterly allowance to the proprietor or tenure holder, and the payment of a surplus, if any, under sub-section (2) of Section 25 of the impugned Act, subject to the provisos mentioned therein. Such payment does not, in my opinion, amount to compensation: firstly because, according to the scheme of Section 25, It is the proprietor's own money which is being paid to him; secondly, because the payment is hedged in with so many conditions that in effect there may be no payment at all.

70. The other two questions are not amenable to an easy solution. First, as to the question whether the impugned Act authorities compulsory acquisition of land within the meaning of Section 299, I find it very difficult to accept the contention of Mr. Lalnarain Sinha that the impugned Act provides for nothing more than mere possession of an estate or a tenure. There are many provisions in the impugned Act which go a good deal beyond mere possession. Take, for example, those provisions which relate to a mortgagee or a lessee on the land. The power of the proprietor or tenure-holder to lease or mortgage the property is taken away. The lessee or mortgagee can be removed by an order of the manager. The mortgagee loses his right as a mortgagee, and has to file a claim like an ordinary creditor. The right to arrears of rent and profits is taken away. The proprietor or tenure-holder cannot even ask for accounts. All these provisions go much beyond mere possession. Ordinarily, if possession of a particular piece of land is taken, possession is taken subject to the assets and liabilities. What the impugned Act provides for is the taking of possession, after depriving the owner of several of his rights, in part, or whole, and after repudiating, in part or whole, many of the liabilities existing on the estate or tenure or against the proprietor or tenure-holder. The impugned Act is, therefore, a combination of possession cum

deprivation of many important rights in land; cum repudiation or reduction of liabilities, secured or unsecured; cum barring of jurisdiction of Courts; etc It is true that if the test of compulsory acquisition were the transference or deprivation of the totality of rights of an owner, then the impugned Act falls short of acquisition, I do not, however, think that is the proper test under Section 299. Most of the provisions of the impugned Act are apparently borrowed from the Chota Nagpur Encumbered Estates Act, 1876, and if one is permitted to use an expression without casting any reflection on anybody, the 'inspiration' behind the impugned Act seems to have been derived from the Chota Nagpur Encumbered Estates Act. The scheme of the impugned Act follows closely the scheme of latter Act with one very important difference. The basic principle of the Chota Nagpur Encumbered Estates Act is that the holder, whose estate is taken over, suffers from some disqualification or disability, and asks for the application of the Act to his estate; or the Deputy Commissioner is satisfied that the estate has been attached and is liable to be sold in execution of a decree or order of a civil Court or a revenue Court or the holder has entered upon a course of wasteful extravagance likely to dissipate his property. This basic, principle-this raison d' etre of the Chota Nagpur Encumbered Estates Act -has been ignored in the impugned Act and what was applied in the case of a sick proprietor is being applied to all, healthy or otherwise.

71. Be that as it may, in view of the terms of sub-section (6), Section 299 would apply to compulsory acquisition of immovable property of every kind, including any rights in or over such property. It seems clear to me that the impugned Act provides for the acquisition or deprivation of several rights in land, even though the entire bundle of rights of a proprietor or tenure holder is not taken away. A very similar question arose for decision in the Minister of *State for the Army v. Dalziel*[42], where the Commonwealth of Australia took possession of a piece of land, by virtue of Regn. 54 of the National Security (General) Regulations, of which one Arthur Dalziel was the occupier as a weekly tenant. The question that arose for decision was whether the taking under Regn. 51 for an indefinite period of the exclusive possession of the land constituted an acquisition of property within the meaning of Section 51 (xxxi) of the Constitution of Australia. Section 51 (xxxi) of the Constitution empowered the Commonwealth Parliament to make law with respect to

> "the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws."

Latham C. J. answered the question in the negative and held that the possession under the regulation was akin to that of a licensee. The majority of Judges, however, held that the taking of possession under Regn. 54 constituted an acquisition of property within the meaning of Section 61 (xxxi) of the Constitution. The arguments for and against the two views have been very carefully considered in the decision, and no useful purpose will be served by re-stating those arguments. It is, I think, sufficient to state that I am in entire agreement with the majority view. Rich J. pointed out that property, in relation to land, was a bundle of rights exercisable with respect to the land, and the tenant of an un-encumbered estate in fee simple in possession had the largest possible bundle. He further pointed out that there was nothing in the Constitution to suggest that the legislature was intended to be at liberty to free itself from the restrictive provisions of the placitum by taking care to seize something short of the whole bundle owned by the person whom it was expropriating. It was rightly observed that a right to possession was a

right of property, and was the most characteristic and essential of those rights. Williams J. referred to the decision of the House of Lords in *Attorney General v. De Keyser's Royal Hotel Ltd*[43]*.,* and pointed out that the permanent and temporary acquisitions of property were dealt with in the Defense Act of 1842 in the same way, and both transactions were treated as concerning property which was being acquired from the owners or any other person or persons interested therein, and in both cases the statute provided for a purchase or hiring by agreement. Therefore, on principle, no distinction can be made between possession for a temporary period and acquisition for all time. In *Bug Tain v. Collector of Bombay*[44]*,* Bhagwati J. preferred the view of Latham C. J. That decision is entitled to respect, but is not binding on us. It appears that after Bhagwati J.'s decision, an ordinance was made (No. 5 of 1947) under the authority conferred on the Provincial Legislature to enact laws with respect to requisition of land by a notification of the Governor- General of India under B. 104, Government of India Act, 1935. In *Ratanchand Hirachond v. D. R. Pradhan, AIR (36) 1949 Bom. 93:(50 Bom. L. R. 614)(Supra)*, it was held that the Governor General had authority to issue a
notification whereby he conferred on the provincial legislature power to enact laws with respect to requisition of land. It appears that to put the matter beyond any doubt, Item 36 of List II and Item 42 List 11I of the Constitution of India mention both acquisition or requisitioning of property. Article 31 (2) of the Constitution of India, which corresponds more or lees to Section 299 (2) Government of India Act, 1935, also mentions both taking possession of or acquiring property for public purposes.

72. Looking at the impugned Act from the point of view of Section 239, Government of India Act, 1935, as I am doing now, it seems to me that the impugned Act cannot be justified in the way Mr.Lalnarain Sinha has sought to do it, by holding that it provides merely for possession of land and not acquisition. In my opinion, the impugned Act is a piece of confiscatory legislation which deprives a proprietor or tenure-holder of several of his important rights in land without providing for compensation to him. The principle that an increase of the amount of land revenue payable for estates does not involve acquisition of right in or over immovable property laid down in *Kunwar Lal Singh v Central Provinces and Berar*[45]*,* has no application here. In that case, Spens C. J. pointed out that the word 'acquisition' implies that there must be an actual transference of and it must be possible to indicate some person or body to whom is or are transferred, the land or rights in land. In the case before us, important rights in land are transferred by the impugned Act to the State Government or the Manager named in the vesting order. Therefore, the impugned Act is hit by Section 299, and was made in contravention of the provisions of that section.

73. There is, I think, an additional ground for its invalidity. The impugned Act does not show on the face of it that the acquisition is for a public purpose. I have referred to the preamble and the various provisions of the impugned Act. Except for a reference to the payment of costs of irrigation works for the benefit of the tenantry of the estates and tenures in the sixth clause of Section 25 (1), there is nothing in the impugned Act to indicate that the purpose of acquisition is a public purpose. Mr. Lalnarain Sinha has referred us to various Acts passed in the last five years for the benefit of the tenantry, such as the Bihar Tenancy Amendments Act of 1946 to 1948, the Bihar Privileged Persons Homestead Tenancy Act of 1948, the Bihar Bakasht Disputes Settlement Act, etc. He has stressed that we should take judicial notice of those Acts and hold that the purpose of the impugned Act is similar to the purpose of those other Acts, viz., to eliminate conflicts between landlords and tenants, to give larger rights to tenants, to make it

easier for tenants to cultivate their lands, etc.

74. It should be stated here that a Court of law is not called upon to determine the expediency or otherwise of State policy; nor is it concerned with motives of legislation. The simple point for decision by a Court of law is whether the constitutional charter imposes, a restriction on the power of legislation, and if so, whether the restriction has been exceeded There is no doubt that one of the restrictions imposed by Section 299 is that a law authorising acquisition of property must be for a public purpose. It is, I think, beyond dispute that the State cannot take possession of the property of A and make it over to B, without reference to some use to which it is to be applied for the public benefit. There has been a good deal of
discussion before us as to the power of the State to take private property, by virtue of an authority existing in every sovereignty, which the American jurists call the right of eminent domain. As Dr. Cooley has put it (Cooley's, Constitutional Limitations, vol. II, p. 1119, Edn. 8):

> "The right to appropriate private property to public uses lies dormant in the State, until legislative action is had, pointing out the occasions, the modes, conditions, told agencies for its appropriations. Private property can only be taken pursuant to law; but legislative act declaring the necessity, being the customary mode in which that fact is determined must be held to be for this purpose 'the law of the land' and no further finding or adjudication can be essential, unless the constitution of the State has expressly required it. When, however, action is had for this purpose, there must be kept in view that general as well as reasonable and just rule, that whenever in pursuance of law the property of an individual is to be divested by proceedings against his will, a strict compliance must be had with all the- provisions of law which are made for his protection. and benefit, or the proceeding will be ineffectual. Those provisions must be regarded as in the nature of conditions precedent, which are not only to be observed and complied with before the right of the property owner is disturbed, but the party claiming authority under the adverse proceeding must show affirmatively such compliance."

75. It is clear that Section 299, sub-section (1) and sub-sections (2) read together, imposes a restriction. or to put it in the words of Dr. Cooley, imposes a condition; that a law authorizing acquisition of property must be for a public purpose, and on payment of compensation. There is no authority in the State to take private property except for a public purpose. What then is a public purpose? It is impossible to define the expression "public purpose," and Dr. Cooley rightly said,

> "we find ourselves some what at sea when we undertake to define, in the light of the judicial decisions, what constitutes a public use (Cooley's Constitutional Limitations, Vol. II, Edn. 8, p. 1129).

In *Haniabai Framjee v. Secy. of State*[46], two suits were instituted to recover possession of certain lands situated in Malabar Hill, Bombay. In one of the suits, the land had been leased by the East India Company in 1854 for a term of ninety-nine years with a proviso that

> "In case the said company shall for any public purpose be at any time desirous to resume possession of the premises,"

they should be at liberty to re-enter. In the second suit, the land was granted by a sanad in 1839 at a small annual rent subject to a stipulation, "the said ground to be at any time resumable by Government for public purposes." The Government of Bombay gave notice that they desired to resume possession of the lands for a public purpose stating that they proposed to utilize the land for the residences of Government officers. It was found on evidence that owing to the dearth of suitable houses in
Bombay and the high rents demanded, officials were reluctant to accept appointment there, and that this was prejudicial to the efficilancy of the various public services. The question for decision in the Privy Council case was whether the aforesaid purpose was a public purpose. The argument of the appellant before the Privy Council was that

> "there cannot be a public purpose in taking land it that land when taken Is hot some in way or other made available to the public at large "

Their Lordships did not accept this argument. 'While deprecating an attempt to define precisely the extent of the phrase "public purposes" in the lease, they laid down the following test:

> "Whatever else the expression may mean, it must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

At page 1139 (Constitutional Limitations, vol. II, 8th Edn.) Dr. Cooley has thus stated the problem:

> "No satisfactory definition of the term 'public use' has ever been achieved by the Courts. Two different theories are presented by the judicial attempts to describe the subjects to which the expression would apply. One theory of 'public use' limits the application to 'employment' -'occupation.' A more liberal and more flexible meaning makes it synonymous with 'public advantage'- 'public benefit.' A little investigation will show that any definition attempted would exclude some subjects that properly should be included in and include some subjects that must be excluded from, the operation of the words 'public use.' As might be expected, the more limited application of the principle appears in the earlier cases, and the more liberal application has been rendered necessary by complex conditions due to recent developments of civilization and the increasing density of population. In the very nature of the case, modern conditions and the increasing interdependence of the different human factors in the progressive complexity of community make it necessary for the government to touch upon and limit individual activities at more points than formerly."

76. Applying the tests indicated above, it seems to me that mere State policy or policy of the

party in power is not the same thing as public purpose; secondly, though prima facie, the Legislature or the Government are good judges of whether a particular purpose is a purpose in which the general interest of the community is concerned, they are not absolute judges, particularly where the constitutional charter or instrument creating the legislative power imposes a restriction by saying that a law relating to compulsory acquisition must be for a public purpose. As Lord Dunedin put it in *Hamabhai Framjee Petit v. Secretary of State, 42 I. A 44 at p. 47 : (A. I. R (1) 1914 P. C. 20)(Supra)*, "they cannot say 'sic volo sic jubeo,' but at least a Court would not easily hold them to be wrong." I have very carefully considered the provisions of the impugned Act, but' find it very difficult to hold that the acquisition or deprivation of rights in land therein provided was for a public purpose. No public purpose as is envisaged by the tests mentioned above is apparent either from the preamble or the provisions of the impugned Act. The provisions of the impugned Act do not benefit the State peculiarly. It is conceded by Mr. Lalnarain Sinha that the State gets no benefit. The tenantes get no benefit either: the provision for irrigation costs is highly problematic or hypothetical. I can find nothing in the provisions to avoid conflicts between landlords and tenants or give larger rights to tenants. As far as one can make out, the impugned Act is intended either as an experiment, without incurring any cost, of large-scale management of estates, or as a confiscation of rights in land without payment of compensation.

77. I wish to guard myself against saying that in no circumstances can there he a public purpose in acquiring zamindaries or in acquiring the interest of intermediaries or rent collectors, either in exercise of the right of eminent domain or in exercise of the police powers of the State. It would not be correct to make such a sweeping or general' statement, and I must not be understood to have arrived at any such conclusion. All that I have said about a public purpose relates solely to the provisions of the impugned Act, and all that I am called upon to determine in this ease is whether the impugned Act provides for acquisition of rights in land for a public purpose. My answer is that neither the preamble nor the provisions of the impugned Act show that the acquisition is for a public purpose. It can hardly be said that it is necessary for a public purpose to repudiate liabilities, to prevent the proprietor from getting account, to remove mortgagees and lessees, to bar executions etc. by ordinary creditors, when there is benefit neither to the State, nor to the tenants, nor the general public. In the absence of any clear indication as to the purpose of the impugned Act, Mr. P. R. Das has not unnaturally characterized the impugned Act as a cloak by which the real purpose is concealed, namely, to take away everything from a proprietor or tenure-holder without payment of compensation, leaving only the empty husk of proprietorship.

78. The net result of the aforesaid discussion is that the impugned Act contravened the provisions of Section 299, both sub-section (1) and sub-section (2), and was, therefore, ultra vires and void at the time when it was made.

79. Assuming that it was valid on the date when it was made, it clearly infringes the fundamental right guaranteed to a citizen under Article 19 (1) (f) of the Constitution of India. That Article reads:

> "19. (1) All citizens shall have the right -
> * * * * *
>
> (f) to acquire, bold and dispose of property."

Article 13 (1) of the Constitution states:

> "All laws in force in the territory of India immediately before the commencement of this constitution in so far as they are inconsistent with the provisions of this part shall to the extent of such inconsistency be void."

80. There cannot be any doubt that the impugned Act is inconsistent with the provisions of Article 19 (1) (f) in Part III of the Constitution. The question is whether the impugned Act is saved by Article 19 (5), Article 31 (2) or by reason of the certificate under Article 31 (6) of the constitution. Clause (5) of Article 19 which is in the nature of an exception to the general right given by Article 19 (1) (f) clearly does not save the impugned Act. Clause (5) of Article 19 refers to two conditions; the first condition is that the restrictions imposed on the exercise of the right guaranteed by Article 19 (1) (f) must be reasonable; the second condition is that the restrictions must be in the interest of the general public or for the protection of the interest of any Scheduled Tribe. It is clear enough from what I have stated above that the restrictions are neither reasonable nor in the interest of the general public. Article 19 (5) cannot, therefore, save the impugned Act, assuming that the impugned Act was a valid piece of existing law on 26th January 1950, when the Constitution of India came into force.

81. As to the provisions of Article 31 of the Constitution, it is not in dispute that the provisions in Article 19 (1) (f) should be read with the provisions in Article 31. Article 19 (1) (f) refers to the right as a right of freedom. Article 31 relates to the right to property. The provisions in the two articles must be read together in order to avoid any apparent inconsistency or conflict. The constitution is an organic whole and must be so interpreted as (not?) to bring one part in conflict with another. This proposition has not been disputed, and has both authority and principle in support of it. I do not wish to overburden this judgment by citing authority for a proposition which is not really in dispute. The provisions of clauses (1) and (2) of Article 31 have the same effect as sub-sections (1) and (2) of Section 299. The effect is this; every citizen has the right to acquire, hold and dispose of property. Under Clause (5) of Article 19, reasonable restrictions can be imposed on that right either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Under Article 31, any right of property may be taken possession of or acquired by the State for public purposes on payment of compensation. When that is done, the right mentioned in Article 19 (1) (f) disappears. Therefore, the provisions of Article 31 are in the nature of special provisions, and the general right to freedom must yield to the special provisions relating to right to property. That, in my opinion, is the only way of reconciling the' provisions of Article 19 (1) (f) with the provisions of Article 31.

82. The question then is: is the impugned Act saved by the provisions of Article 31? Mr. Lalnarain Sinha conceded that if the impugned Act were held to authorize possession or acquisition of property or any interest in property without a public purpose, then the impugned Act would not be saved by the provisions of Article 31. I have aready examined the question whether the impugned Act provides for mere possession or acquisition. I have also examined the question whether the acquisition or possession is for a public purpose. I have further examined whether it provides for compensation. In view of my findings on these questions it is clear that the impugned Act is not saved by the provisions of Article 31.

83. The certificate under Clause (6) of Article 31 is also of no help. Mr. P. R. Das has contended that the certificate cannot save the impugned Act, because (a) the suit was brought before the commencement of the Constitution, and the certificate cannot affect the right of action which bad already accrued ; (b) the certificate is a fraud on Section 299; (c) the certificate is a fraud on the exercise of power, inasmuch as it seeks to do indirectly what could not be done by the Legislature directly; and (d) the impugned Act being a nullity ab initio, the certificate cannot revive it or make it valid. We have been taken through a large number of decisions in support of the aforesaid contentions. I do not propose to examine them, because I think that there is a shorter and simpler answer. Therefore, I am expressing no final opinion on all the above contentions, except to state my view that Article 31 (6), as worded, would prevent the Court from calling into question a law, coming within the purview of that clause, even in a pending action, and a law which is liable to be challenged only on the ground covered by that clause, must be held to be valid law, because it cannot be called into question on that ground which renders it invalid; thus there will be no question of reviving something which is dead or validating a nullity. A law passed by a competent Legislature is valid unless it is declared invalid by a competent Court of law. If the Court cannot call it into question on a particular ground, that ground cannot be urged for its invalidity either at the inception or at a subsequent stage; for to do so would nullify the provisions for Article 31 (6) of the Constitution.

84. But it is clear to me that the concluding words of Clause (6) of Article 31, namely –

> "it shall not be called in question in any Court on the ground that it contravenes the provisions of clause (2) of Article 31 or has contravened the provisions of sub-section (2) of Section 299, Government of India Act, 1935",limit the effect of the certificate; in other words, the effect of the certificate is that the impugned Act shall not be called in question on the only ground that it contravenes the provisions of clause (2) of Article 31 or has contravened the provisions of sub-section (2) of Section 299, Government of India Act, 1935. It leaves it open to a party to challenge the validity of the impugned Act on other grounds. The certificate does not say that the impugned Act shall not be called in question on any ground; on the contrary, clause (6) of Article 31, in express terms, limits the effect of the certificate to one and one ground only. In that view of Clause (6) of Article 31, it is open to the plaintiff to challenge the impugned Act on the ground that it contravenes Article 19 (1) (1), or even Clause (1) of Article 31 of the Constitution. Like sub-sections (1) and (2) (sic) of Article 31 have to be read together. So read, the effect of the provisions of clauses (1) and (2) of Article 31 is that no property can be acquired or taken possession of except for public purposes and on payment of compensation. The mere defect as to non-payment of compensation may, I think, be cured by a certificate under clause (6) of Article 31, but I do not think that a certificate under 01. (6) of Article 31 can make valid a piece of legislation which authorizes the acquisition of private property without a public purpose; for such legislation would be in contravention not merely of clause (2) but of clause (1) as well. Moreover, such deprivation of property as is provided for in the impugned Act, contravenes the fundamental right guaranteed under Article 19 (1) (f). The certificate under Clause (6) of Article 31 will not cure such a contravention.

85. I shall be most reluctant to whittle away by judicial decision the fundamental rights guaranteed by the provisions in part III of the Constitution. In *James v. Commonwealth of Australia, 1936 A. C. 678 : (105 L. J. P. C. 110(Supra),* their Lordships of the Privy Council had to consider whether Section 92, Commonwealth of Australia Constitution Act 1900, which provides that trade, commerce and intercourse among the States shall be absolutely free, binds the Parliament of the Commonwealth of Australia equally with the States. Their Lordships observed:

> "It is the declaration of a guaranteed right; it would be worthless if the Commonwealth was completely immune and could disregard it by legislative or executive act. It is difficult, if not impossible, to conceive that any one drafting a statute, especially an organic statute like the Constitution, would have written out Section 92 in its present form, if what we intended was a constitutional guarantee limited to the States but ineffective so far as regards the Commonwealth."

On the same principle, the declaration of guaranteed rights in Article 19 (1) (f) aria Clause (1) of Article 31 cannot be frittered away by reading something more in Clause (6) of Article 31 than what the words in that clause say. My conclusion, therefore, is that the certificate granted under Clause (6) of Article 31 does not save the impugned Act.

86. Lastly, there is the question if some of the provisions of the impugned Act can be severed from the rest, and supported either under clause (5) of Article 19 or Clause (2) of Article 31. This question does not really arise in view of my finding that the whole Act was ultra vires ab initio by reason of the contravention of the provisions of Section 299, Government of India Act, 1935. Even if it were permissible to examine this question, it seems to me that the provisions of the impugned Act are so inextricably interwoven that one set of provisions cannot be separated or severed from the rest. On this doctrine of severability, the leading decision is the one in Attorney General for *British Columbia v. Attorney General for Canada, 1937 A. C. 377: (AIR (24) 1937 P. C. 93)(supra)*. Their Lordships there pointed out that the whole texture of the Act being inextricably interwoven, one part could not be said to exist independently of the other part; secondly, their Lordships pointed out that where the severable sections were incidental or ancillary to the main legislation, they could not be severed from the rest of the enactment. In my opinion, the impugned Act in this case is of the same nature; the whole texture of the Act is inextricably interwoven, and a large number of the provisions relating merely to possession are ancillary and incidental to the main legislation. It would be impossible to sever some of the provisions from the rest. Such a severance would disturb and defeat the whole scheme of the Act.

87. For the reasons given above, the suit must succeed, and the plaintiff will get a declaration that the Bihar State Management of Estates and Tenures Act 1949, is ultra vires and wholly void. The plaintiff is also entitled to an order of injunction in the terms asked for. The plaintiff is further entitled to his costs against the State of Bihar.

88. As to the applications in the miscellaneous cases, I agree with my learned brethren that they be dismissed without costs, for the reasons given by them.

Suit decreed.

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[3]1909-1 K. B. 310 at p. 319 : (79 L.J.K.B. 259)
[4](1848) 164 E. R. 389 : (12 Jur 138)
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[9]1920 A. C. 508 at p. 528 : (89 L. J. Ch. 417)
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[40]14 I. A. 89 at p. 96 (11 Bom. 551 P.C)
[41]46 I. A. 109 at pp. 118-19 : (AIR(6)- 1919 P.C. 1)
[42]68 Comm. L. R. 261
[43]1920 A. C. 508 (89 L. J. Ch. 417)
[44] AIR(33) 1946 Bom. 216: (47 Cr. L J. 594)
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