PUNJAB AND HARYANA HIGH COURT

State of Punjab

Vs

S. Kehar Singh

(A Bhandari, C.J.T Chand and A.N. Grover, JJ.)

12.05.1958

JUDGMENT

A.N. Grover, JJ.

1. In order to decide the validity and constitutionality of the Punjab Consolidation ofLand Proceedings (Validation) Act, 1957, which has been referred for decision to the Full Bench it is unnecessary to restate the facts which have already been set out in the Referring Order. It would suffice to mention the three classes of properties which are likely to be affected by the Act-

(a) Property of an evacuee which vests in the Custodian who has allotted it to displaced persons;

(b) Property which was once evacuee property but has ceased to be so owing to acquisition by the Central Government under Act 44 of 1954; and

(c) Properly once evacuee property which had been acquired but in which the title has now passed to displaced persons by conferment of proprietary rights under Act 44 of 1954.

2. The first main question that requires consideration is whether the Punjab Legislature was competent to enact the impugned Act. According to the contentions canvassed by the parties this wilt require examination under 3 sub-heads :

(i) Whether the impugned Act is legislation with respect to Item 18 of List II read with Items 27 and 41 of List III, Seventh Schedule (Constitution of India), or whether it falls under Entry 32 of List I of the Schedule?

(ii) Can the Punjab Legislature by law extinguish As rights in favour of 15, or confiscate A's property and give it to B?

(iii) Is the impugned Act a piece of colourable legislation?

3. The contention raised on behalf of the owners and. allottees of the lands in question with regard to Sub-head (i) is this. Property mentioned as class (a) does not exist any more by virtue of the enactment of the Displaced Persons (Compensation and Rehabilitation) Act (Act 44 of 1954). Class (b) vests in the Central Government and only the Union Parliament can legislate with regard to it under Entry 32 of List I. As regards (c) the Union Parliament alone is competent to enact legislation. The learned Advocate-General on the other hand relies on Entry 18 of List II and on Entries 27 and 41 of List III, the assent of the President having been obtained. Entry 18 of List II is in the following terms :

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

It is submitted on behalf of owners and allottees with regard to property which has been allotted to displaced persons either under the Administration of Evacuee Property Act 1950 or Act 44 of 1954, that the allottees cannot be said to have any rights in or over land. Reliance is placed on a decision of the Supreme Court in Amar Singh v. Custodian Evacuee Property, (S) AIR 1957 SC 599 (B), where the position of quasi-permanent allottees vis-a-vis their legal rights was examined, it being held that the sum total of the various incidents of a quasi-permanent allotment did not in any sense constitute even qualified ownership of the land allotted. It is then said that the provisions of the impugned legislation could not be covered by Entry 27 of List III, which is as follows :

"Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan."

It is pointed out that Section 3 of the Act validates all consolidation schemes published between 31-12-1951 and 1-1-1956 in respect of land of an evacuee and all subsequent proceedings taken in relation thereto and Section 4 deals with the extinguishment and modification of allottees' rights in an estate. These provisions do not relate to relief and rehabilitation of displaced persons provided for by Entry 27. The object and purpose of the Act is not rehabilitation but validation of consolidation proceedings taken between certain specified dates.

It is argued that the matter cannot be covered by Entry 41 of List III as the impugned legislation docs not relate to the custody, management and disposal of property (including agricultural land) declared by law to be evacuee property. It is, firstly necessary to examine whether the provisions of the Act can be said to he covered by Entry 18 of List II. As regards the rights of the allottees on whom proprietary rights have not yet been conferred under Act 44 of 1954 (class a) it is true

that they cannot be regarded to be "property" within the concept of that word so as to attract the protection of fundamental rights as has been held by the Supreme Court in AIR 1957 SC 599 (B). Nevertheless, even their Lordships were of the view that the incidents of a quasi-permanent allotment constituted some kind of interest in land analogous to what is jus in re aliena in Roman Law.

It cannot, therefore, be said that the allottee has no rights in the land in the general sense as seems to be contemplated by the language of Entry 18 of List II. In Megh Raj v. Allah Rakhia, AIR 1947 PC 72 (C), while interpreting Item 21 of List II, Schedule VII, Government of India Act 1935, the Privy Council held that the aforesaid item should on ordinary principles receive the widest construction, unless by some reason it was cut down either by terms of the item itself or by other parts of the Constitution which had to be read as a whole. The observations of Lord Wright contained in para 16 are pertinent-

" 'Land' the governing word is followed by the rest of the item which goes on to say 'that is to say', these words introduce the most general concept....'rights in or over land'. 'Rights in land' must include general rights like full ownership or leasehold or all such, rights."

In United Provinces v. Atiqa Begum, AIR 1941 FC 16 (D), Item 21 came up for consideration and it was laid down that none of the items in the list were to he road in a narrow or restricted sense. Each general word should he held to extend to all ancillary or subsidiary matters which could fairly or reasonably be said to be comprehended in it. As has already been pointed out, the Supreme Court in Amar Singh's case (B) considered that the right of the allottee was analogous to what is called jus in re aliena in Roman Law. That is certainly some kind of a right which may not be property in the strict sense of that word, but which can fall within the meaning of the words "rights in land" occurring in Item 18 of List II of our Constitution. Now the pith and substance of the impugned legislation is to validate consolidation proceedings taken with regard to lands between certain specified dates.

In testing the validity of an enactment with reference to the entries or heads under which the legislation has been enacted the pith and substance rule has been accepted vide Prafulla Kumar v. Bank of Commerce, Khulna, AIR 1947 PC 60 (E), Lefroy's Canada's Federal System, P. 200, Jennings' Constitutional Laws of Commonwealth at P. 200. In Amar Singhji v. State of Rajasthan, (S) AIR 1955 SC 504 (F). the Supreme Court held that the heads of legislation mentioned in the entries should receive liberal construction. In this view of the matter the Punjab Legislature was competent to enact the impugned Act under Entry 18 of List II of the Seventh Schedule (Constitution of India).

3a. The contention that with regard to the property classified as (b) Entry 32 of List I would cover the impugned legislation seems to be without substance. Entry 32 is in the following terms :

"32. Property of the Union and the revenue therefrom, but as regards property situated in a State specified in Part A or Part B of the First Schedule subject to legislation by the State, save in so far as Parliament by law otherwise provides."

It is said that as the Union Legislature has already provided with regard to the aforesaid property by Act 44 of 1954, it would not be open to the State Legislature to legislate in the same field. In the first place the rights of the Union Government in the properties in question are not affected by the impugned Act and it is only the rights of allottees of land or of transferees of proprietary rights that are touched. Secondly, the State Legislature is competent to legislate with regard to properties situate in the State unless Parliament by law expressly or by necessary implication provides to the contrary. There being no such provision the State Legislature would be perfectly competent to legislate under Entry 18 of List II.

4. It has been contended by the learned Advocate General that even if the impugned legislation is not covered by Item 18 of List II, it would fall under Items 27 and 41 of List III. Section 3 of the Act expressly mentions that schemes in respect of land of an evacuee forming part of an estate etc., Shall be deemed to be valid, and Section 4 provides that if as a result thereof a diminution in the original holdings of an allottee occurs, ihe ownership or allottee rights shall be extinguished and modified to that extent. It is suggested that whatever allotments were originally made had been made under the provisions of the Administration of Evacuee Property Act 1950 which was covered by Entry 41 of List III, and whatever transfers of proprietary rights or other allotments have been subsequently made, that was done under Act 44 of 1954 which legislation was covered by Entry 27 of List III.

The present legislation is for the purpose of validating certain executive orders which were issued regarding the consolidation of lands over which displaced persons had rights either by virtue of quasi-permanent allotment or by virtue of transfer of proprietary rights under the enactments mentioned above. Therefore such a legislation can be enacted for validating executive orders. There seems to be a good deal of substance in these contentions. The Federal Court in AIR 1941 FC 16 (D). found that legislation for the purpose of "validation of executive orders" must necessarily be regarded as subsidiary or ancillary to the powers of legislating on the particular subjects in respect of which the executive orders might have been issued.

The Privy Council had to consider the question whether the Act of a local legislature was intra

vires or not in McGregor v. Esquimalt and Manaima Ry. Co., 1907 AC 462 (G). The Legislature of British Columbia had passed an Act in 1883 according to which certain land had been granted with its mines and minerals to the Dominion Government in aid of construction of a Railway Company. In 1887 the said land was granted to the Railway Company under the provisions of a Dominion Act. In 1904 the Legislature of British Columbia passed another Act by which the same land was allotted to a private individual of the name of McGregor. Their Lordships made the following observations :

"On the constitutionality of the Act of 1904 and the power of the British Columbia Legislature to enact it their Lordships see no reason for doubt. The Legislature had the exclusive right to amend or repeal in whole or in part its own said statute of December, 1883. And the Act relates, not to public property of the Dominion, as contended for by the respondents, but to property and civil rights in the province, and affects a work and undertaking purely local. This railway is the property of the respondents, and the said land had ceased to be the property of the Dominion in 1887 by the grant thereof to the respondents (the Railway Company)".

It is further clear that it is open to a legislature to extinguish rights under a particular entry. In AIR 1947 PC 72 (C), the validity of Punjab Act IV of 1938 entitled "The Punjab Restitution of Mortgaged Lands Act" was in question. The object of ths impugned Act was the relief of mortgagors by giving them restitution of the mortgaged premises on conditions more favourable than those under the mortgage deed and by providing for a procedure before the Collector which was more summary than that before the ordinary Courts. That enactment involved extinguishment of rights of the mortgagees and the same was found to be covered by Item 21 of List II of the Government of India Act, the language of which is the same as of Item 18 of List II of the present Constitution.

The validity of the Rajasthan Land Reforms and Resumption of Jagirs Act was in issue in (S) AIR 1955 SC 504 (F). The resumption of Jagirs was held to he covered by Entry 18 of List II. In that case it was argued that the heads of legislation mentioned in the entries should receive a liberal construction and their Lordships agreed that the position was well settled and it could rightly be said that the legislation could fall under Entry 18. The impugned legislation so far as class (b) is concerned will, therefore, be valid. The Act in pith and substance relates to consolidation of land holdings which would undoubtedly be covered bv Entry 18 in case of class (c) of the properly mentioned before, as by conferment of proprietary rights under Act 44 of 1954, the allottees have become full owners like any other owner ot land.

There is no substance in the argument that the proprietary rights which have been conferred being subject to the overriding powers of the president of India by virtue of which ho could

resume the owner-ship these properties still retain the character of the property of the Union as given in Entry 32 of List 1. It is perfectly clear from the scheme of Act 44 of 1954 that full proprietary rights have been transferred and although there ara some provisions by virtue of which the transferees can be divested of their rights in certain eventualities but that does not mean that they have no rights in land within the meaning of Entry 18 of List II.

5. The next question is whether the Punjab Legislature was competent to extinguish A'S rights in favour of B or confiscate A's property and give it to B (sub-head (ii) above). The contention raised on behalf of the owners and allottees is that even if the impugned Act was covered by the entries relied upon by the learned Advocate General, the legislation was expropriatory and confiscatory in nature and it was not open to extinguish the rights of one set of persons and pass them over to another set or persons. Reliance fot this purpose was placed on the observations of Mahajan J. (as he then was) in State of Bihar v. Kameshwar Singh, AIR 1952 SC 252 at P. 272 (II) which are set out in the Referring Order.

This matter will be considered more appropriately later when the provisions of the impugned Act are examined in the light of Articles 31 and 31-A of the Constitution. The general argument, however, that it is not competent to the Punjab Legislature to enact legislation of an expropriatory or confiscatory nature is without force. McGrcgor's case (G) is an instance of pure expropriation inasmuch as valid title had passed to the railway company and yet the State Legislature by a subsequent enactment deprived the company of its fights and gave the same lands to MeGregpr. The law Courts are not concerned with the justice of legislation and all that has to be seen is whether it is competent to the legislature to enact a particular statute, nor is the Legislature limited by the doctrine of 'eminent domain'. In State of New South Wales v. Commonwealth, 20 CLR 54 (1) it was observed at page 77 as follows :

"The power of the State to expropriate real property by Statute is in these days never questioned. * *** If the property is taken without compensation, that is to say, if it is confiscated, the question which arises is constitutional only in the political and not in the legal sense. In other words a Statute passed by a Sovereign Parliament is equally within the legal rights of the Legislature whether it nakedly confiscates property or takes it upon terms of payment more or less. That is the position in the United Kingdom, and the right flows from the Sovereignty of Parliament, and does not depend for its defence upon the doctrine called 'eminent domain'."

tinder English Law the Courts will not question the supremacy of the Parliament. Whenever the legal rights of the subject are impaired without payment of compensation, there will be a presumption that Parliament does not intend to deprive a subject of such rights but the Courts will only look for express and clear words to that effort (vide Wade and Phillips Constitutional

Law 5th Edition page 46). In Jagannath Baksh v. United Provinces. AIR 1940 PC 127 (J), the Privy Council followed the rule laid down by Gwyer C. J. in 1940-3 FLT 97: (AIR 1941 FC 16) (D), that within their own sphere the powers of the Indian Legislatures are as large and ample as those of the Parliament itself.

Their Lordships of tho Supreme Court in Umeg Singh v. State of Bombay, (S) AIR 1955 SC 540 (K), have referred to the rule that the legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any such provision expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the State Legislature enjoys to legislate on the topics enumerated in the Lists II and III of the Seventh Schedule. It will, therefore, have to be seen whether the impugned Act has infringed any of the provisions of the Constitution, and if there is no such infringement then the Act cannot be challenged on the ground that the State Legislature was not competent to pass an enactment which is confiscatory or expropriatory in nature.

6. It has been argued on behalf of the owners and allottees (sub-head (iii)) that the impugned Act is a piece of colourable legislation. Reliance for this purpose is placed on the observations of Mahajan J. in AIR 1952 SC 252 at p. 276 (H), where Section 23(f) of the Bihar Land Reforms Act 1950 was found to be so. After referring to Entry 42 of List III and the contentions of the learned Attorney-General, Mahajan J. observes that an entry concerning payment of compensation in no sense includes legislative power of non-payment of compensation. The whole purpose of this head of legislation is to provide payment of compensation and not the confiscation of property. At page 277 the following conclusion was reached :

"This provision, therefore, in my opinion, has been inserted in the Act as a colourable exercise of legislative power under Entry 42 and is unconstitutional on that ground. The power has not been exercised under any other legislative head authorizing the State legislature to pass such a law. Legislation ostensibly under one or other of the powers conferred by the Constitution but in truth and fact not falling within the content of that power is merely colourably constitutional but is really not so."

It is suggested that the necessary result and effect of the impugned Aet is deprivation of a number of people of their property without payment of compensation and that this result could not be achieved by enacting legislation under any of the entries relied upon by the learned Advocate-General. It is urged that under the garb of validating certain proceedings taken in the matter of consolidation of lands, the owners and allottees are being deprived of their rights without payment of any compensation, such deprivation and extinction being tantamount to acquisition.

The question of colourable legislation was examined by B. K. Mukherjea J. in Narayan Deo v. State of Orissa, AIR 1953 SC 375 (L).

It was observed by him that the idea conveyed by the expression 'colourable legislation' was that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appeared on proper examination to he a mere pretence or disguise. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it was the result of such investigation and not the form alone that would determine as to whether or not it related to a subject which was within the power of the legislative authority. The statement from Lefroy in his well-known book on Canadian Constitution was also referred to. According to Lefroy.

"even if the legislature avow on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no jurisdiction, yet if the enacting clauses of the Act bring the legislation within its powers, the Act cannot he considered 'ultra vires'."

The previous decision of the Supreme Court in the Bihar case was considered and it was observed at page 390 :

"It was held in the Bihar case by the majority of this Court that the item of deduction provided for in Section 23 (f) was a fictitious item wholly unrelated to facts. There was no definable pre-existing liability on the part of the landlord to execute works of any kind for the benefit of the raiyat. What was attempted to be done, therefore, was to bring within the scope of the legislation something which not being existent at all, could not have conceivable relation to any principle of compensation."

With regard to the Orissa Agricultural Income-tax (Amendment) Act 1950, the Supreme Court decided that it was not colourable legislation, the test being that although it might appear on scrutiny that the real purpose of a legislation was different from what appeared on the face of it, but it would be colourable legislation only if it could be shown that the real object was not attainable to it by reason of any constitutional limitation or that it lay within the exclusive field of another legislature. The question of motive was wholly immaterial in such cases. Applying this test, the impugned Act in the present case cannot be held to be a piece of colourable legislation.

It has already been discussed that the real object of the enactment was covered by Entry 18 of List II or by the other heads of legislation mentioned before. It could not be said that the object fell within the exclusive field of another legislature. If there is transgression of any constitutional limitation, which will be discussed later, the legislation may lie bad. But so long as the impugned

Act can be determined to be covered by definite legislative heads and so long as it cannot be shown that an attempt has been made to bring within the scope of legislation something which could have no conceivable relation to any of the matters covered by the entries, it cannot be held to be colourable legislation.

7. This brings us to the second main question whether the impugned Act infringes any fundamen tal rights guaranteed by the Constitution. The very preamble of the Act states that it is meant to provide For extinguishment and modification of rights in an estate without payment of compensation. In view of the decisions of their Lordships of the Supreme Court in 1953 SCA 53: (AIR 1952 SC 252) (II); and Dwarkadas Shriniwas v. The Sholapur Spinning and Weaving Co., Ltd., 1954 SCA 132, (AIR 1954 SC

119) (M), any deprivation of property would be co vered by Article 31 of the Constitution and the impugn ed Act would be void as violative of that Article unless Article 31(2A) or Article 31-A can be pressed into service which are the sheet-anchors of the learned Advocate-General's arguments. In order to attract the application of Article 31-A, the meaning of the ex pressions 'Estate' and 'rights' will have to be de termined. The definition of these expressions as given by Article 31-A (2) is as follows :

"The expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or maufi or other similar grant; the expression 'rights', in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder (raiyat, under-raiyat) or other intermediary and any rights or privileges in respect of land revenue." The word 'estate' as defined in the Punjab Tenancy Act, 1S87, has the same meaning which is assigned to the said expression in the Punjab Land Revenue Act '1887. In the Punjab Land Revenue Act, "estate" means any area -

(a) for which a separate record-of-rights has been made; or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed; or

(c) which the State Government may, by general rule or special order, declare to be an estate. It is argued that admittedly the areas involved in the present case which are affected by the impugned legislation are not being separately assessed to land revenue because the word 'estate' is a defined unit, the fundamental element of which is separate assessment. The lands which have been allotted to displaced persons or of which proprietary rights have been transferred may constitute parts of various estates but they cannot be regarded as an estate or estates within the meaning of

the above definition. In Barkley's Directions for Settlement Officers in the Punjab, Mr. Thompson defined 'estate' as "any parcel or parcels of land which may be separately assessed with the public revenue: the whole property of the persons settled within the estate being held hypothecated to Government for the sum assessed upon it."

The joint responsibility of all the land owners in an estate for its revenue is provided for in Section 61 of the Punjab Land Revenue Act. Thus, "estate" is a legal expression which forms the unit of revenue assessment and administration in the Punjab, the esesntial elements being two -- (i) separate unit of assessment with a separate record of rights, and (ii) where more than one person own the same estate, their joint responsibility for the payment of its revenue. The Advocate-General has not contended that the areas or lands affected by the present Act can be regarded as 'estates' within the meaning of the definition of that expression. But he submits that these lands form part of an estate or estates and a part is included in the whole. Reliance is placed on Hukum Singh v. State of Punjab, 1935 Pun LR 359; (AIR 1955 Punj 220) (N) which followed the decision of the Full Bench in Bhagiralh v. State of Punjab, AIR 1954 Punj 167 (O) In the Full Bench judgment Khosla J. observed :

"It is clear that the whole includes the part and where an Act provides for rights in an estate it provides for rights in part of an estate."

The Full Bench while considering the validity of Punjab Security of Land Tenures Act 1953 examined an argument raised in that case that Article 31-A did not save the Act because the Act did not affect estates but areas of land, large or small. After stating that whole includes the part, it was observed that the Punjab Act had been modelled for the greater part on the lines of Bombay Act 67 of 1948. The provisions of the two Acts were very similar and the Bombay Act was mentioned in the 9th Schedule of the Constitution and thus declared valid by the provisions of Article 31B.

This showed that the Constituent Assembly intended to deal not only with whole estates but also with parts of estates. The reasoning of the Full Bench is assailed on behalf of the owners and allottees on various grounds. It is contended firstly, that the essential characteristics of an 'estate' as defined were not kept fully in view. An estate was intended to be a separate unit and unless any particular land could be said to comprise the entire unit, it could not possibly be an 'estate' Secondly, our attention was invited to the decision of the Supreme Court in AIR 1952 SC 252 (H) where Patanjali Sastri C. J., observed as follows :

"There is nothing in Article 31-B to indicate that the specific mention of certain statutes was only intended to illustrate the application of the general words of Article 31-A. The opening words of

Article 31-B are only intended to make clear that Article 31-A should not be restricted in its application by reason of any thing contained in Article 31-B and are in no way calculated to restrict the application of the latter article or of the enactments referred to therein to acquisition of 'Estates'."

It appears that the provisions of Article 31-A cannot be taken to be restricted by anything contained in Article 31-B nor can the mere fact that because the 9th Schedule included certain Acts which were validated would show that the Constituent Assembly intended to deal with parts of estates also. As a matter of fact Article 31-B provides clearly that the Acts and Regulations specified in the 9th Schedule shall not be deemed to be void but that was without prejudice to the generality of the provisions contained in Article 31-A. There seems to be force in the argument that Article 31-B was introduced only because Art. 31-A was not considered sufficient to cover the enactments validated by Article 31-B.

The learned Advocate-General supports the previous judgment of the Full Bench by pointing out that the word "any" includes all the rights of a particular person. For the proposition that 'any' means one or all, he relies on Synnot v. Simpson, (1854) 5 HLC 121 at p. 148 (P); Victorian Chamber of Manufacturers v. Commonwealth, 67 CLR 335 at p. 340 (Q); and Isle of Wight Ry. Co. v. Tahourdin, (1883) 25 Ch D 320 at p. 322 (R). He has also referred to the maxim--"omne majus continet in se minus" which means that the greater contains the. less. In Broom's Legal Maxims it is stated that the said maxim admits of familiar illustration in the power which a tenant in fee-simple possesses over the estate held in feel for he may cither grant to another the whole of such estate, or charge it in any manner he thinks fit, or he may create out of it any lesser estate or interest.

There can be no doubt that generally speaking part is inducted in the whole, but in the present case it has to be seen whether a piece of land which is not separately assessed to land revenue and in case of which there is no joint responsibility for its payment can be considered to be an "estate". Unless any piece or parcel of land retains those essential features it cannot be brought within the ambit of the definition of the expression 'estate'. In Kalikakumarsinhji v. Saurashtra State, AIR 1952 Sau 114 (SB) (S), the matter was not discussed fully and that decision cannot be of much assistance. In Sankarsana Ramanuja Das v. State of Orissa, (S) AIR 1957 Orissa 96 (T), a similar point was examined. The definition of an estate in Article 31-A(2) does not expressly include part of an estate.

It was urged that though any legislation dealling with the acquisition of a whole estate might be entitled to the protection of Article 31-A, a law dealing with the acquisition of only a part of an estate would not be entitled to such protection. The argument was repelled by applying the

maxim "omne majus continet in se minus" and it was stated that if a law relating to acquisition of an entire estate got the perfection of Article 31-A, it would necessarily follow that a law dealing with the acquisition of a part of an estate would get the same protection. This again is based on general principles which can only be applied if the particular definition which is given in the Punjab Land Revenue Act is to be ignored.

It seems that a!I the contentions on the point raised before us were not urged before the Full Bench in the previous case. After fully considering the matter I am constrained to hold that such fands or parcels thereof in Punjab State as are not assessed separately to land revenue and which do not form units by themselves cannot be brought within the meaning of the expression 'estate' as defined by Article 31-A. The protection claimed by the Advocate-General by reason of the provisions of Article 31-A will not, therefore, be available in the present case.

8. The other argument in this connection remains to be examined. Referring to the meaning of the expression 'rights' as defined in Article 31-A (2) (b), it has been contended that rights in relation to an estate can refer only to intermediary rights or such other rights as are expressly mentioned in the definition itself and can have no reference to the rights which are in dispute in the present case. This matter came up for consideration in Ajab Sinnh v. State of U. P.. AIR 1957 All 153 (U) where the validity of the U. P. Consolidation of Holdings Act was in dispute.

It has been held that the words 'other intermediary' in Article 31-A(2)(b) point to the conclusion that the proprietor, sub-proprietor, under proprietor, tenure-holder (raiyat, under-raiyat) mentioned in that clause are persons who are intermediaries and not tenants cultivating the land. The word tenure-holder as used in that clause must be interpreted in that sense and unless a person is shown to be a tenure-holder within the meaning of that expression in Article 81A, that Article could not save the relevant provision of the U. P. Consolidation of Holdings Act under which lands of tenure-holders were taken away for purposes of common utility without payment of compensation.

In (S) AIR 1955 SC 504 (F), the validity of Ra-jasthan Land Reforms and Resumption of Jagirs Act 1952 was in question. The contention raised on behalf of the petitioners was that the properties held by them were neither estates nor jagirs nor other similar grants within the meaning of Article 31-A and that therefore the impugned Act fell "quoad hoc" outside the ambit of that Article. After tracing the origin and evolution of the jagir tenure in Rajasthan their Lordships held that the word 'jagir' was used as connoting 'state grants' which conferred on the grantees rights in respect of land revenue. While considering this matter their Lordships observed at page 522:

"Moreover, the object of Article 31-A WAS to save legislation which was directed to the abolition of intermediaries so as to establish direct relationship between the State and the tillers of the soil, and construing the word in that sense which would achieve that object in a full measure, we must hold that jagir was meant to cover all grant under which the grantees had only rights in inspect of revenue and were not the tillers of the soil."

In Surendranath v. State of West Bengal, 62 Cal WN 14: (AIR 1958 Cal 96) (V), Sinha I. has dissented from the decision of the Allahabad High Court, and has expressed the view that it cannot be said that Article 31-A(2)(b) of the Constitution intended to affect only such raiyats and under-raiyats as are intermediaries, that is to say, not in actual possession of the land. The rule of ejusdem generis does not help because the classes of persons enumerated before the words 'other intermediary' do not appear to belong to the same genus. It is true that the object of Article 31-A was directed to the abolition of intermediaries. Sinlia J has referred to the decisions of the Supreme Court, in State of West Bengal v. Subodh Gopal, AIR 1954 SC 92 at p. 104 (W), M. K. Ranganathan v. Govt. of Madras, (S) AIR 1955 SC 604 at p. 608 (X) and T. K. Musaliar v. Voikatchalam Potti, (S) AIR 1956 SC 246 at p. 265 (Y) according to which it is permissible to look into the objects and reasons to see the historical background but not for the purpose of construing any part of the Act or of ascertaining the meaning of any of the words used in the Act.

It cannot, therefore, be held that because the rights involved in the present case are not of intermediaries they will not be covered by the expression 'rights' as defined by Article 31-A(2)(b). The contention raised on behalf of owners and allottees is without force. It is now to be seen whether the impugned Act is hit by the provisions of Article 31 of the Constitution. Whatever may have been the position before the Constitution (Fourth Amendment) Act 1955, there can be no doubt now that in view of the provisions of Article 31(2A) it is not open to the owners and allottees to attack the Act as violative of Article 31(2). The amended provision (2A) of the aforesaid Article is as follows :

"Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any per son of his property."

The impugned Act does not provide for the transfer of the ownership or right to possession of any property to the State. Therefore, no provision is being made for compulsory acquisition with the result that Article 31(2) will not be attracted vide Bhikhaji v. State of M. P., 1956 SCA 1 at pp. 10-11: ((S) AIR ,1955 SC 781 at p. 785) (Z).

9. The last challenge to the validity of the Act is made under Article 14 of the Constitution. It is submitted that there is no rational basis for the classification which has been made by the Act nor is the same founded on any rational differentia. It Is submitted that properties regarding which schemes were published between particular specified dates are covered by the Act whereas these schemes which Were published later were admittedly not within its scope. The result is that in village "A" the impugned Act would be operative and in the neighbouring village 'B it may not be so although the persons in both the villages would be similarly placed and circumstanced with this difference only that in the former village the scheme was published between particular dates, and in the latter, it was not.

By way of illustration it is pointed out that say in villages Raikot and Jagraon displaced persons have been given lands and that consolidation started in both together, but in case of Raikot the scheme was published on 31-12-1955 whereas in Jagraon the scheme could not be so published until 1-1-1956 owing to accident or design on the part of revenue officials. According to the impugned Act the displaced persons in Raikot would be deprived of portion of their lands whereas the rights of similar persons in Jagraon will not be affected at all. The learned Advocate-General has not been able to satisfy us that this result will not follow but his argument is that the legislafion is based on a valid classification for the purposes of validating the executive instructions which had been issued and which had been previously declared by this Court to be void and inoperative.

He submits that with regard to those displaced persons who were allotted lands on the same terms and conditions or to whom ownership has been subsequently transferred, identical mistakes had occurred at the time of allotment and such persons could legitimately be called one class. These persons were scattered throughout the State and treatment was being meted out to them equally which could not be regarded as discriminatory inter sc although there may be discrimination in a broad sense between such persons who had lands in villages where the schemes were published within the dates specified in the Act and others with regard to whose lands the schemes were published after 1-1-1956.

10. On behalf of owners and allottees it is pointed out that the power of making classification is not unlimited. In order to be valid it must not he arbitrary and it must alwavs rest upon some real and substantial distinction bearing a reasonable and just relation to the needs in respect to which the classification is made. In Surajmal Mohta and Co. v. Visvanatha Sastri, AIR 1954 SC 545 (Zl) at page 552, Mahajan C. J. observed as follows :

"It is well settled that in its application to legal proceedings Article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all

in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position. The State can by classification determine who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis."

In that case Section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947, was declared invalid as hit by Article 14 of the Constitution. It was found on a true scope and construction of Sub-section (4) that it dealt with the same class of persons who fell within the ambit of Section 34 ot the Income-tax Act and were covered by Sub-section (1) of that provision and whose income could be caught by proceedings under that section. The result was that some of the persons could be dealt with under the provisions of the Act of 1947, at the choice of the Commission, though they could also be proceeded with under the provisions of Section 34 of the Income-tax Act.

It was observed that it was not possible to hold that all such persons who evaded payment of income-tax and did not truly disclose all particulars or material facts necessary for their assessment, by themselves formed a class distinct from those who evaded payment from income-tax and came within the ambit of Section 34 of the Income-tax Act. There was nothing uncommon either in properties or in characteristics between persons who had been discover ed as evaders of income-tax during an investigation conducted under Section 5 (1) and those who were discovered by the Income-tax Officers to have evaded payment of income-tax. Both these kinds of persons had common properties and common characteristics and therefore required equal treatment. A test for classification was stated at page 552 in the following terms :

"Classification means segregation in classes which have a systematic relation, usually found in common properties and characteristics."

The other provision of the Taxation on Income (Investigation Commission) Act 1947, namely, Section 5(1) came up for consideration before their Lordships of the Supreme Court in Meenakshi Mills Ltd., Madurai v. Visvanatha Sastri, (S) AIR 1955 SC 13 (Z2). In that case it had been held that the class of persons alleged to have been dealt with by Section 5(1) of the Taxation on Income (Investigation Commission) Act comprised of those unsocial elements in society, who, during recent years prior to the commencement of the Act had made substantial profits and had evaded payment of tax on those profits and whose cases were referred to the Investigation Commission before 1-9-1948. At page 17 the following observations of Mahajan

C. J. are significant:

"Assuming that evasion of tax to a substantial amount could form a basis of classification at all for imposing a drastic procedure on that class, the inclusion of only such of them whose cases had been dealt with by the drastic procedure, leaving other tax evaders to be dealt with under the ordinary law will be a clear discrimination for the reference of the case within a particular time has no special or rational nexus with the necessity for drastic procedure."

A great deal of emphasis has been naturally placed by the counsel for the owners and allottees on this decision. It is submitted that by the inclusion of only such displaced persons whose schemes have been published within the specified dates for being deprived of their rights and interests in property leaving others with regard to whose lands schemes were published either before or after those dates, there would be clear discrimination because the publication of the schemes within a particular period or time can have no special or rational nexus with the necessity for making the drasitc provisions embodied in the impugned Act.

The answer of the Advocate-General is that the object was to validate executive instructions passed illegally and the

motivating

force was the history of such instructions which showed that the purpose was to remove inequalities which had arisen at the time of allotment by the Rehabilitation Department which in its very nature could not have taken account of all the factors which became apparent later on. Those schemes which were affected by the executive instructions had been put under one classification and were being validated.

All schemes in which those instructions had been followed were fully covered and an evil which confronted the State had to be eliminated by legislation, and thus there was a reasonable classification and the period selected had a rational nexus with the necessity for the provisions made. He has relied on Queenside Hills Realty Co. v. Saxl, (1946) 90 Law Ed 1096 at p. 1099 (Z3). It is also contended that a presumption should be raised in favour of the constitutionality of a legislative enactment and it had to be presumed that a legislature understands and correctly appreciates the needs of its own people.

11. Although the learned Advocate-General did not call attention to certain American decisions which deal with curative Acts, a reference to some of them may be made for determining the correct principles. pin the State of Minnesota Ex Rel. Board of Education of Minneapolis et al. v. Dan C. Brown, City Comptroller, 5 LRA (N.S.) 327 (74), the question raised was with regard to the validity of an Act, which legalised certain school bonds which were not legal under the

existing law. It was observed at page 331-

"Neither upon principle nor precedent should these statutes be treated as special legislation. They are remedial, curative acts, and apply to all subjects of legislation which are within the conditions and subject to the evils sought to be remedied. They resemble statutes which cure and make valid all deeds which were defectively executed or acknowledged. The matters classifies by these acts are improperly and defectively authorised school bonds, and the acts apply to all bonds of the kind which come within the conditions."

It has further been observed that when the statute if remedial or curative, the classification is legal if it includes within the class the subjects which are affected by the condition which it is sought to remedy or the evils it is sought to cure. It will be noticed, however, that in the aforesaid case, the discussion centred on the question whether curative acts were special legislation which was forbidden by the Constitution of the particular State. It is however clear from the discussion at page 338 that curative statutes were treated to be general legislation.

On the other hand a constitutional provision forbidding the passing of a special Act locating or changing a county seat was held to invalidate a statute which sought to validate an illegal and wholly unauthorised resolution of the board of supervisors of a particular county changing the county seat. Williams v. Boynton, 147 N.Y. 426: 42 N.E. 184 (Z5) The Court said that the legislature could not defeat such a provision by indirect method of a defective resolution followed by an Act legalising the same.

Another instance of a validating Act which was found to be violative of the constitutional provisions which required all laws on a particular subject to be general and of uniform operation throughout the State is to be found in Mitchell v. McCorkle, 69 Ind 184 (Z6). The statute in question legalised the judgments, orders and decrees of such Circuit Courts as had adopted rules of practice making civil summons returnable on the first day at the term. Thus, it cannot be regarded as settled that a curative or validating Act is to he tested by any different principles when its constitutional validity is challenged from those which are applicable in case of general legislation.

12. In Chicago, M. and St. P. Ky, Co. v. Westby, 178 Federal Reporter 619 (Z7) the validity of the employer's liability law of South Dakota was in question. That law exccpted from the general law of the state all common carriers and all their employees subjected the former to and granted to the latter causes of action for injuries to the employees caused by the negligence of their fellow servants and for those to which their own negligence contributed, while no such liability was imposed upon other employers and no such right was granted to other employees. The

following principles were laid down by the Circuit Court of Appeals.

(1) Legislatures of states for sonic sound reason of necessitv or propriety inherent in the subjects of their legislation may classify those subjects and make laws applicable to one class that are inapplicable to another, but may not make such classification arbitrarily.

(2) There are three indispensable conditions to a constitutional imposition by a state of liabilities or burdens upon and to a constitutional grant by a State of rights or privileges to the members of a class that other members of the State may not bear or enjoy.

(a) There must be such a difference between the situation and circumstances of all the members of the class and the situation and circumstances of all other members of the state in relation to the subjects or the discriminatory legislation as presents a just, natural reason for the difference made in their liabilities and burdens and in their rights and privileges.

(b) No one who does not belong to the class may be included there, and all the members of the class must be treated alike.

(c) All who are in a situation and circumstances relative to tbe subjects of the discriminatory legislation indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in tbe same way as are the members of the class.

13. The statement contained in Volume 6, R.C.L., Article 375, deserves notice. According to it, the legislature cannot take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered factions of the original unit as two classes, and thereupon enact different rules for the government of each.

14. The case Fountain Park Co. v. George Hensler, 50 ALR 1518 (28), is very instructive. In that case Chautauqua companies, which as such, possessed common attributes and stood in like situation with relation to any public necessity that might exist for their obtaining a site, were split up, and a sub-class--a very small sub-class of such companies, to wit, those which had existed and conducted meetings for sixteen days a year continuously for fifteen years, and which had held a lease for all of said period on a tract of timberland had been singled out as the recipient of the benefits conferred by the statute. It was observed at page 1523 as follows :

"We can see no necessity for, nor propriety of, different legislation for a Chautauqua company that has operated sixteen days a year for fifteen years, than for one which has operated fourteen days a year for five years; for a Chautauqua company that has operated on a leased tract of woodland for fifteen years, than for one which operates in a city park or in a school yard or

which owns a piece of prairie [and.

Such differences arc not germane to the purpose of the law, which, is to grant the right of eminent domain to Chamtauqua companies. Leases and timberlands are merely property incidents and arc not reasonable or natural differences upon which to base the legislative classification. The attempted classification does not embrace all those possessing the common attributes of the appellant company, and we believe it is capricious and arbitrary, can serve only to identify and not to classify, and that the act therefore is invalid."

15. All these principles with regard to classification are well settled and the only question is whether the classification made in the impugned legislation can be sustained on those tests. The first question is whether there is any difference between the situation and circumstances of all such allottees and owners with regard to whose lands the schemes were published between 31st December 1951 and 1st January 1956, and others with regard to whose lands the schemes came to be published later.

On the face of it, there is absolutely no difference so far as their properties, rights and other characteristics arc concerned. All these persons were displaced persons having had to abandon their homes and properties in Pakistan and who took refuge in India.

They were allotted evacuee lands according to the schemes of rehabilitation which applied to them equally and which made no distinction from the point of view of the consolidation schemes which had no connection with the allotment of lands.

The burdens which have been imposed or benefits conferred on persons with regard to whose lands the schemes were published within the specified dates, cannot be justified by any natural reason tor the difference between them and the other allottees in whose case schemes were not published dining those specified dates. The second question is whether all the persons who are in situation and circumstances similar to those who are affected by the impugned Act have been brought within its ambit.

The answer has to be in the negative because such persons in whose case the schemes have been published after 1st January, 1956, and who in situation and circumstances are indistinguishable from others have not been subjected to tbe impugned legislation.

16. The third question is whether the classification is based on a real and substantial distinction bearing a just and reasonable relation to the objects sought to be achieved and is not arbitrary. It may be said that the object sought to be attained is to validate the executive instructions which were issued previously and therefore there is a just relation to the objects sought to be attained,

but here again the element of arbitrariness is present.

By selecting one particular date, namely 1st January, 1956 as the outside limit with regard to the publication of the schemes, the legislature has fixcd an arbitrary method for determining the class on which the impugned legislation is to operate because publication of a scheme on or before a particular time can have no special or rational nexus with the necessity of extinguishment and modification of rights of such a class of persons.

Tbe purpose of the Act is stated to be implementation of some assurances which were given to displaced persons that injustice in their case would bo redressed during consolidation operations. This has been sought to be alone by extinguishment and modification of the rights in estates. If any injustice is being caused and if in order to redress the same, extinguishment and modification of rights was necessary, it has not been shown to be rational. It is difficult to see how it was necessary only with regard to allottees and owners in respect of whose lands schemes have been published between the specified dates and that the necessity for removing such an injustice has ceased after 1st January, 1956.

17. The present case certainly seems to fall within the rule that a legislature cannot take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate tho dissevered factions of the original unit as two classes. The natural class of persons consisted of all the allottees who are displaced persons and who had been allotted evacuee lands.

The only reason given for withdrawing the illegal instructions which were sought to be validated by the impugned Act is that proprietary rights of evacuee lands are being conferred on the allottees of such lands and there remains no distinction between a local landlord and evacuee landlords. But it is significant that proprietary rights were being conferred on all the allottees of evacuee lands irrespective of the date of publication of consolidation schemes and thus they all form one class.

That class has been split into two by putting those with regard to whom the consolidation schemes were published between 31st December 1951 and 1st January 1956 into one class and those in whose case the schemes were published after 1st January 1958, into another. This is clearly an arbitrary way of designating the dissevered factions of the original unit as two classes and having two sets of laws governing them.

In case of the former class, the impugned Act extinguishes and modifies their rights in accordance with Section 4, whereas in case of the latter class, clearly no such extinguishment and modification is to take place. Can it be said that there is any inherent difference in the situation and circumstances of the persons placed in the class which is subjected to the impugned

legislation and which peculiary requires and necessitates different and exclusive legislation with regard to them?

So far as rights and properties and other characteristics are concerned, there is admittedly no difference between the members of the two classes. The only difference apparently is the date or dates on which the consolidation schemes came to be published. A classification based on the mere act of publishing a scheme of consolidation cannot be held to be anything but unreasonable and arbitrary.

It cannot be justified on the ground that there has been segregation in classes which have a systematic relation, usually found in common properties and characteristics. The observations of Mahajan C. J., in (S) AIR 1955 SC 13 (Z2), which have already been set out before, would fully cover the present case. Another decision of the Supremo Court in State of Rajasthan v. Manohar Singhji, AIR 1954 SC 207 (Z9), may be considered with advantage.

In that case when the State of Rajasthan was formed in 1949, the Jagirdars of only a part of the present State of Rajasthan could not collect their rents while Jagirdars in other areas which were covered by Jaipur, Bikaner, Jaisalmer and Jodhpur etc.. were under no such disability. In the former State of Rajasthan provisions regarding the management by Government of Jagirs and the right to collect rents already existed, whereas there was no such provision in the former States of Jaipur, Bikaner etc.. but when the integration took place the discrimination exhibited itself.

It was held by their Lordships of the Supreme Court that in the absence of any allegation it could not be held that the Jagirdars of the particular area to which category the respondents belonged were differently situated to other Jagirdars. There was no real or substantial distinction why the Jagirdars of a particular area should continue to be treated with inequality as compared with the Jagirdars in another area of Rajasthan. No rational basis for any classification or differentiation had been made out. At page 298, it was observed as follows :

"Such an obvious discrimination can be supported only on the ground that it was based upon a reasonable classification. It is now well settled by the decision of this court that a proper classification must always bear a reasonable and just relation to the things in respect of which it is proposed. Judged by this criterion it seems to us that the discrimination is based on no classification at all and is manitestly unreasonable and arbitrary.

The classification might have been justified if the State had shown that it was based upon a substantial distinction namely, that the Jagirdars of the area subjected to the disability were in some way different to those of the other areas of Rajasthan who were not similarly situated."

In the present case, the State has not shown anything by which the classification made in the impugned act can be justified except the fact that certain executive instructions had been issued which had been found to be illegal and it became necessary to extinguish and modify the rights in respect of those lands of which the consolidation schemes had been published between the specified dates.

Nor has it been shown that the allottees with regard to whose lands the consolidation schemes were published between 31-12-1951 and 1-1-1956 were in any way different from those in whose case the said schemes were published after 1-1-1950, Judged by this criterion the classification would be altogether arbitrary and unreasonable. Thus, there can be no escape from the conclusion that the Ad is hit by the provisions of Article 14 of the Constitution. As all its provisions are, interconnected, the entire Act would be unconstitutional.

18. As a result of the entire discussion, the following conclusions emerge;

(1) The impugned legislation was within the competence of the State Legislature, (2) It is not saved by Article 31 (A) of the Constitution.

(3) It violates Article 14 of the Constitution. The answer to the reference will be that the Act in question is unconstitutional and invalid.

A.N. Bhandari, C.J.

19. I agree.

Tek Chand, J.

20. I agree.