RAJASTHAN HIGH COURT

Amar Singh Madho Singh

Vs.

State of Rajasthan

Group I (Jagirdar Cases), Civil Misc. Writ Cases Nos. 79-81, 89-33, 97 etc. of 1952 and 4, 13, 15 and 24 of 1953; Group II : (Bhomichara and Ehomat Cases) Marwar - Civil Misc. Writ Cases Nos. 256, 257, 264-267, 281-293, etc of 1952; Mewar - Civil Misc. Writ Nos. 143, 153, 206 etc. of 1952
(Wanchoo, C.J., Bapna and Dave, JJ.)

23.08.1954

JUDGMENT

Wanchoo, C.J.

1. These are 210 applications under Article 226 of the Constitution, challenging the validity of the Rajasthan Land Reforms and Resumption of Jagirs Act, (No. 6) of 1952 as amended by The Rajasthan Land Reforms and Resumption of Jagirs (Amendment) Act (No. 13) of 1954 (hereinafter to be referred together as the Act). We propose to deal with them by one judgment as the points raised in these cases are common.

2. The cases may be divided into two broad groups. The first group consists of what may be called ordinary jagirdari cases. The rights of the applicants in these cases arise from grants by the Rulers of the covenanting States. The second group of cases are Bhomichara and Bhomat cases, and it is said that the rights of the applicants in these cases did not arise out of any grant by the Rulers.

3. We do not think it necessary to set out the allegations in the various applications in detail. It would, in our opinion, be enough to indicate the points on the basis of which the validity of the Act is being challenged, particularly as learned counsel appearing for the applicants have only addressed us on those points and on no others. These points are:

(1) Article 31-A of the Constitution has no application to this Act, and therefore it is open to the applicants to challenge the validity of the Act on the ground that it infringes the fundamental rights of the applicants;
(2) The Act is discriminatory, and is therefore hit by Article 14 of the Constitution;
(3) The compensation provided in the Act is not fair or just compensation, and the Act is therefore hit by Article 31(2) of the Constitution;
(4) The Act is beyond the competence of the Rajasthan Legislature, and is therefore invalid;
(5) The assent of the President of India was not properly obtained, and therefore the Act is not valid in view of Article 31(3) and the proviso of Article 31A(1) of the Constitution;
(6) There is no public purpose behind the Act, and it is therefore invalid; and
(7) The Act takes away the ancient rights of the applicants, and is, therefore, invalid.
(4) The applications have been opposed on behalf of the State of Rajasthan, and it is urged that none of the objections raised by the applicants are valid, and that the Act is a valid piece of legislation. We shall take these points seriatim.
(5) The main argument on behalf of the applicants is that the Act is not covered by Article 31-A of the Constitution and therefore it is open to the applicants to challenge its validity on the ground that it infringes their fundamental rights. Article 31-A is as follows :
"Saving of laws providing for acquisition of Estates etc.- (1) Notwithstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the state of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part :
Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.
(2) In this article - (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant;
(b) the expression "rights", in relation to an estate, shall include any rights

vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue."

By this Article, the power of the Courts to scrutinize the validity of any law providing for the acquisition by the State of any estate or of any rights therein on the ground that the law infringes fundamental rights is taken away, provided that the assent of the President has been given to such law, and the law deals with the acquisition of estates as defined in this Article. The contention of the applicants in this connection is three-fold. In the first place, it is urged that this is not a case of acquisition but of resumption, and therefore this Article does not apply. Secondly it is urged that the assent of the President, as required by this Article, was not obtained, and therefore this Article will not apply. Thirdly, it is urged that the property acquired or resumed is not an estate within the meaning of this Article.

6. The first question, therefore, is whether this is a case of acquisition or of resumption pure and simple. It is true that the Act is called 'The Rajasthan Land Reforms and Resumption of Jagirs Act, 1952'; but the name alone is not sufficient to come to the conclusion that the Act provides for resumption and not for acquisition. What we have to see is the pith and substance of the Act to find out whether it is an Act for purposes of acquisition or merely for resumption of jagir lands. Reliance is also placed on Section 21 of the Act, which provides that the Government may issue notification appointing a date for the resumption of any class of jagir land. Section 22 provides for the consequences of resumption, and the argument is that the intention of the legislature was clearly to resume the jagirs and not to acquire them. We are, however, of opinion that though the Act talks of resumption in Sections 21 and 22, what has really been intended is to acquire the jagirs. Generally speaking, jagirs used to be granted in Rajasthan by Rulers of the former States, and they were liable to be resumed for various reasons, as for example, when the line of the original grantee failed or when the jagirdar was disloyal to the Ruler and so on. The Act, however, has not provided for resumption on any of these well-known grounds. Section 23 of the Act shows that certain portions of the jagir are exempted from the purview of the Act. If it was a case of resumption pure and simple, the whole jagir would have been resumed, and no part of it could have been exempted. This is one clear indication that the Act is not meant for purposes of resumption pure and simple. Further Chapter 6 of the Act provides for liability for compensation and Chapter 7 for payment of compensation and the manner in which compensation is to be determined is given in

the Second and Third Schedules. Now if it was a case of resumption, there would have been no necessity for paying any compensation whatsoever. The very fact, therefore, that the Act provides for payment of compensation is the clearest possible indication that the Act is for the acquisition of jagirs, and not for resumption as that word is well understood. Resumption implies taking back by the person who grants the land, and there can be no liability to pay compensation when such taking back takes place because of breach of conditions of the grant. Here the property is being taken away not because of any breach of condition of any grant under which it was given to the jagirdars, but on payment of compensation. An examination of the Act, therefore, clearly shows that this is an Act providing for acquisition of jagir lands whatever may be the words used to convey that idea. We are, therefore, of opinion that the application of Article 31-A cannot be excluded on the ground that this is not an Act for acquisition of estates.

7. Next, we come to the argument that the Act not having received the assent of the President cannot be saved by Article 31-A. This argument is based on a misconception. It seems that a bill was published in the Extraordinary Gazette of 15-11-1951, for eliciting public opinion. It was then called the Jagirdari Abolition Bill. Thereafter, certain changes were made and another bill was published on 1-1-1952, and it was notified that this bill had been reserved for the assent of the President. This was called Land Reforms and Resumption of Jagirs Bill. The enactment Act No. 6 of 1952, as it finally emerged after the assent of the President, was, however, different from the bill published on 1-1-1952, and reserved for the assent of the President. It is because of this difference that it is urged that the assent of the President was not obtained to the bill which finally emerged as an Act. We have, however, been shown the original document on behalf of the State, and it appears that the bill, which was reserved for the assent of the President on 1-1-1952, was not assented to by the President, and certain changes were suggested. Thereafter, a third bill was prepared on 8-2-1952, and was reserved for the assent of the President and it was this bill which was finally assented to by the President without any change. Similarly, the bill relating to the amendment Act of 1954 was reserved for the assent of the President, and was assented on 15-6-1954. In both the cases, the procedure provided by law for enacting legislation was properly followed, and the two bills properly received the assent of the President. It cannot, therefore, be said that these two laws are not saved by Article 31-A because they have not received the assent of the President properly.

8. Then we come to the last and most important point in this connection, namely that the property acquired by the Act is not an 'estate' within the meaning of Article 31-A and therefore the Act is liable to be assailed under the other provisions of Part 3 of the Constitution. This argument is pressed with great force so far as the second group of cases is concerned on the ground that the proprietors in these cases do not hold their lands as grants from the states, and that these lands do not come within the definition of the word 'estate' as given in Article 31-A. So far as the first group is concerned, and it consists of the majority of the applications before us, it has not been seriously contended that these cases are not covered by the word 'estate' as defined in Article 31-A. The word 'estate' in Article 31-A includes any jagir, inam, muafi or other similar grant. So far, therefore, as the first group of cases relating to ordinary jagirdari estates is concerned, it is clearly covered by the definition of the word 'estate' in Article 31-A(2) (a) for the word includes any jagir. Accepting that a jagir must be some kind of grant because the words "other similar grant" appear in Article 31-A(2)(a), it is obvious that the first group of cases consists of grants, and would clearly be estates.

9. So far as the second group of cases, namely Bhomichara and Bhomat, are concerned, it is urged that they are not grants, and that the proprietors of these land were in possession of them before the Rulers of Jodhpur or Udaipur came on the scene. These proprietors did not receive the lands from the Rulers of Jodhpur or Udaipur as grants, and as such these lands cannot be called jagir lands. We have been taken through the history of Bhomichara lands of Marwar in particular in this connection. There is no doubt that there are certain distinguishing features between Bhomichara lands and other jagirdars. Bhomichara lands are generally divided between all the sons on the death of the holder, and the rule of primogeniture does not prevail, though here also there are exceptions, vide paragraphs 12 to 17 at pages 19 and 20 of the Report of the Rajasthan Madhyabharat Jagir Enquiry Committee.

10. In a book called 'Brief Account of Mallani', published by order of the Durbar in 1892, we find it stated at page 5 that the whole of Mallani belongs to the Thakurs who are the offshoots of the ruling family of Jodhpur, and they are the real owners of the soil. It is also mentioned at page 10 that Foujbal or army tribute is levied proportionately on the jagirdars of Mailani. It may be mentioned that it is in Mallani that Bhomichara tenure is found in the former State of Marwar. Mallani was originally conquered by one Malinath. He had a brother Biram, and this Biram's son Rao Chundaji was the ancestor of the Chiefs of Marwar (vide page 13). It further appears

from this book at page 14 that there were troubles in this tract of land in 1835, and the British Government took the Chiefs of Mallani tinder protection. Eventually, however, this tract was ceded back to the Ruler of Marwar in 1891, and the Ruler of Marwar was acknowledged sovereign over these districts, and entitled to the tribute they might yield. For sometime, there after there was a British Superintendent; but later on Mallani became as much a part of Marwar as any other part.

11. Whatever be the origin of these land-owners of Mallani, what we have to see is the position of these land-owners, who hold land in Bhomichara tenure, just before the Act came into force in February, 1952. We have already seen that in 1891 Mallani was restored to the Marwar State by the British Government; but certain conditions were attached to this restoration, namely (1) that the chief officials of Mallani will be appointed with the approval of the Resident, (2) and no tax or cess of any kind shall be levied in Mallani in addition to the Foujbal without the sanction of the A.G.G., Rajputana. This was, however, between the British Government and the Ruler of Marwar, and the land-owners of Mallani could not enforce these conditions. In course of time Mallani also came to be treated just as any other part of the former State of Marwar, and this will be clear from the course of legislation in the former State of Marwar. In 1922 an Excise Act was passed by the former Marwar State, and it applied to the whole of the State including Mallani. In 1923 the Marwar Court of Wards Act was passed, and under Section 3 of that Act, the word 'jagirdar' was defined as any person holding an estate in land as a grant or who holds land in Bhomichara tenure. In 1937 certain rules were passed for maintenance of Jagirdars' wives, and in these rules also the word 'jagirdar' was defined to include anyone who holds land in Bhomichara tenure. In 1938 the Marwar Customs Act was passed which applied to the whole of Marwar including Mallani. In this Act there was a schedule of those who received rebate on export duty of sheep and goats, and in this schedule are mentioned the Mallani Jagirdars. In 1947 Rules for Assessment of rents in jagir estates were passed, and they applied to Mallani also. In 1949 a new Customs Act was passed, which applied to the whole of Marwar including Mallani. Finally, on 6-4-1949, the Marwar Tenancy and the Marwar Land Revenue Acts were passed. In Section 3, Marwar Tenancy Act, 'landlord' was defined as including a Bhomichara jagirdar. In Section 169, Marwar Land Revenue Act of 1949, it was provided that the ownership of all land vested in His Highness and all jagirs, bhoms, sansans, dolls or similar proprietary interests were held and should be deemed to be held as grants from His Highness. We are of opinion that this Section clearly applied to land owners holding land in

Bhomichara tenure, and by virtue of this Section, whatever might have been the origin of Bhomichara tenures, those, who held lands in Bhomichara tenure, also held them as grants from His Highness.

12. It was urged that this Section did not apply to Bhomichara tenure because it does not mention it specifically. We are, however, of opinion that the word 'jagir' used in this Section is wide enough to cover Bhomichara jagirdars also. We have shown that whatever might have been the origin of Bhomichara tenure, these land owners were always treated as jagirdars by the former State of Marwar. The word 'jagir' has not been defined either in the Marwar Tenancy Act or in the Marwar Land Revenue Act, and has been used in Section 169 in its ordinary meaning as covering all proprietary interests which are known as jagirs at that time. As Ebomichara was also known as jagir at that time, the word 'jagir' used in Section 169, in our opinion, clearly referred to Bhomichara tenures also.
The Land Revenue Act then defines certain special kinds of jagirs called 'Scheduled Jagirs' and 'Listed Jagirs', and Bhomichara tenures were not included in them. But that is because Bhomichara jagirs had their own rules of succession, which were different from the rules of succession in the case of scheduled and listed jagirs. Further Sections 192 to 194 provided for transfers by landlords as defined in the Marwar Tenancy Act, which definition also applied to the Marwar Land Revenue Act. These landlords included Bhomichara jagirdars, and thus the Act clearly applied to Bhomichara jagirdars also. Further Section 198, Marwar Land Revenue Act has provided that any transfer of land in contravention of the provisions of this Act shall be void, and the land so transferred shall be resumable by His Highness. This Section also clearly applies to Bhomichara jagirdars, and then lands were also resumable if there was any transfer in contravention of the Act. It seems to us therefore that whatever may be the origin of Bhomichara tenure, it was not different from a jagir after 6-4-1949, when the Marwar Tenancy Act and the Marwar Land Revenue Act came into force. By virtue of Section 169, Marwar Land Revenue Act, Bhomichara jagirs must also be deemed to be grants from His Highness, and therefore at the time when the impugned Act came into force Bhomichara tenure was also a grant in the former State of Marwar. As it was a grant in the former State of Marwar, it would be covered by the word "Jagir" used in Article 31A(2)(a) assuming that the jagir there has to be some kind of a grant.

13. Further, we are of opinion that if Bhomichara tenures are not jagirs within the meaning of Section 169, Marwar Land Revenue Act, and therefore are not jagirs

within the meaning of Article 31A(2)(a), they must be held to be estates within the meaning of Article 31A(2)(a) wherein 'estate' is defined as having the same meaning in relation to any local area as that expression or its local equivalent has in the existing law relating to land tenures in force in that area.

In the Marwar Land Revenue Act are defined the words 'estate', 'land revenue', and 'Mahal' in Section 4. 'Estate' means a mahal or mahals held by the same landlord. 'Lord Revenue' means any sum payable to the Government on account of an estate or survey number and includes rekh, chakri and bhombab. 'Mahal' means any area not being a survey number which has been separately assessed to land revenue whether such land revenue be payable or has been released, compounded for or redeemed in whole or in part. The question is whether these Bhomichara lands are estates within the meaning of the Marwar Land Revenue Act. If they are then they will be estates within the meaning of Article 31A also.

It has been strenuously contended on behalf of the Bhomichara applicants that their lands are not estates within the meaning of the Marwar Land Revenue Act. We find no force in this contention however. An 'estate' under the Land Revenue Act is merely a mahal or mahals held by the same landlord, and the 'Mahal' is any area which has been separately assessed to land revenue. All that we have to see, therefore, is Whether the lands which the Bhomichara jagirdars hold are separately assessed to land revenue. 'Land Revenue' is defined as any sum payable to the Government on account of an estate or survey number. It will be seen that the definition of the words 'land revenue' is very wide and includes any sum payable to the Government on account of an estate. Obviously the word 'estate' used in the definition of land revenue does not refer to the word 'estate' as defined in Section 4 of the Act, because if it was so, it would be going round in a circle, and the word 'estate' would be defined with reference to the same word. Obviously the word 'estate' used in Section 4(iv) which defines 'land revenue' is used in its ordinary meaning which with reference to land is the interest which any one has in lands, tenements or any other effects (Vide Oxford English Dictionary, Vol. III). Therefore, land revenue means any amount which is payable by a man for his interest inland. The question is then whether these Bhomichara jagirdars pay any sum of money for their interests in land. It is not in dispute that Bhomichara jagirdars used to pay a certain sum of money which was called Foujbal to the former State of Marwar. It is said that Foujbal was an army tribute. It is also said that it was fixed as one lump sum for the whole tract of Mallani. From the affidavit filed by the parties, however, it is clear that though the sum was originally fixed as one lump sum for the whole tract, it was divided between the

various jagirdars of Mallani. This division, according to the affidavit filed by the applicants, was made by themselves and intimated to the former State of Marwar which accepted it. When this division was made, it is said that some jagirdars were exempted from payment and this exemption was also accepted by the former State of Marwar. Accepting these statements as correct, the fact remains that the Bhomichara jagirdars had interest in land and had been paying a certain sum of money to the former State of Marwar. It is urged that this payment was not on account of their land. We have not been able to understand why this payment was not on account of their land. Even if the Bhomichara jagirdars were originally independent and were later brought, under the sovereignty of the former State of Marwar and began to pay tribute to that State, that tribute could only have been for the lands which these jagirdars were allowed to hold as before. In any case, the position at the time when the Land Revenue Act was passed clearly was that the payment was made for the lands which the Bhomichara jagirdars were holding and .for nothing else. These payments were entered in the State records against the jagirs held by the Bhomichara jagirdars, (see papers filed on behalf of the State) and we have not the least doubt that long before 1949 the position was that these payments were being made (whatever may have been their origin) for the lands which the Bhomichara jagirdars were holding.

14. It was next urged that even if the payment was for the land, it cannot be said that there was any separate assessment on the lands of these jagirdars, and separate assessment is essential before the land becomes a Mahal, and, of course, an estate, as defined in the Land Revenue Act, is one or more Mahals belonging to one landlord. The contention seems to be that settlement operations were never carried out in Mallani and therefore it cannot be said that there was separate assessment of revenue. We are, however, of opinion that it is not necessary to carry out settlement operations in order that revenue may be assessed separately on particular parcels of land. It is clear from the affidavits filed even by the applicants that the amount that was fixed as a lump sum for the whole Mallani tract was distributed and fixed separately on particular lands. This distribution was accepted by the former State of Marwar and as soon as that was done there was a separate assessment for the particular land. We are, therefore, clearly of the opinion that Bhomichara jagirdars are paying land revenue and this land revenue is separately assessed with respect to separate parcels of land, and therefore their interest in land is an 'estate' within the meaning of the Marwar Land Revenue Act, and therefore it is an estate within the meaning of Article 31A of the Constitution. The cases of those, who do not pay any land revenue, is also covered

by the definition of the word 'Mahal', for in their case it would be deemed that whatever land revenue was to be assessed on them had been released by the former State of Marwar which accepted the distribution of the lump sum paid by the Bhomichara jagirdars of Mallani. We are, therefore, clearly of or opinion that the interest of Bhomichara jagirdars in their lands is an estate within the meaning of the Marwar Land Revenue Act, and there fore within the ambit of Article 31A.

15. As to the Mewar cases, it is enough to refer to the Qanoon Mal of Mewar (No. 5) of 1947. In that Act, the word 'estate' has not been defined as such; but Section 27 provides that all lands shall be the property of His Highness, and no one shall have the right to take possession of any land without the permission of His Highness. Further, though the term estate has not been defined generally in the Act, various kinds of estates have been denned. Section 106 mentions these various estates as Thikanedars, Jagirdars, Muafidars and Bhomias, and says that these persons will have such rights as His Highness would give them. A list of Thikanedars is also given and among them are to be found Jawas, Jurha and Panarwa which claim to be something different from ordinary jagirdars. That claim of theirs has no value as the Mewar law makes them a special kind of jagirdar known as Thikanedars.
Further Section 110 of the Act says that the Thikana, Jagir or Bhom would have to pay such amount to the State as fixed upon them. Then Section 116 provides conditions in which a Thikana, Jagir or Bhom would be liable to be resumed as for example rebellion, conviction for serious crime, bad management and so on. It is clear, therefore, from the Qanoon Mal, Mewar, that all those applicants of Mewar, who claim to be something better than an ordinary jagirdar, are not different from ordinary Jagirdars. Their case is, therefore, covered by the word 'jagir' appearing in Article 31A. Further, they also hold estates as is clear from Sections 106 and 110 of the Qanoon Mal, Mewar.

16. There is, therefore, no force in the argument on behalf of some of the applicants that Article 31A does not apply to them. We are clearly of opinion that Article 31A of the Constitution fully applies to the lands being acquired under the Act, and it is, therefore, not open to the applicants to challenge the validity of the Act on the ground that any part of it violates any of the rights guaranteed in Part III of the Constitution.

17. Assuming, however, that the Act is not saved by Article 31A of the Constitution, let us turn to the arguments based on the violation of certain provisions of Part III of

the Constitution.

18. It has been urged that the Act violates Article 14 inasmuch as it is discriminatory, and therefore should be struck down. The argument is based on Section 21 of the Act which lays down that the Government may, by notification, appoint a date for the resumption of any class of jagir lands and different dates may be appointed for different classes of jagir lands. It is urged that no criterion has been provided to enable the Government to fix different dates for the resumption of different classes of jagir lands, and the Government is given naked and arbitrary power to discriminate between jagirs and jagirs.

This argument would have had force if Section 21 stood by itself. But we have to read it along with Section 20 and the purpose of the Act. The purpose of the Act apparently is to provide for the acquisition of all jagir lands and Section 20 lays down that Chapter V applies to all jagirs except jagirs the income of which is utilized for the maintenance of any place of religious worship, or for the performance of any religious service. This Section, in our opinion, clearly shows that all jagirs barring those excepted must be acquired. It is not, in our opinion, the intention of the Act that only some jagirs should be acquired and not others, nor is it left to the absolute discretion of the State Government to acquire such jagirs as it likes and not to acquire others. The reason why the State Government has been given the power to notify different dates for different classes of jagirs is that it may not be administratively convenient to take possession of all the jagirs in the whole of Rajasthan at the same time. Sections 20 and 21 read together, in our opinion, can only lead to this inference that the Act compels the State Government to acquire all jagirs, but gives it discretion to proceed class by class for the sake of administrative convenience. It is not open to the State Government not to apply this Act to any particular jagir which it arbitrarily wants to exempt. It must apply the Act to all the jagirs barring the excepted classes mentioned in Section 20, though for administrative convenience it may take time to do so. This being the purpose of the Act, we are of opinion that it cannot be said that the Act is discriminatory for all jagirs will be resumed in course of time. The notifications issued by the Rajasthan Government from time to time also show that they are taking possession of various jagirs according to the income beginning with those with higher incomes first. Reference in this connection may be made to *Biswambhar Singh v. State of Orissa',* [1] In that case. Article 14 was invoked on the ground that the State Government had been given arbitrary power to issue notification with respect to those Zamindars who opposed the ruling party in the election and to refrain from doing so

with respect to others who were loyal to that party. The Supreme Court held that "the object and purpose of the Act was to abolish all the rights, title and interest in land of intermediaries by whatever name known. That was a clear enunciation of the policy which was sought to be implemented by the operative provisions of the Act, and whatever discretion had been vested in the State Government must be exercised in the light of this policy, and therefore it could not be said to be an absolute or unfettered discretion, for sooner or later all estates must per force be abolished. From the very nature of things a certain amount of discretionary latitude had to be given to the State Government. It would have been a colossal task if the State Government had to take over all the estate at one and the same time. It would have broken down the entire administrative machinery." Further, the learned Judges pointed out that "it had not been suggested or shown that in practice any discrimination had been made. If any notification or order was made not in furtherance of the policy of the Act but in bad faith and as and by way of discrimination, such notification or order would be void. (See page 144)." This case, in our opinion, clearly applies to the facts of the present case. Here also the policy is that all jagirs barring those excepted by Section 20 will be taken over. The notifications also by the State Government taking over estates according to their income beginning with those with larger incomes are in consonance with that policy, and there is nothing to show that the State Government is, in any way, acting in bad faith. Time will certainly be taken in resuming all jagirs in view of administrative difficulties. We are, therefore, not prepared to hold that the Act is discriminatory and is hit by Article 14.

19. We now come to the argument that compensation provided in the Act is not just and fair compensation, and the Act, therefore, contravenes the provisions of Article 31(2). The Act provides in Section 23 that certain properties shall continue to belong to the jagirdar. Leaving out these properties, the second schedule to the Act provides for computing the gross income of the jagirdar and also his net income. It is then provided that the jagirdar will get seven times his net income as compensation. The Third Schedule provides for certain rehabilitation grants which are also in the nature of compensation. The method, therefore, for providing compensation is the usual method for valuing property, namely calculating the net income and then multiplying it by a certain figure to arrive at its capitalized value. This multiplier works out to nine times the net income in the case of jagirdars with a gross income of over Rs. 30,000 and 13 times in the case of jagirdars with a gross income less than of Rs. 250/-. The contention on behalf of the applicants is that this is not a fair compensation as the

property is worth much more. We are of opinion that there is no force in this contention. It may be pointed out that in Rajasthan jagirs are generally not alienable, and therefore they cannot be sold. A jagirdar generally is not a full proprietor having a right to sell away his property. His rights are, therefore, something less than that of a full proprietor, and are not marketable either. In these circumstances, compensation at the rate of 9 to 18 times the net income cannot be said to be inadequate, when we also find that certain properties are exempted from acquisition as mentioned in Section 23.

20. It has, however, been urged that the method of arriving at the net income in the Second Schedule is such that the net income is being unnecessarily reduced. Clause 4 of the Second Schedule shows how net income would be arrived at. The deductions provided from the gross income include the amounts payable by the jagirdar to the Government as tribute, and on any account other than land revenue. There is a further provision for reduction of 25 per cent. of the gross income on account of administrative charges inclusive of the cost of collection, maintenance of land records, management of jagir lands and irrecoverable arrears of rents. There is also a proviso that in no case shall the net income be computed at less than 50 per cent of the gross income. The main attack is directed towards the deduction on account of administrative charges. It is pointed out that in Section 22(1)(d) the expenses of collection are only mentioned at 7 per cent. and there is no reason why the administrative charges should be as high as 25 per cent. This argument however is not sound because administrative charges consist not only of expenses of collection but further items also. These other items are maintenance of land records, management of jagir lands and irrecoverable arrears of rent. It may be mentioned that there are no Patwaris in Jagir lands in Rajasthan, and land records are all maintained by the jagirdars who pay for their maintenance. When the jagirs are resumed, this work will fall on Government, and therefore it is only right that deductions should be made from the income for maintenance of land records.
Similarly management of jagir lands is something different from cost of collection. Then there remain irrecoverable arrears of rents. It is common knowledge that rent is not recovered in full for various reasons. Some tenants may run away without paying rents, others may not be able to pay the full rent for one reason or the other; there may in some years be remissions on account of failure of rains or invasion by locusts, or some such cause. Therefore, it stands to reason that a landlord is not able to realize the entire rental demand. It cannot, therefore, be said that a deduction of 25 per cent. on the ground of administrative charges which includes all these items is necessarily too

high. The charge, therefore, that the net income is being reduced arbitrarily by such a high percentage does not appear to be sound.

21. Another provision, which is attacked, is that the State was taking over the right, title and interest of the jagirdar under Section 22(1) (a) free from all encumbrances, and this means that though the property of the jagirdar has been taken away, yet encumbrances remain, and the jagirdar will have to pay them. This argument also, to our mind, has no force. It is well to remember that the State is paying compensation to the jagirdar for the rights taken over by the State. We have pointed out that this compensation cannot be called unfair or unjust, and must in the circumstances prevailing in Rajasthan be held to be quid pro quo for the rights taken away. In these circumstances, it stands to reason that the State, after it has paid full compensation, would not be liable to pay any encumbrances and the encumbrancer will have to be paid out of the amount paid to the jagirdar as compensation. Whether the State should reduce the incidence of the encumbrances and let some part of the burden be borne by the encumbrancer also in view of this legislation is a different matter relating to policy with which we are not concerned, though we are told that some such thing has been done in some other States. But the provision that the jagirs would be taken over free from encumbrances appears to us to be quits proper when compensation is being paid for taking over the right, title and interest of the jagirdar.

22. Next, it is urged that certain rights were being taken away without compensation as will appear from Section 22(1)(a). That Section provides that the right, title and interest of the jagirdar in forests, trees, fisheries, wells, tanks, ponds, water channels, ferries, path-ways, village-sites, hats, bazars and mela-grounds and mines and minerals whether being worked or not shall stand resumed. In this connection, reference may also be made to Section 23 which provides that all groves, trees, private wells belonging to the jagirdar, and all tanks in the personal occupation of the jagirdar will not be taken away. Reference may also be made to the Second Schedule which provides for taking into account income from forests, gracing fees, quarries, markets, fisheries and the like in calculating the gross-income. It cannot, therefore, be said that rights over forests etc. mentioned in Section 22(1)(a) are being confiscated without compensation. This does not, however, include mines and minerals which in our opinion, stand on a different footing altogether. It is urged that mines and minerals, whether being worked or not, were being confiscated without compensation. It must, however, be remembered that jagirdars had, generally speaking, no rights over mines

and minerals in Rajasthan, for example Section 231, Marwar Land Revenue Act provides that unless it is otherwise expressly provided in the records of the settlement or by the terms of a grant, the right to all minerals, mines and quarries shall vest in the Government. Similarly Qanoon Mal, Mewar (Act No. 5) of 1947 provides by Section 28 that all mines and minerals will be the property of His Highness, and those in possession of lands will have no right to take out minerals without the permission of the Government. We understand that similar provisions exist in the land laws of other States. In these circumstances, the jagirdar is not entitled to compensation for any mines and minerals, as these never belonged to them. Mines and minerals have been mentioned in Section 22(1)(a) only as a matter of abundant precaution for they already belong to the State.

23. Then our attention is drawn to Section 22(1)(G) which provides chat the right, title and interest of the jagirdar in all buildings on jagir lands used for schools and hospitals not within residential compounds shall stand extinguished and such buildings shall be deemed to have been transferred to the Government. It has been urged that this is a very wide provision which confiscates the property of the jagirdar without any compensation. The words used are certainly wide, but they have to be read along with Section 23(1)(C) which says that all buildings belonging to or held by the jagirdar or any other person shall continue to belong to or be held by such jagirdar or other person. Obviously, therefore, Section 22(1)(G) applies only to those school or hospital buildings which are not held by or do not belong to the jagirdar or any other person. Such buildings can only be buildings which by user as schools or hospitals have become dedicated to the public. If school or hospital buildings belong to the jagirdar, as for example where a jagirdar has built a school and charges rent from the school authorities, such buildings will come under Section 23(1)(C) as belonging to the jagirdar, and not under Section 22(1)(G). Similarly if a jairdar has built a school building and has made a trust relating to it, that building will also come as held by 'any other person' mentioned in Section 23(1)(c) and not under Section 22(1)(g). We realize that Section 22(1)(g) is widely worded, but reading it along with Section 23(1)(c), it is obvious that the intention of Section 22(1)(g) is that only such school and hospital buildings outside residential compounds, as have become dedicated to the public by user, shall vest in the Government, and the right, title and interest of the Jagirdar in such buildings, which can only be the right of ultimate reversion in case the building is not used for the purpose of school or hospital, is to be extinguished. We do not therefore think that Section 22(1)(g) properly understood in any way

confiscates any property of the jagirdars.

24. On the whole, therefore, we are satisfied that even if Article 31(2) applied the compensation provided in the Act is fair, and the Act is not hit by Article 31(2) of the Constitution.

25. The next point that is urged is that the Act is beyond the competence of the Rajasthan Legislature. This is based on the argument that the Act provides for resumption pure and simple and is not an Act for acquisition of property. We have dealt with this argument when we considered the application of Article 31A, and have pointed out that the Act really provides for acquisition of property and not for resumption. As such it is covered by item 36 of List II of the Seventh Schedule, and is within the competence) of the State Legislature. There is, therefore, no force in this argument, and we reject it.

26. The next argument is that the Act was not properly assented to by the President. We have dealt with this argument also when dealing with the argument relating to Article 31A. Now it is enough to point out that the bill was reserved for the assent of the President and was assented to by him so far as Act No. 6 of 1952 is concerned in February, 1952. The Amendment Act No. 13 of 1954 was assented to on the 15th of June, 1954, after the bill had been reserved for the President's assent. The procedure prescribed by the Constitution for promulgation of laws was followed in both instances. This law will have effect as provided in Article 31(3) of the Constitution, for it was reserved for the assent of the President. It also complies with the proviso of Article 31A(1) as already held by us. In some of the applications it has been said that the Act was not reserved for the assent of the President but only the bill, and therefore the procedure provided by the Constitution was not followed. This, in our opinion, has no force. Article 31(3) and the proviso to Article 31A(1) speak of the law being reserved for the assent of the President and not of the bill or the Act. The word 'law' is used in the context as meaning the measure which later becomes the Act. It is not used in the sense of a law passed by the legislature. It stands to reason that there would be no sense in the Rajpramukh or the Governor assenting to a bill and then reserving it for the assent of the President. The usual procedure in such cases is that when the bill has been passed by the Legislature, it is reserved by the Rajpramukh or the Governor for the assent of the President, and when the assent of the President is received, it becomes law. This is what is done in this case also with the difference that when there

was no legislature in Rajasthan in 1952, the bill was prepared by the Rajpramukh and was reserved by him for the assent of the President. There is no force therefore in this point either.

27. In some of the applications, it has been urged that there is no public purpose behind this Act by which the properties of the applicants are being acquired. No serious arguments were addressed to us on this point for the reason that the matter is now concluded by the decision of the Supreme Court in - *'State of Bihar v. Kameshwar Singh',* [2] That is a judgment in appeals from the decisions in the Zamindari Abolition Cases from Uttar Pradesh and Bihar. In that judgment it is pointed out that whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. It was said that the proper approach was to take the scheme as a whole, and then to examine whether the entire scheme of acquisition is for a public purpose, and that the phrase 'public purpose' has to be construed according to the spirit of the times in which particular legislation is enacted. Judged from this point of view, it can hardly be said that there is no public purpose behind the Act. As the Act itself shows, it is a measure of land reform in the State of Rajasthan intended for the benefit of the whole community. It is too late, therefore, in the day to say that there is no public purpose behind the acquisition by this Act.

28. Lastly, it was faintly urged that the jagirdars had very ancient rights granted to them by the Rulers of the former States, and it was not open to the State of Rajasthan to take away those rights, particularly after the coming into force of the Constitution which guaranteed the proprietary rights of the jagirdars. Reliance in this connection was placed on - *'Virendra Singh v. State of Uttar Pradesh',* [3] That case, however, is clearly distinguishable on the facts. In that case a grant made by a former Ruler of a merged State was ordered to be resumed by the State of Uttar Pradesh by executive action. It was, in those circumstances, that the Supreme Court held that a grant could not be resumed by executive action after the 25th of January, 1950, after the coming into force of the Constitution. At p. 455 it was expressly stated that no opinion was being expressed on the question whether the State would have the right to set aside these grants in the ordinary courts of the land, or whether it could deprive the petitioners of those properties by legislative process. The present Act is a piece of legislation and is not covered by this authority of the Supreme Court.

29. In this connection reference may be made to - *'Jagannath Baksh Singh v. United Provinces',*[4] In that case, the U.P. Tenancy Act of 1939 was attacked by a Talukdar on the ground that it infringed the terms of the Crown grant made to him. The following observations of their Lordships of the Privy Council at p. 130 may be quoted with advantage -

> "It is many centuries since the Courts were invited to hold that an Act of Parliament was ultra vires or invalid in law on the ground that it infringed the prerogative of the Crown. So startling a claim as that made in the present case cannot be upheld. That broad and general principle is sufficient to dispose of the. claim."

Then at p. 131 appear the following observations –

> "Support may be found (if support is needed) for the general proposition that the Crown cannot deprive itself of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists. So the proposition is stated by Luxmoore, J., in – *'North Charterland Exploration Co. v. King',*[5] "

The fact, therefore, that these grants were made to the applicants long ago, and they enjoyed certain rights under these grants cannot take away the legislative authority of the State to pass suitable laws for the acquisition of the rights of the grantees so long as the laws are within the competence of the legislature, and are not hit by any provision in Part in of the Constitution. The mere fact, therefore, that the rights are ancient in some cases or that they were granted by the Rulers or protected by any covenant (even if it be so) cannot take away the right of the legislature to legislate for a public purpose in the interest of the people of the State, and acquire these rights, so long as the legislature acts within the field reserved for it, and there is nothing in the law which violates the provisions of Part III. As was pointed out by Gwyer, C.J. in - *'United Provinces v. Mt. Atiqa Begum',*[6] "the powers of State Legislature within its own sphere are as large and ample as those of Parliament itself", subject now, of course, to the limitations imposed by Part III of the Constitution. We are, therefore, of the opinion that there is no force in this contention either.

30. We, therefore, dismiss all the applications. We allow Rs. 50/- per writ application to the State as costs.

Applications dismissed.

Cases Referred.

1. AIR 1954 SC 139
2. AIR 1952 SC 252
3. AIR 1954 SC 447
4. AIR 1946 PC 127
5. 1931-1 Ch 169
6. AIR 1941 FC 16