PEPSU HIGH COURT

Pirthi Singh

Vs

State of Pepsu

Civil Misc. Nos.31, 21, 119, 124, 125, 133 to 146 of 1951; 62 to 65 of 1952 and 10, 22 to 33 of 1953

(Teja Singh, C.J. and Kesho Ram Passey, J.)

05.05.1953

JUDGMENT

Teja Singh, C.J.

1. This order will dispose of the 36 petitions under Article 226, or Article 227 or both, of the Constitution of India mentioned in the list attached at the end. The main point urged by the petitioners is that the Farman-i-Shahi No.11 of 11-3-1947 promulgated, and Notification No.33' of 2-9-1948 issued by the Ruler of the erstwhile Patiala State had lapsed and the subsequent Ordinances and Act made by the Rajpramukh of the Patiala and East Punjab States Union to which reference shall be made hereafter and by which the said Farman-i-Shahi was amended from time to time, were void, inoperative and unconstitutional.

2. In order to be able to understand the position taken up by the petitioners and appreciate the arguments advanced on their behalf it is necessary to refer in brief to the historical background of the formation of the Patiala and East Punjab States Union. On the passing of the Indian Independence Act, 1947 (Nos.10 and 11, George-VI C/13) in July, 1947, the Sub-Continent of India constituting the British Indian Empire became divided into two dominions, India and Pakistan According to Section 7, Clause (b) of the Act the suzerainty of His Majesty over the Indian States lapsed and with it all Treaties and agreements in force at the date of the passing of the Act between His Majesty and the Rulers of Indian States etc., but the proviso to the Section laid down that effect shall as nearly as may be, continue to be given to the provisions of any agreement, etc., that existed between His Majesty and the Rulers of the States and which related to Customs, Transit. Communications, Posts and Telegraphs, or other like matters until they were denounced by the Rulers. The Act also authorized the Governor-General of India to make the Government of India Act, 1935, applicable to India with such omissions, additions, adaptations and modifications as he may by order specify. When the Government of India Act, 1935, was adopted by the Governor-General and provision was made for the Indian States to accede to the Dominion of India, the Rulers of Patiala and the other Punjab States acceded to the Dominion with respect to Defense, External Affairs and Communications. Later on, on 20-8-1948 these States formed themselves into the Patiala and East Punjab States Union by virtue of the Covenant

that the Rulers of the States had entered into on 5-5-1948 with the concurrence and guarantee of the Government of India The preamble to the Covenant reads as below : We, the Rulers of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kals'ia and Nalagarh, Being convinced that the welfare of the people of this region can best be secured by the establishment of a State comprising the territories of our respective States, with common Executive, Legislature and Judiciary; And having resolved to entrust to a Constituent Assembly consisting of elected representatives of the people, the drawing up of a democratic Constitution for the State within the framework of the Constitution of India, to which we have already acceded, and of this Covenant; Do hereby, with the concurrence and guarantee of the Government of India, enter into the following Covenant :

> 'Article' II of the Covenant stated that
> "The Covenanting States agree to unite and integrate their territories in one State with a common executive, legislature and judiciary, by the name of Patiala and East Punjab States Union, hereinafter referred to as "the Union"
> Provided that the Constituent Assembly of the Union formed under Article X of this Covenant may adopt such other name for the Union as it may deem appropriate."

Article III laid down that there would be a Council of Rulers consisting of the Rulers of the Covenanting Salute States and one of the Rulers of the two Covenanting Non-Salute States, and the Council would exercise such functions "as are assigned to it by this Covenant" and such other functions if any, as may be assigned to it by or under the Constitution of the Union.

3. This article also made a provision for election of one of the members of the Council to be the President and another to be the Vice-President and provided that "the President and the Vice-President so elected shall be Rajpramukh and Up-Rajpramukh of the Union."

4. Clause (6) of the Article was to the effect that

> "Notwithstanding anything contained in the Article the present Rulers of Patiala and Kapurthala shall respectively be the first President and Vice-President of the Council of Rulers and were entitled to hold office during their life-time".

The other articles of the Covenant important for the purposes of the present case are Articles VI, VIII and X and for facility of reference I am reproducing them here :
Article VI.

> (1) The Ruler of each Covenanting State shall, as soon as may be practicable and in any event not later than the 20th August, 1948, make over the administration of his State to the Raj Pramukh and thereupon (a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the Government of the Covenanting State shall vest in the Union and shall hereafter be exercisable only as provided by this Covenant or by the Constitution to be framed thereunder :
> (b) all duties and obligations of the Rulers pertaining or incidental to the Government of

the Covenanting State shall devolve on the Union and shall be discharged by it :

(c) all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the Union; and

(d) the military forces, if any, of the Covenanting State shall become the military forces of the Union

Article VIII.

The Rajpramukh shall, as soon as practicable and in any event not later than the 30th of August, 1943 execute on behalf of the Union an instrument of accession in accordance with the provisions of section 6 of the Government of India Act, 1935, and in place of the Instrument of Accession of the several Covenanting States; and he shall by such Instrument accept as matters with respect to which the Dominion Legislature may make laws for the Union all the matters mentioned in List I and List III of the Seventh Schedule to the said Act, except the entries in List I relating to any tax or duty.

Article X.

(1) There shall be formed, as soon as may be practicable a Constituent Assembly in the manner indicated in Schedule II and it shall be the duty of that Assembly to frame a Constitution of a unitary type for the Union within the frame-work of this Covenant and the Constitution of India, and providing for a Government responsible to the Legislature.

(2) Until a Legislature elected in accordance with the terms of the Constitution framed by it coming into being the Constituent Assembly as constituted in the manner indicated in Schedule II shall function as the interim Legislature of the Union :

Provided that until a Constitution framed by the Constituent Assembly comes into operation after receiving the assent of the Raj Pramukh, the Raj Pramukh shall have power to make and promulgate Ordinances for the peace and good Government of the Union or any part thereof, and any Ordinance so made shall for the space of not more than six months from its promulgation have the like force of law as an Act passed by the Constituent Assembly; but any such Ordinance may be controlled or superseded by any such Act.

5. In accordance with Article 8 of the Covenant and Section 6, Government of India Act, 1935, the Maharaja of Patiala in the capacity of the Raj Pramukh of the Union executed for and on behalf of the Union an Instrument of Accession, acceding to the Dominion of India and declaring 'inter alia', that the Governor General of India, the Dominion Legislature, the Federal Court, and any other Dominion authority established for the purpose of the Dominion, shall "by virtue of the Instrument of Accession but subject always to the terms thereof and for the purposes only of the Dominion" exercise in relation to the Union such functions as may be vested in them by or under the Government of India Act, 1935, and accepting all matters enumerated in Lists 1 2 and 3 of Schedule 7 to the Act as matters in respect of which the Dominion Legislature may make laws for the Union, subject to certain provisos. On 9-4-1949 a supplementary Covenant was entered into by all the Rulers of the State forming the Union with the concurrence of the Government of India by which Articles 10 and 12 of the original Covenant were amended. The amendment of

Article 10 was to the effect that the words "for the space of not more than six months from its promulgation" appearing in the proviso to para. 2 were to be omitted and after the words "any such Act" the words "and if promulgated after the first meeting of the Constituent Assembly shall not be in force for more than six months from its promulgation" were to be added. This means that according to the amended Article no limitation was to be placed upon the life of Ordinances promulgated by the Rajpramukh before the first meeting of the Constituent Assembly. With the amendment of Article 12 we are not concerned in the present case.

6. Since no Constituent Assembly as provided by Article 10 came into existence the Rajpramukh frequently exercised the powers given to him by the proviso to para.2 of the Article and made Ordinances and Acts for the Government of the Union. The first Ordinance promulgated by him was known as the Patiala and East Punjab States Union (Administration) Ordinance (No.1 of 2005) and it was issued, and came into force, on the very day on which the Union was formed. Section 3 of it provided that as soon as the administration of any covenanting State had been taken over by the Rajpramukh as provided in the previous Section.

> "all laws, Ordinances, Acts, Rules, Regulations, Notifications, Hidayats, Farman-i-Shahi, having force of law in the Patiala State on the date of the , commencement if this Union shall apply 'mutatis mutandis' to the territories of the said State and with effect from that date all laws in force in such covenanting State immediately before that date shall be repealed."

The proviso to the Section made an exception in case of "pending proceedings of any nature whatsoever" and laid down that such proceedings would be disposed of in accordance with the laws governing them and in force for the time being in any such covenanting State. This Ordinance was amended by Ordinance No.31 of 2005 and was subsequently repealed and replaced by Ordinance No.16 of 2005 published respectively in the Union Gazette of 25-1-1949 and 15-2-1949 but Section 3 of it was reproduced in Ordinance No.16 of 2005 as sub-section (1) of Section 3.

7. The Farman-i-Shahi was published in the Patiala Government Gazette of 12-3-1947. It was mentioned in the preamble that the relations between landlords and occupancy tenants in the State had been progressively deteriorating for sometime past and while the occupancy tenants had been resisting the payment of Batai and cesses which they were bound to pay under the existing law the landlords an their side had refused to make any change in the existing terms; that His Highness had been watching the situation with anxiety and had offered his advice from time to time to both parties in the hope that a compromise might be effected between them and in this way mutual good-will that at one time existed might be restored, but his hopes had been disappointed and his efforts at compromise had failed; that in fact the situation had been steadily deteriorating and acts of lawlessness resulting from the disputes had been on the increase; and that alter giving the matter his most careful consideration His Highness was satisfied that the time had come for decisive action and had, therefore, decided that "in the interests of the preservation of peace and the restoration of mutual good-will between the two sections of his people, the relationship of landlords and occupancy tenants must come to an end". The operative part of the Farman-i-Shahi was in the following words :

"The lands now held in occupancy rights in the State will be apportioned as follows :
(1) In the case of occupancy rights under section 5 of the Tenancy Act one-third to the landlords and two-thirds to the tenants;
(2) In the case of occupancy rights under Sections 6 and 8 of the Tenancy Act, two-fifths to the landlord and three-fifths to the tenant.

The lands so apportioned will be held in full ownership by the landlords and tenants respectively. They will also acquire corresponding rights in Shamilat Deh." It was also laid down in the Farman-i-Shahi that it should be given effect to with the least possible delay, and special extra Revenue staff for purposes of effecting necessary partition between the landlords and occupancy tenants be employed, and further that the whole work should be completed within one year.

8. The papers placed before us by counsel for the State show that occupancy tenants who paid no rent beyond land-revenue and rates and cesses were not satisfied with the scheme of the Farman-i-Shahi and it was felt that they were hard hit by it. Accordingly on the recommendation of the Revenue Minister and his cabinet, His Highness the Maharaja of Patiala on 20-7-1948 A.D. made an order withdrawing the partition proceedings between the landlords and tenants who did not pay anything over and above land revenue and cesses that had been taken under the Farman-i-Shahi and issued a notification whereby the said tenants were to be treated as full owners of the lands of which they were in possession. In compliance with this order Notification No.33 was issued by the Revenue Secretary on 18-5-2005(2-9-1948). For reasons which are not clear the notification could not be published in the Gazette of the Patiala State but was published in the Gazette of the Union dated 12-9-1948. It will be remembered that the Union came into existence with effect from 20-8-1948. These are the words of the notification :

"In partial modification of Farman-i-Shahi No.6 dated 11th March, 1947, regarding division of land between landlords and occupancy tenants His Highness has, vide order No.1420/6-AR-03 dated 20-7-1948 passed on this office note No.115/1 dated 23-12-47/8-9-2004, been graciously pleased to command that occupancy tenants under Sections 5, 6 and 8 of the Tenancy Act, who do not pay any rent in cash or kind except land-revenue and cesses be treated as full owners in respect of lands under their occupancy."

9. After this the Farman-i-Shahi was amended thrice by the following enactments : (i) Patiala and East Punjab States Union Abolition of Biswedari Ordinance (No.23 of 2006) of 2006 published in the Union Gazette of 15-8-1949, (ii) Patiala and East Punjab States Union Abolition of Biswedari Ordinance (No.36 of 2006) of 2006 published in the Union Gazette dated 1-1-1950, and (iii) Patiala and East Punjab States Union Abolition of Occupancy Tenants Tenure and Settlement of Land Dispute (Amendment) Act (No.4 of 2007) published in the Gazette of 17-9-1950. The important changes introduced by Ordinance No.23 of 2006 as laid down in Section 4 thereof were as follows :

(a) That no tenant was to have or could claim a right of occupancy either under Section 5, or Section 6, or Section 7 or Section 8, Tenancy Act, or under any other law in any land held by him under a landlord, (b) that all rights and interests created in or over any holding before the notified date were to be regulated and determined in the manner laid

down in the Ordinance, and (c) that the relationship of landlord and occupancy tenant in any holding as between them was to be extinguished and the holdings were to be apportioned in such a manner and proportion and on such terms as were provided in the Ordinance. Section 9 of the Ordinance laid down that an occupancy tenant was to get three-fourth share of the entire holding and the landlord one-fourth share. This was subject to the proviso that if the Partition Officer was of the opinion that the shares between the landlord and the tenant should not be determined in the aforementioned ratio he was to refer the matter to a committee that was to be appointed by the Government for the purpose and the decision of the Committee on the point was to be final. The other change introduced by the Ordinance which was far more important than those mentioned above was that the occupancy tenant was given the option to purchase the share allotted to the landlord in the holding on payment of compensation to be determined under its provisions (S.11).

10. The changes introduced by the second Amending Ordinance were not very important and the only one of which mention need be made is that it amended Section 12 which related to the determination of compensation and laid down that instead of compensation being determined in accordance with the principle laid down in Section 5, Patiala Land Acquisition Act, 1995, it should be done in accordance with "such rules as may be made in this behalf by the Government." The amendments made by Act 4 of 2007 though fewer in number deserve more notice. First of all it renamed the Amending Ordinance 23 of 2006 as the Patiala and East Punjab States Union. Abolition of Biswedari Ordinance. Secondly it added a proviso to Section 9 of that Ordinance the effect of which was that when an occupancy tenant did not pay to the landlord anything over and above the land revenue and rates and cesses thereon, he was entitled to the entire holding and also provided that the amendments made by it were to have retrospective effect.

11. The first point raised by the petitioners' counsel against the validity of the Farman-i-Shahi was that it lapsed on 14-8-1949. They conceded that though the Farman-i-Shahi was originally promulgated by the Maharaja of Patiala and to start with it applied only to the erstwhile Patiala State it became a law for the whole Union by virtue of Section 3, Patiala and East Punjab States Union Ordinance No.1 of 2005 and later on by virtue of Section 3 Administration Ordinance No.16 of 2005, ' but they maintained that since according to the first covenant entered into by the Rulers of the covenanting States the Rajpramukh could make an ordinance only for six months, the life of Ordinance No.16 of 2005 expired on 14-8-1949 and with it came to an end all the Patiala Laws which became applicable to the whole Union in accordance with the provisions of sub-section (1) of Section 3 of the said Ordinance. As regards the second Covenant which gave the Rajpramukh the powers to make ordinances without any limitation of time before the first meeting of the Constituent Assembly, counsel urged that it was ultra vires of the Rulers who entered into it because (i) by entering into the first covenant they had surrendered whatever powers they had as Rulers of their respective States to the Union and the Rajpramukh and (ii) they did not reserve any power to themselves to amend or modify the covenant at any future time.

12. The learned Attorney General who appeared on behalf of the State in all these petitions

controverted all these arguments. First of all he argued that so far as internal administration of the States was concerned each of the Rulers was more or less a sovereign and even if it be conceded for a moment that because they were subject to the suzerainty of the British Government their position was somewhat anomalous, each one of them became a sovereign by the passing of the Independence Act by the British Parliament in 1947 and consequently the covenants entered into by them must be treated as treaties between sovereign States and not as a statute made by a legislature or a constitution framed by a Constituent Assembly. In support of his contention learned counsel referred us to a Full Bench decision of our High Court, - *'Shri Teg Bahadur v. Piara Singh[1]',* and - *'Ram Dubey v. the Government of the State of Madhya Bharat[2]'.* In the first case the question was whether an order made by the Ruler of the erstwhile Patiala State before the formation of the Union could be questioned by a civil Court. The Full Bench held that so far as the internal administration was concerned Patiala remained a sovereign State even after it became a protectorate of the British Indian Government, and that as regards the internal matters the power of the Ruler was identical with that of the British Parliament in England. The status and powers of the Rulers of the other States have not been the subject matter of any judicial decision but the learned Attorney General contended, and I am inclined to agree with him, that so far as internal administration is concerned they enjoyed the same status and powers as the Ruler of the erstwhile Patiala State. In any case Section 7, Independence Act, 1947, to which a reference has been made in the earlier part of this order removed all the disadvantages and handicaps to which they were subject because of the suzerainty of the British Indian Empire and each one of them became a complete sovereign Ruler. It is true that the Rulers before they entered into the first covenant acceded to the Government of India but that accession was under Section 6, Government of India Act, 1935, which was adopted by the Indian Independence Act (See Section 9), and as, mentioned in Clause 2 of Section 6, was limited to the three subjects that were specified in the Instrument of Accession and to which reference has already been made. A covenant similar to the one with which we are dealing here was entered into by the Rulers of States in Madhya Bharat and in - 'Ram Dubey's case, the Court was called upon to interpret one of the clauses of that covenant. In this connection Kaul, C.J., made the following observations :

> "I should before proceeding further like to say a few words as to the approach of the learned counsel to the matter before us. He attempted to interpret the
> Covenant as if it were a Statute passed by a Parliament. We should not forget the origin of this document, the circumstances in and the purposes for which it was brought into existence. The parties to it were Rulers of a number of Central India States who had absolute authority to enter into such a covenant in regard to their respective states. They could at the time of which we are speaking, by mutual consent and concurrence of the Government of India amend, alter or abrogate the covenant."

These observations in my opinion apply to our covenant and in the light of them I hold that the real nature of the covenant was that of a treaty between the Rulers of Independent States and as such it could be modified and even abrogated by the Rulers themselves unless it contained a provision prohibiting its modification or abrogation which is not the case here. I may mention that International Law also allows modification and revision of treaties made by independent States. Reference in this connection is made to Oppenheim's International Law, Volume I, page 842. This is what it says :

> "A treaty, although concluded for ever, or for a period of time which has not yet expired, may nevertheless always be dissolved by mutual consent of the contracting parties. Such mutual consent can be evidenced in three different ways ..... If a treaty even if concluded for ever can be dissolved, there can be no doubt that it can be modified with the mutual consent of the parties."

As regards the contention of the petitioners' counsel that by entering into the first covenant the Rulers put an end to their existence as Rulers it is negatived by some of the clauses of the covenant. Of these mention has already been made by me of Article 3 which brought into existence Council of Rulers and obviously this Council is to remain in existence for ever unless it is put an end to by the Rulers themselves. The other relevant Article is Article 11 which entitles the Ruler of each covenanting State to receive annually from the revenue of the Union for his privy purse the amount specified against that covenanting State in Schedule I. The other Article to which reference may be made is Article 12 which gave the Ruler of each covenanting State the right to full ownership, etc., of all private properties. Article 14 guarantees 'the succession according to law and custom to the Gaddi of each covenanting State'.

Now if we read all these Articles together the inference is clear that the Rulers by entering into the covenant did not intend to surrender to the Union or the Rajpramukh of the Union or the Government of India anything more than that they agreed to surrender by virtue of the covenant nor did they do so in fact. In the view that I take I hold that the Rulers of the Covenanting States did not deprive themselves of the powers to alter, amend or even to abrogate the covenant and 'accordingly the second covenant entered into by them, was not ultra vires of the Rulers. It may be that had the Constituent Assembly contemplated by the covenant come into existence and had that Assembly in exercise of the powers given to it by the covenant made certain laws, if the Rulers wanted to do something inconsistent with thoes laws, they would have been faced with the real difficulty. It may also be that had any objection been raised to the amendment of the first covenant either by the Rajpramukh who had given powers to legislate till the coming into existence of the Constituent Assembly or by the Government of India who had in the meanwhile become a suzerain power, if not in law at least in fact, it could have been urged with some plausibility that the second covenant was ultra vires of the Rulers, but no such difficulty arose firstly because the Constituent Assembly was never formed and secondly because while the Maharaja of Patiala who was and is the Rajpramukh was himself a party to the second covenant, the Government of India gave their assent to it. This means that the Farman-i-Shahi remained a good law for the whole Union and so did the Ordinances Nos.23 and 36 of 2006 that were promulgated before the Constitution of India came into force. It is admitted by both sides that by virtue of the proclamation issued by the Rajpramukh the Constitution of India came into force in the Union with effect from 26-1-1950, but this did not affect the laws that were already in force, because it is definitely laid clown in Article 372 clause (1) of the Constitution that notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 (Indian Independence Act, 1947, and the Goi'ernment of India Act, 1935) but subject to the other provisions of this Constitution.

> "all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

The amending Act 4 of 2007 was enacted by the Rajpramukh before the competent Legislature for the Union came into existence and as he had power to do so under Article 385 of the Constitution, it must be admitted that it was properly made. Accordingly the first point raised by the petitioners' counsel is overruled.

13. The second point raised by the petitioners' counsel was that even though the Farman-i-Shahi and the two amending Ordinances were in force in the Union immediately before the commencement of the Constitution and they could, therefore, remain in force after the Constitution by virtue of Article 372, they became void in accordance with Article 13, because they were inconsistent with the provisions of part 3 of the Constitution that dealt with fundamental rights. Now Article 372 lays down that all laws in force in the territories of India immediately before the commencement of the Constitution shall continue to be in force therein until altered, etc. but subject to the other provisions of the Constitution,. One of the "other provisions" is contained in Article 13, Clause (1) which says that all laws in force in the territories of India immediately before the commencement of the Constitution in so far as they are inconsistent with the provisions of this part (i.e., part 3) shall to the extent of such inconsistency be void. It follows from this that if certain provisions of the Farman-i-Shahi and the amending Ordinance are inconsistent with the provisions of part 3 of the Constitution they did become void. The question is whether there is any inconsistency.

14. From what I have said above in respect of the important provisions of the Farman-i-Shahi and the amending Ordinances, it will be seen that there were several aspects of the legislation. The first was that the holdings in which the tenants had occupancy rights were to be divided between them and the landlords according to a fixed ratio, and along with the holding that was to fall to their respective shares each party was also to get corresponding rights in the Shamlat. The notification and Section 24 of the first Ordinance made an exception in the case of tenants who did not pay anything over and above land-revenue and cesses and they were given the right to get the entire holding with the Shamlat as complete owners. The petitioners' counsel urged that these provisions were inconsistent with Article 19(f) because they took away the petitioners' right to hold and dispose of the land of which they were the landlords. They maintained that notwithstanding the fact that the landlords' rights were subject to the occupancy rights of the tenants every inch of the land of which they were landlords was their property and to lay down that out of that a part of that land, and according to the provisions of the law it was really a substantial part, should be taken away and given to the tenants in complete ownership violated the fundamental rights guaranteed to them by clause (f) of Article 19. They also maintained that in respect of those portions of holdings which the Farman-i-Shahi and the amending Ordinances directed to be given to the tenants the landlords were deprived of them, and consequently the legislation went counter to the provisions of clause (1) of Article 31 which lays down that no one should be deprived of his property save by authority of law and clause (2) which deals with the legislation authorizing acquisition and requisition of private property for public purposes.

15. The second aspect of the impugned legislation was that after the holding had been divided between tenants and landlords the former were entitled to acquire the landlord's share on payment of compensation. At first the compensation was to be determined in, accordance with the provisions of the Patiala Land Acquisition Act, but by virtue of the later amendment of Ordinance No.23 Government were to make rules laying down principles for the determination

of the compensation. It was urged on behalf of the petitioners that this also violated their right to hold the property and deprived them of it and accordingly the legislation was void because of the provisions of Article 19(f) and Article 31(1). In addition the petitioners' learned counsel maintained that if this part of the legislation was regarded as one for acquisition it was inconsistent with clause (2) of Article 31 as the acquisition was not for a public purpose and the law as it stands at present did not make a provision for compensation.

16. Article 19 relied up6n by the petitioners' counsel guarantees to every citizen a number of rights and at the same time saves laws, existing as well as those to be; made by the State in future, that may impose reasonable restrictions on the exercise of those rights. The rights guaranteed are given in Clause (1) of the Article and they consist of the right :

> (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India (f) to acquire, hold and dispose of property and (g) to practice any profession, or to carry on any occupation, trade or business.

As regards the right to acquire, hold and dispose of the property Clause (5) of the Article provides that nothing in sub-clause (f) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of the said right in the interests of the general public or for the protection of the interests of any Scheduled Tribe. The petitioners' counsel urged that the impugned laws were inconsistent with Article 19, firstly because they deprived the petitioners of their holdings or part of them and divided the same between them and their occupancy tenants which had the effect of violating their right to hold and dispose of property and secondly because they gave the tenants the right to acquire a part or whole of the petitioners' holdings together with the shamlat land which amounted to placing unreasonable restrictions upon their right. As regards the scope of Article 19 we must turn to the leading case - *'A.K. Gopalan v. State of Madras*[3] , which was the first case dealing with the fundamental rights and in which the learned Judges of the Supreme Court discussed the whole question at great length. This is what Plania, C.J., observed :

> "The Article has to be read without any preconceived notions. So read, it clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation, for instance for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of Article 19 does not arise."

It may here be mentioned that Gopalan was detained under the Preventive Detention Act and one of the points urged by his counsel before the Supreme Court was that the Act violated some of the rights guaranteed by clause (1) of Article 19 and imposed restrictions upon citizen's right to

move freely throughout the territory of India, etc. It was while dealing with this argument of the counsel that the learned Chief Justice made the above observation but they apply with equal force to every kind of legislation which is impugned on the ground that it contravenes other rights mentioned in the clause including the right to acquire, hold and dispose of the property. Viewed in this light those parts of the impugned Farman, Ordinances and the Act which provide for the division of the petitioners' holdings between them and occupancy tenants should be considered separately from other parts because they deprive the petitioners of their holdings or part of them but they do not impose any restriction upon their rights to hold or dispose of them.

17. A perusal of the case cited before us by both sides makes me think that there is almost a consensus of opinion on the point that when an enactment deprives a person of a right, it cannot be regarded as the law placing restrictions upon the enjoyment of that right. Reference in this connection is invited to' the following observations made by Kania, C.J., in Gopalan's case :

> "Deprivation (total loss) of personal liberty, which inter alia includes the right to eat.....is quite different from restriction (which is only a partial control) of the right to move freely (which is relatively a minor right of a citizen) as safeguarded by Article 19(1)(d). Deprivation of personal liberty has not the sama meaning as restriction of free movement .....Therefore
> Article 19(5) cannot apply to a substantive law depriving a citizen of personal liberty. I am unable to accept the contention that the word 'deprivation' includes within its scope 'restriction' when interpreting Article 21."

In the same case Patanjali Sastri, J. (now C.J.) made the following observations :

> "Deprivation of personal liberty in such a situation is not in my opinion, within the purview of Article 19 at all but is dealt with by the succeeding Articles 20 and 21. In other words Article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free while Articles 20-22 secure to all persons - citizens and non-citizens - certain constitutional guarantees in regard to punishment and prevention of crime. Different criteria are provided by which to measure legislative judgments in the two fields and a construction which would bring within Article 19 imprisonment in punishment of a crime committed or in prevention of a crime threatened would, as it seems to me, make a reductio ad absurdum of that provision."

In the judgment that Dass, J., delivered in the same ease be formulated the following questions as regards the ambit and scope; of the rights protected by Article 19 :

> "Does it protect the right of free movement and the other personal rights therein mentioned in all circumstances irrespective of any other consideration? Does it not postulate a capacity to exercise the rights? Does its protection continue even though the citizen lawfully loses his capacity for exercising those rights? How can the continuance of those personal rights be compatible with the lawful detention of the person?"

After discussing various provisions of law the answer that the learned Judge gave to the above questions was that

> "the conclusion is irresistible that the rights protected by Article 19(1), in so far as they relate to rights attached to the person, i.e., the rights referred to in sub-Sections(a) to (e) and (g) are rights which only a free citizen, who has the freedom of his person unimpaired, can exercise".

Later on he observed :

> "It follows that the rights enumerated in Article 19(1) subsist while the citizen has the legal capacity to exercise them. If his capacity to exercise them is gone by reason of a lawful conviction with respect to the rights in sub-clauses (a) to (e) and (g), or by reason of a lawful compulsory acquisition with respect to the right in sub-clause (f), he ceases to have those rights while his' incapacity lasts."

Relying principally upon these observations of Dass, J., a Bench of the Bombay High Court held in - *Dwarkadas Shriniwas v Sholapur Spg. and Wvg. Co. Ltd.[4]',* that the right to acquire, hold and dispose of property guaranteed to the citizen under Article
19(f) would only be operative in the case of those whose property has not been taken a way and if a man has been deprived of his property no question of his acquiring, holding and disposing of that property could possibly arise under Article 19. Another Bench of the sama High Court took a similar view in *'Abdul Majid v. R.R. Nayak'[5],* The learned Judges held that the rights guaranteed by Article 19(1)(f) can only be enjoyed provided the citizen is in a position to enjoy those rights and provided those rights can be enjoyed although he has been deprived of his property under Article 31(1) or his property has been acquired or taken possession of under Article 31(2). The other cases in point are - *'Md. Safi v. State of West Bengal[6]',* and the Full Bench decision of the Allahabad High Court - *'Raja Suryapalsingh v. U.P. Government[7]',* It was held in the latter case that when a person loses his property he loses his right to hold that property and cannot complain that his fundamental right in Article 19(1)(f) has been infringed. In view of these decisions I am of the opinion that the first thing that has to be decided is whether the impugned laws deprived the petitioners of any of their properties or whether they amount to laws of acquisition and are hit by Article 31 clause (2). After deciding these questions it will be seen whether the laws were valid and enforceable and if they could not have the effect of depriving the petitioners of their properties and they were not even hit by clause (2) of Article 31, whether they placed restrictions upon the petitioners' right to hold and dispose of their properties and they had become void because the restrictions were unreasonable and not in the interests of general public.

18. The first two clauses of Article 31 read as below :

> (1) No person shall be deprived of his property save by authority of law,
> (2) No property, moveable or immoveable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or

such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given.

19. The petitioners' counsel argued that the first clause laid down the general rule while the second clause dealt with only a particular class of laws which made the provision for acquisition and requisition of property for public purposes. The learned Attorney General, on the other hand, argued that the two clauses were mutually exclusive. In order to be able to decide this point we shall have to determine what the word "deprive" means. According to the dictionary meaning 'to deprive' means to dispossess, bereave, divest, to hinder from possessing, to debar and to shut out, etc. Accordingly 'deprivation' which is the act of depriving includes dispossession, privation, loss etc. The petitioners' counsel, therefore, urged that clause (1) deals with all cases in which a person is made to part with his property, regardless of the, fact whether the property is destroyed or taken possession of temporarily or it is acquired on payment of compensation. The position of the Attorney General, on the other hand, was that the operation of clause (1) is confined only to those cases where the
property is dealt in such a manner that the owner gets nothing in lieu thereof. He also argued that when compensation is paid or the owner gets something for the property either in cash or in kind, it is a case of acquisition, or if the property is not taken away permanently it may be a case of requisition and since the terms 'acquisition' and 'requisition' have now acquired a technical meaning, cases relating to them do not fall within the ambit of clause (1). Learned counsel, however, was not able to support his contention by any authority and in my judgment clause (1) enacts a general rule that no person shall be made to lose his property, either temporarily or permanently or with or without compensation, except by the authority of law, while clause (2) deals with particular kinds of deprivations, that is to say, a deprivation which results from acquisition or requisition.

20. The following observations made by Chandrasekhara Aiyar, J., in the famous case - *'State of Bihar v. Kameshwar Singh*[8]*',* may be quoted with advantage : There are three modes of deprivation : (a) destruction, (b) acquisition and (c) requisition. Destruction may take place in the interests of public health or the prevention of danger to life or property, ... In the case of 'acquisition there is an element of permanency, and in the case of 'requisition' there is an element of temporariness. Except for this distinction both modes stand on the same footing, as regards the rights of the State vis-a-vis the rights of the private citizens.

21. In - 'AIR 1951 Bombay 86', Chagla, C.J., remarked as follows :

"Turning to Article 31(1) it prohibits the deprivation of property except by authority of law, and as the Attorney General has fairly conceded there are two possible interpretations that can be put upon this clause. One is to read 'deprivation' as meaning the same thing as 'acquisition' or 'taking possession' used in Article 31(2). The other interpretation is that 'deprivation' is wider in its signification than 'acquisition' or 'taking possession'. It seems to us that the second view is more logical and more consistent with the situations that may arise with which the Legislature may have to deal. If the first view were to be accepted

then there would be no provision at all for a case where the legislature may wish to deprive a subject of his property without acquiring it or taking possession of it. The second view also presents some difficulty, but that difficulty when one carefully looks into the matter, is really only on the surface."

22. Basu in his commentary on the Constitution of India (edition 1952) made the following remarks about clauses (1) and (2) of Article 31 :

> "It would be wrong to suppose that clauses (1) and (2) relate to the same topic, viz., compulsory acquisition or taking possession of property. In fact clause (1) is the genus of which a species is referred to in clause (2). Clause (1) refers to deprivation of property by any mode and includes deprivation by means other than by 'acquisition' or 'taking possession of, e.g., destruction of a property in order to prevent a fire from spreading. Deprivation of no kind will be possible without the authority of law; that is the import of clause (1) .....

Clause (2) on the other hand refers to only two kinds of deprivation viz., by acquisition or taking possession of and in these two cases, the law would not be valid unless it has an additional feature, viz., that it provides for payment of compensation....."

23. In my opinion, this correctly defines the scope of the two clauses. It means that when a person is deprived of property for any reason or in any shape deprivation can be challenged under clause (1) if it is not by authority of law. The term "law" is not defined, but I have no doubt that it means the "statute law". I am further of the opinion that the statute law under which a person can be deprived of his property must be a valid and enforceable law, i.e., it must have been made and passed by Legislature or other authority competent to do so it has not become void by virtue of clauses (1) and (2) of Article 13. The reason why I hold this opinion is that if the Legislature or the authority that made the law had no power to enact it or it comes within the ambit of clauses (1) and (2) of Article 13 and is, therefore, void, it is no law at all. The impugned Farman-i-Shahi, the Ordinances and the Act were all made by Maharaja of Patiala, first in the capacity of the Ruler of the erstwhile Patiala State and the remaining three as the Rajpramukh of the Union and it is not even alleged that he had no power to make them. The question whether they have become void under Article 13 clause (1) requires examination and if the answer to the question be in the affirmative they cannot be enforced so as to deprive the petitioners of their properties under Clause (1) of Article 31.

24. As regards clause (2) of Article 31 lengthy arguments were addressed to us to show why it was considered necessary to make it a part of the Constitution and we were referred to the theory of eminent domain and the American conception of Police power. These are, however, matters for the, jurists and it is not necessary for us to go into them. Our duty is merely to enforce the law as it stands.

25. It will be seen that the clause does not deal with all laws that may result in deprivation of property, but is, confined only to laws authorizing acquisition and requisition of property for public purposes. The general rule laid down in clause (1) is that no one can be deprived of his property except by authority of law. Clause (2) enacts that when the law authorises the taking

possession of or acquisition of property for public purposes, it should fulfil two conditions (i) that it should provide for compensation and (ii) that it should fix the amount of compensation or should specify the principles on which and the manner in which compensation is to be determined. Obviously the intention is that no property should be acquired or requisitioned except for public purposes and further that if the law under which action is taken does not fulfill the conditions mentioned above, it would not be a valid law.

26. Counsel for the petitioners argued that the impugned laws authorize acquisition of their holdings by the occupancy tenants and they offend against clause (2) of Article 31, because they do not fulfil any of its requirements. The learned Attorney General maintained that the scheme of the, impugned laws did not envisage any kind of acquisition and accordingly it was not necessary for the Court to determine whether acquisitions were for public purpose or whether other conditions mentioned in the clause were satisfied. Now acquisition by A of a property belonging to B implies that A had no interest in the property before and it was by virtue of the acquisition that the property that was previously vested in B was to vest in A. In order to find out whether the provisions of the Farman-i-Shahi or the Ordinance authorised anything of the kind we must examine their provisions. It cannot be denied that both the landlords and tenants had definite rights in the holdings. The possession of the holdings was with the occupancy tenants and they had the right to cultivate them and to realise the produce. The landlords had the right to recover in some cases a share of the produce and in other cases land revenue and cesses. In this sense neither the landlords nor the occupancy tenants could be described as complete owners of the holdings. The Farman-i-Shahi provided that these holdings were to be divided and in the case of tenants under Section 5, one-third of the holding was to go to the landlord and two-third to the tenants and in the case of tenants under Section 6 tenants and landlords were to get three-fifth and two-fifth share respectively. The first Ordinance, i.e., 23 of 2008 put the law laid down by the Farman-i-Shahi in a regular form and gave it the shape of a regular enactment. In addition it provided a machinery for giving effect to what the Farman-i-Shahi provided. Section 9 of the Ordinance according to which the shares of the landlords and occupancy tenants were to be determined fixed the share of the tenant at three-fourth of the holding and that of the landlord at one-fourth. It also laid down that if the partition officer be of the opinion that the shares could not be determined in the above mentioned ratio he should refer the matter to a Committee. Taking into consideration the fact that both the landlords and tenants had definite interest in the holdings the provision contained in the Farman-i-Shahi and the Ordinance merely evaluated their interests and divided the holdings between them in proportion to the interest that each possessed therein and I agree with the learned Attorney General that such a division could not be described as acquisition either by the landlord or by the tenant of those parts of the holdings of which they were to become complete owners after the partition. But the scheme of the Ordinance, as said in the earlier part of this order did not stop at mere division of the holdings between landlords and tenants. Section 10 of the Ordinance lays down that after the partition the tenant is to be given the option to purchase landlord's share on payment of compensation to be determined in accordance with Section 14. The subsequent Ordinance and the Act did not alter this provision though they made certain changes regarding the method of determining the compensation. The petitioners' counsel argued that this part of the law at least authorized acquisition by the tenant of the land of which the landlord was to become complete owner by virtue of the partition. I am inclined to think that there is some force in this contention, but this would not bring the Ordinance within the ambit of Clause 2, because the impression that I have formed by carefully reading the whole clause is that it relates only to those laws which authorize acquisition by the State and not

acquisition by private persons or by a class of private persons. Learned counsel for the petitioners argued that had this been the intention of the framers of the Constitution, they would have inserted the words "by the State" after the words "taken possession of and acquired" as they did in Articles 31A and 31B that were added to the Constitution by a later amendment. There is no doubt that had the words "by the State" been used in the clause there would have been no scope for any controversy, but even their absence does not make any difference, because the sub-clause clearly lays down that taking of possession and acquisition has to be for a public purpose and this being the case it means that they must be by the State. We are aware that there are several laws which give private persons the right to buy or obtain other persons' property such as Pre-emption Acts, Tenancy Acts and Consolidation of Holdings Acts and the petitioners' learned counsel have not been able to cite a single instance in which such laws have ever been described as laws of acquisition. In every day experience when we talk of a law of acquisition what we mean is a law whereby the State is enabled to acquire property. It is true that under certain laws of acquisition the State is given the right to acquirs property for local bodies or even for public institutions but the acquisition is always by the state and not by the local body or the public institution concerned. I may observe that all cases that counsel cited before us related to acquisitions by the State and they did not refer us to a single case in which a law by which a private person was given the right to buy another person's property was questioned under Clause (2) of Art 31. In - *'the Punjab State v. Indar Singh*[9]*',* the validity of the. Punjab Pre-emption Act was challenged but the ground taken was not that it was inconsistent with Article 31 clause (2), but that it violated the fundamental right of the buyer to acquire, hold and dispose of the property under clause (1)(f) of Article 19. The Ordinance with which we are dealing now cannot be called a law of acquisition and cannot be brought within the laws referred to in clause (2) of Article 31, because it did not make a provision for acquisition of the landlords' share by the State for the tenants but gave the tenants the right to purchase that share straightway without the intervention of the State.

27. In the view that I take, it is not necessary to go into the question whether the other conditions laid down by the clause i.e. of public purpose and provision relating to compensation are satisfied by the impugned law, but since the question is important and was argued before us at great length I consider it desirable to discuss it also. I shall first take up 'public purpose'.

28. The question whether the existence of a public purpose is a provision of Article 31(2) or whether the Article merely declares that if the acquisition is for a public purpose it must be on payment of compensation is not free from difficulty. This is what Mahajan, J., has to say about it in - 'AIR 1952 SC 252' :

> "The existence of a public purpose is undoubtedly an implied condition of the exercise of compulsory powers of acquisition by the State but the language of Article 31(2) does not expressly make it a condition precedent to acquisition. It assumes that compulsory acquisition can be for a public purpose only which is thus inherent in such acquisition."

A similar view was expressed by Chandrasekhara Iyer, J., in the same case. He said :

> "Acquisition of property can only be for a public purpose; under the Land Acquisition Act (No.1 of 1894) a declaration by the Government that land is needed for a public purpose shall be conclusive evidence that the land is so needed and the Courts cannot go into the

question whether the public purpose has been made out or not. There is no such provision in any Article of the Constitution with which we have to deal. It is true that sub-clause (2) of Article 31 speaks of property being acquired for public purposes. The bar created by sub-clause (4) of Article 31 relates to the contravention of the provisions of clause (2). The provision of clause (2) is only as regards compensation as can be gathered from its latter part."

After quoting the relevant part of Article 31(2) the learned Judge went on :

"It is assumed, rightly, that the existence of a public purpose is part aid parcel of the law and is inherent in it. The existence of a public purpose is not a provision or condition imposed by Article 31(2) as a limitation on the exercise of the power of acquisition. The condition prescribed is only as regards compensation.

The opinion of Mukherjea, J., was that the requirement of a public purpose is implied in Article 31(2). The following are the exact words used by his Lordship :

"As regards Section 4(b) it has been held by my learned brother that the provision of this clause is unconstitutional as it does not disclose any public purpose at all. The requirement of a public purpose is implicit in compulsory acquisition of property by the State or what is called, the exercise of its power Eminent Domain. This condition is implied in the provision of Article 31(2) of the Constitution and although the enactment in the present case fulfils the requirements of clause (3) of Article 31, and as such attracts the operation of clause (4) of that Article..... my learned brother has taken the view that the bar created by clause (4) is confined to the question of compensation only and does not extend to the existence or necessity of a public purpose which, though implicit in, has not been expressly provided for by clause (2) of the Article."

Das, J., took a different view. His Lordship said :

"That the existence of a public purpose is an essential pre-requisite to the exercise of the power of compulsory acquisition has not been disputed by the learned Attorney General. The contention put forward on behalf of the respondent is that the necessity for the existence of a public purpose as a condition precedent to the compulsory acquisition of private property is not a provision of Article 31(2) but is a requirement of Entry 36 in List II or entry 42 in List III. The words "for public purposes" do occur in Article 31(2) but it is said that there is a distinction between a "provision" and an assumption. It is urged that Article 31(2) assumes a law authorizing the taking of possession or the acquisition of property for a public purpose and provides that the property shall not be taken unless the law also provides for compensation. It is, therefore, concluded that the only provision of Article 31 (2) is that the law authorizing the taking of possession or the acquisition of property for public purpose must provide for compensation, and it is this provision only

that cannot be made a ground of attack on the Act by reason of Article 31(4), etc."

After showing that this contention was not correct his Lordship added :

> "In any case, what is implied in the clause must, nevertheless, be a provision of the clause for the expression "Provision" is certainly wide enough to include an implied as well as an express provision."

29. With all deference my opinion is that the existence of a public purpose is not a condition precedent for the validity of a legislation under clause (2) of the Article but the clause assumes that when a legislation authorises acquisition or requisition it does so only for a public purpose, otherwise if the intention of the framers of the Constitution was that like the payment of the compensation public purpose should also be a condition that the legislation must satisfy there is no reason why it should not have said so in clear words. At the same time I hold that whether the public purpose of an acquisition is assumed or it is one of the conditions precedent for the validity of the law, the matter is justiciable and if it is shown that there was no public purpose for the acquisition or requisition authorised by the law, it will have to be held that the law is inconsistent with clause (2) of Article 31 and is hence void under Article 13. This, of course, assumes that the law falls within the ambit of the clause. This was the view taken by the Full Bench of the Allahabad High. Court in - ' AIR 1951 Allahabad 674'. The learned Judges, after quoting the observations made by Mukherjea, J., in - *'Charanjit Lal v. Union of India[10]',* held that

> "they agreed with the view that whether the restrictions placed by clause (2) of Article 31 on the State's power of acquisition are described as limitation, or conditions and whether they be express or implied, they are none-the-less provisions of clause (2)."

30. Now what is a 'public purpose'? This question was also discussed in the Allahabad case mentioned in the previous paragraph. The learned Judges referred to- *'Ramabai Framjee v. Secy. of State[11]'.* and the view of Batchelor, J., and without making any effort to define the term 'public purpose' they held that three conclusions can be reached : First, the phrase "public purpose" must include an object or aim in which the general interest of the community as opposed to the particular interest of individuals, is directly and vitally concerned; secondly, it is not necessary that the property acquired, when in the form of land, should be made available to the public at large, it is enough if the purpose is one in which the general interest of the community is concerned; and thirdly, the fact that the object or aim of the particular scheme may be achieved in some other way, does not necessarily negative the existence of a public purpose

31. They further held that 'the directive principles of State policy contained in Chapter 4 of the Constitution may be taken as a guide in this respect. This is what they said :

> "Now, is there to be found in the Constitution of India anything to guide the courts as to the meaning to be attributed to the expression "public purpose" when used therein? We think there is. Chapter 4 contains what are described as directive principles of State policy and although those principles are not enforceable by any Court Article 37 specifically lays down that they are

nevertheless fundamental in the governance of the country and that it shall be the duty of the State to apply these principles in making laws."

32. They particularly referred to Article 39, clauses (b) and (c) which provide :

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; and
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. And also to Article 43, which says :

The State shall endeavour to secure by suitable, legislation..... to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, etc. They concluded by saying :

"In our opinion, the law made for purposes of securing an aim declared in the constitution to be a matter of State policy is for a public purpose."

With this dictum, I respectfully agree,

33. Now, as regards the purpose of the Farman-i-Shahi. I have already referred to its preamble and mentioned that the object of it was to settle the growing disputes between the landlords and occupancy tenants, to preserve the peace and to restore mutual good-will between the two sections of the people by removing the causes of disputes and by making a provision for apportionment of lands between landlords and occupancy tenants. This was also the object with which Ordinance No.23 of 2006 was promulgated. In addition it was mentioned in the preamble to the said Ordinance that it was expedient to amend and consolidate the law as contained in the Farman-i-Shahi and in the interest of peace and good Government to abolish the occupancy tenure in the Union. There can, therefore, be no doubt that these laws were made for a public purpose. In fairness to Mr. Dalip Chand who appeared in support of 13 petitions of Narnaul District, it must be stated that he admitted the public purpose of the Farman-i-Shahi and the Ordinances. Mr. D.S. Nehra, counsel in four petitions from Rajpura Tehsil conceded that the Farman-i-Shahi was made for a public purpose but he urged that there was no public purpose behind Section 9 of the Ordinance (No.23 of 2006) whereby the landlord's share in the holding which had been fixed in the Farman-i-Shahi at one-third was reduced to one-fourth. His argument was that if the purpose of the legislation was to apportion the land between the landlords and tenants and the Farman-i-Shahi had once fixed their shares there was absolutely no justification to modify those shares and to reduce the landlords' share by 1 /12th without giving them any corresponding advantage. As I look at the matter the point raised by Mr. Nehra does not affect the question of principle which the framers of the Farman-i-Shahi and the Ordinance had in view. In both cases the purpose was to remove causes of mutual disputes between the landlords and tenants by dividing the lands between them and by improving the tenants lot. At the time the Farman-i-Shahi was made it was considered that the tenants would be satisfied with two-third share of the holding and this would result into peace and amity between the parties. Subsequent events, however, showed that the Farman-i-Shahi had not had the desired effect. In

addition, it should be remembered that much water had flowed down the bridges since the Farman-i-Shahi was made. The country had become independent and a democratic Government had been established in the Centre to which all Indian States had acceded. Demand for agrarian reforms had assumed unimaginable proportions. In the circumstances it was only natural that His Highness the Maharaja who had by then become the Rajpramukh of the Union should have the whole position re-examined and if he came to the conclusion that in the interest of public peace as also for bettering the conditions of the tenants it was necessary to increase the tenants' share which they were to get on division of holdings, it cannot be said that the Ordinance was lacking in public purpose. The same remarks must apply to the provisions of the Ordinance whereby the tenants were given the right to buy that part of the holding which fell to the landlord's share on partition. In this respect the Ordinance stood almost on the same footing as the laws which were the subject-matter of discussion to the 'Allahabad case' and in my judgment there is no ground for holding that they were not made for public purpose.

34. It was argued that it was open to the Government to adopt other methods for achieving the object that they had in view and it was inequitable to deprive the landlords entirely of their holdings, first by partitioning and then by compelling them to sell their share to the tenants. This, however, is a matter into which the Courts cannot go, because it relates to policy and the policy can only be determined by the legislature.

35. It was further argued that the provisions of the Farman-i-Shahi and the Ordinance that on partition of the holdings the tenants would also acquire corresponding rights in the Shamilat were not for a public purpose. Now, while adjudicating on the question of public purpose we must look to the whole scheme of the legislation and not to every detail of it. The scheme of the Farman-i-Shahi as stated above was to divide the holdings between landlords and tenants and the Ordinance was a provision enabling the tenants to buy the landlord's share, and I have held that there was a public purpose underlying this scheme. It is true that when a proprietary holding is transferred it does not result in the ipso facto transfer of the proportionate share of the shamlat which the proprietor of the holding may be entitled to, but there is nothing to prevent him from transferring both the proprietary holding and the shamlat together. Since the law made a provision for the division of the holding and one of the objects was to better the tenants' lot, I do not find anything wrong in making a similar provision in respect of the shamlat to which the landlord was entitled by virtue of his rights in the holding. If the argument be that such a provision was not equitable or fair, I can understand it but it relates to policy and for reasons just mentioned the Court cannot hold it to be unconstitutional.

36. We now come to compensation. Before I discuss the points raised by the petitioners' counsel in this connection for the sake of convenience I had better again refer to the relevant provisions of the impugned laws. It will be remembered that the Farman-i-Shahi was merely concerned with the division of holdings and it was Ordinance No.23 of 2006 that gave the tenants the right to buy the landlord's share. Section 10 laid down that

> "the occupancy tenant shall by notice issued by the partition officer be given an option to purchase the share of the landlord in the holding which had been declared under Section 9 on payment of such total compensation as may be payable by the occupancy tenant under section 14".

Section 14 said that

> "the total compensation payable by the occupancy tenant shall be compensation determined under Section 12, the value of the buildings assessed under Section 23 and the arrears of rent, if any".

It was mentioned in sub-section (2) of the said Section that if the landlord had obtained against the occupancy tenant a decree for arrears of rent in respect of the holding such amount shall form a part of the total compensation. The method of determining compensation was laid down in Section 12. The words of sub-section (1) of the Section are that

> "where the occupancy tenants elected to purchase the landlord's share of the holding the partition officer should proceed to determine the amount of compensation payable to the landlord in respect of his share of the holding in accordance with the principles laid down in Section 15, Patiala Land Acquisition Act".

Sub-Section (2) provides that "a person aggrieved by an order of the Partition officer might appeal to the Financial Commissioner whose decision would be final". By Section 6 of Ordinance No.36 of 2006 Section 12 of Ordinance No.23 of 2006 was amended, and it was laid down that the partition officer was to determine the compensation "in accordance with such rules as may be made in this behalf by the Government." This amendment was later on repeated by Section 6 of the Act 4 of 2007 According to R.14 of the amended Rules published in Notification No.59/D dated 20-9-1950 compensation payable to the landlord by the occupancy tenant is to be calculated in the following manner :

> (a) Where the land is assessed to land revenue, the amount of compensation shall be equal to such land revenue in respect of landlord's share multiplied by one hundred;
> (b) where land is not assessed to land revenue and is cultivable, the amount of compensation shall be equal to such land revenue assessable on a similar class of land in the same estate on the landlord's share multiplied by one hundred;
> (c) where land is banjar not assessed to land revenue, the amount of compensation shall be equal to such land revenue assessable on the lowest barani class in the estate on the landlord's share multiplied by fifty;
> (d) where land is gair mumkin, the amount of compensation shall be equal to such land revenue assessable on the lowest barani class in the estate on the landlord's share multiplied by twenty-five.

37. The contention of the petitioners' counsel is that the Ordinance and the Act are inconsistent with clause (2) of Article 31, because according to that clause they neither provide the amount of compensation nor do they specify the principles in which and the manner in which the compensation is to be determined and given, but on the other hand leave the whole thing to the discretion of the Government. In view of the fact that the Ordinance No.23 of 2006 definitely laid down the principle on which the tenant was to buy the landlord's share of the holding and

that provision of it was modified by Section 6 of the later Ordinance which left the whole question of compensation to be determined by the Government by making rules on the point, I have no hesitation in coming to the conclusion that Section 6 of the later Ordinance as well as Section 6 of Act 4 of 2007 which repeated the amendment introduced into the first Ordinance by Section 6 of the later Ordinance offended against clause (2) of Article 31 and if the said Ordinance and the Act can be regarded as laws coming within the scope of the said clause they have become void by virtue of Article 13. The difficulty, however, is that according to my view they do not constitute such laws, and are not hit by clause 2 of Article 31.

38. After having shown that neither the Farman-i-Shahi nor the impugned Ordinances and the Act are hit by clause (2) of Article 31, I now turn to the contention that Section 10 of the first Ordinance giving the tenants the right to buy the landlords' share of the holdings is unconstitutional and void because it violates the petitioners' right to hold and dispose of their property. The learned Attorney General did not deny that the said Section of the Ordinance came in clash with the petitioners' right guaranteed by clause (1)(f) of Article 19, but he explained that it merely placed restrictions upon that right and accordingly it was saved by clause (5) of the Article. But clause (5) can only be applied if the restrictions are reasonable and are in the interest of general public. As was held by the Supreme Court in the case of - *'Chintaman Rao v. State of Madhya Pradesh'*[12], the question what constitutes a reasonable restriction can be determined by the Court and similarly the Court can decide whether or not a particular restriction is in the interest of general public. It was held by Fazl Ali, J., in - *'State of Bombay v. F.N. Balsara'*[13], referred to above that judging the reasonableness of the restriction imposed by the Act, one has to bear in mind the directive principles of State policy and since the maintenance of public peace and order and the amelioration of the condition of tenants are among the primary objects of a civilised Government and the Ordinance was enacted in order to accomplish that object, in my judgment, the restriction in question was reasonable. The phrase "in the interest of the general public" was examined by the Full Bench of the Calcutta High Court in - *'Ishwari Prosad v. N.R. Sen'*[14]. and it was held that the words "in the interests of the general public" mean "in the interests of the public of the whole of the Republic of India."

> "Legislation", observed Harries, C.J.,
> "may be essential to redress some urgent grievances, for example, in a particular State, though such legislation would be wholly unnecessary in any other State."

He further observed :

> "The fact that such legislation would not affect citizens in other States would not in my opinion make it impossible to say that such legislation was not in the interests of the general public. The phrase "in the interests of general public" means I think nothing more than "in the public interest" and it may well be that legislation affecting a limited class of persons or a limited area might well be legislation in the public interests, though the public of other parts of India might not be directly affected by such legislation. The matter may be in the interest of the general public, though the public generally may not be directly affected by such legislation. If they are indirectly affected such would be quite sufficient to make such, legislation in the public interest. Legislation affecting a particular

> class or a particular area would only directly affect the members of that class or the inhabitants of that particular area. But the removal of some serious abuse or grievance or discontent is a matter indirectly affecting the public generally. It is not in the interest of the general public or in the public interest to allow any class of persons to labour under some grievance and to be genuinely discontented. It is in the interests of the general public or in the public interest that all classes of the citizens of India are content and that their grievances should be removed."

If I may say so with respect, I agree with these remarks and in view of the fact that the restrictions upon the right of the landlords to hold and dispose of their share of the holdings were intended to benefit the tenants and at the same time to secure amicable relations between the tenants and the landlords I hold that they were in public interest or in the interests of the general public.

39. Mr. Atma Ram who represented the petitioners in all the 14 cases coming from Malerkotla argued that the impugned laws were hit by Article 14 inasmuch as they discriminated between the landlords and the tenants and whereas they gave the tenants the right to buy the landlords' share of the holdings, they did not grant a similar right to the landlords. It will have to be admitted that the right of equality before the law enunciated in Article 14 is a valuable and a fundamental right and if it is found that any law violates that right it must be adjudged as void under Article 13. But the question is whether the laws with which we are dealing now are inconsistent with the said Article. The words of the Article are :

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The meaning and scope of the Article were fully discussed in - 'AIR 1951 SC 41', and it was laid down as follows :

1. The principle of equality does not mean that every law must have universal application, for all persons are not, by nature, attainment or circumstances, in the same position and the varying needs of different classes of persons often require separate treatment.

2. The principle does not take away from the State the power of classifying persons for legislative purposes.

3. Every classification is in some degree likely to produce some inequality but mere production of inequality is not by itself enough.

4. If law deals equally with all of a certain well-defined class it is not obnoxious and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons.

5. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect of

which such classification is imposed and the classification cannot be arbitrarily made without any substantial basis. The following remarks made by Mukherjea, J., who delivered the principal judgment of the Court can be quoted with advantage :

> "It must be admitted that the guarantee against the denial of equal protection of laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America "equal protection of laws is a pledge of the protection of equal laws", and this means "subjection to equal laws applying alike to all in the same situation". In other words, there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same."

The Article also came in for discussion in - 'AIR 1951 SC 318', in which Fazl Ali, J., approvingly cited the following observations made by Professor Willis :

> "The guaranty of the equal protection of the laws means, the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. 'It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed'. 'The inhibition of the amendment .....was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation'."

Viewed in the light of this I am unable to hold that Ordinance 23 of 2006 which gave the tenants the right to buy the shares that the landlords were to get out of the holdings on partition, can be regarded as a discriminatory legislation. The object of the law was to remove the causes of mutual disputes between the landlords and tenants and one of the causes being that the tenants were hit very hard by the existing laws, the framers of the Ordinances considered that the object could only be achieved by giving them the entire land of which they had been in possession for long and devised a scheme for that purpose. It will have to be admitted the classification of two sections of the people between tenants and landlords was not a creation of the Ordinance. That classification had been in existence probably for centuries and it was within the province of the State to make a law for the benefit of the tenants. It could have been regarded as a discriminatory law if it had accorded preferential treatment of certain tenants over others. This view is supported by - ' AIR 1951 Allahabad 674, and - *'Gharandi v. Parshadi*[15]*',* In the latter case Section 7, Rajasthan Tenants Protection .Ordinance (9 of 1949) was challenged on the ground that it discriminated between the tenants and the landlords and hence was unconstitutional because of Art 14. Sharma, J., who delivered the judgment of the Bench spurned the contention with the following remarks :

> "Obviously Section 7 of the Rajasthan Tenants Protection Ordinance is not meant for the advantage or disadvantage of any single individual. It applies to all the tenants who were

> in occupation of their holdings on the prescribed date and were ejected or dispossessed.....

There is no discrimination between those tenants who answer to this description. It is quite clear from the preamble of the Ordinance that it was promulgated with a view to put a check on the growing tendency of landlords to eject or dispossess the tenants from their holdings and in the wider national interest of increasing the production of food grains." For these reasons I overrule Mr. Atma Ram's objection.

40. I have purposely left Notification No.33 of 2005 (2-9-1948) issued by His Highness the Maharaja of Patiala after the Farman-i-Shahi for a separate discussion because in my judgment it neither authorised acquisition by the State nor did it lay down that the tenants for whose benefit it was issued were to buy the holding. It will be remembered that the Farman-i-Shahi which was the only law in existence at the time made a provision for the division of holdings between landlords and occupancy tenants. The Notification laid down that in case of occupancy tenants under Sections 5, 6 and 8 of the Tenancy Act who did not pay any rent in cash or kind except land-revenue and cesses they were to be treated as full owners in respect of lands under their occupancy. Though the order of issue of the Notification was made by His Highness on 20-7-1948 actually the Notification was not issued by the Revenue Secretary till 2-9-1948. In the meanwhile, the Union had come into existence and the Notification was oublished in the Gazette of the Onion dated 12-9-1948. The petitioners' counsel urged that since the Notification was neither issued nor published before the Patiala State merged into the Union it did not acquire the force of a full-fledged; Patiala law and accordingly it did not become a law for the whole Union by virtue of Section 3, Patiala and E. P. States Union (Administration) Ordinance (No.I of 2005) In my opinion, the Notification dated back to 20-7-1948 when the Maharaja gave orders for its issue and the fact that it was not drafted or published before the formation of the Union, is not material. In any case the question is only of academic importance, because the provision contained in the Notification was re-introduced and became a part of the first Ordinance by Section 5 of Act 4 of 2007 which laid down that the following proviso shall be substituted and shall always be deemed to have been substituted in Section 9 of Ordinance No.23 of 2006 :

> Provided that
> (a) where the occupancy tenant pays only cash rent; or
> (b) where the occupancy tenant pays rent in kind which is less than one-fourth of the produce of the holding :

the respective shares of the landlord and the occupancy tenant shall be determined in accordance with the rules made in this behalf by the Government.

> Provided further, that where in respect of any holding the occupancy tenant does not. pay to the landlord anything thereon, he shall be entitled to the entire holding.

41. Now, if we read Section 9 of the Ordinance with the provisions of the Farman-i-Shahi, that when a tenant or a landlord got the holding or a part of it by partition he would also be entitled to get the proportionate share of the Shamilat as complete owner, and Section 24 of the first

Ordinance which re-affirmed the above-mentioned provision of the Farman-i-Shahi, we shall see that in ease of occupancy tenants under Sections 5, 6 and 8 of the Tenancy Act who did not pay any rent in cash or kind over and above the land revenue and cesses, the entire holdings were to be given to them in complete ownership and in addition they were to get and to become complete owners of the Shamilat appurtenant to those holdings. It may be that the landlords' rights and interests in such lands, were not as valuable as those of the landlords, who were entitled to realise from their tenants, something in addition to land-revenue and cesses, but it cannot be said that they were altogether valueless. Had the operation of the law been confined to the landlords' right in the holdings, the matter would have been different, but even the Shamilat land was to be taken away from the landlords and given to the tenants. This means that it is a clear case of; the deprivation of property.

42. Learned counsel for the State argued that the law merely restricted the landlords right to hold and dispose of the property and like other restrictions mentioned above they were protected by clause (5) of Article 19. My view being that when a person is deprived of property no question of his enjoying any right to hold and dispose of that property arises what has to be seen is whether the case is covered by clause (1) of Article 31. While dealing with this clause in another part of this order I held that the law to which the clause relates must be a valid law. Since the powers of the Rajpramukh to make laws were similar to those of the legislatures of Part A States and at the time Act 4 of 2007 was promulgated by him; the Constitution of India was in force in the State it goes without saying that it was rot within the power of the Rajpramukh to make a law which violated the fundamental principles guaranteed by part 3 of the Constitution. One of the fundamental rights is that the States cannot acquire any private property for a State purpose without paying compensation. There is difference of opinion on the point whether State purpose is a condition of clause (2) of Article 31, or it is implied in the clause, but all authorities are agreed that when the State acquires private property for a State purpose it must pay compensation. Counsel for the parties were not able to refer us to any Article of the Constitution which could be said to deal with the power of the State to make a law for acquisition by private persons or a class of persons of the property belonging to other private persons. Learned counsel for the State maintained that this kind of legislation was covered by entry No.18 of the second list which empowers the States to enact laws regarding land, etc. It has been held in several cases that entries in the lists do not confer any powers either upon the State legislature or upon the Parliament and that they merely divide the field of legislation between the States and the Parliament. Let us, however, assume for the sake of argument that the States have the power to make laws relating to land and consequently the Rajpramukh of our State was also authorised to make laws relating to the land, the question is whether the power went to the length of making a law authorising the taking of private property without any compensation. Taking into consideration the fact that no law can authorise even the State to acquire private property for a public purpose without payment of compensation it appears to me that the question must be answered in the negative, that is to say, no State Legislature can make a law whereby private property can be acquired by a person or a class of persons without compensation. This means that if a law of that kind is made it is unconstitutional and void.

43. In - *'Bankey Singh v. Jhingan Singh*[16]*',* the constitution of a Patna Act called Barahiya Tal Lands (Declaration of Possession) Act (26 of 1950) was discussed. Sections 2 and 3 of the Act read as below :

2. The persons described in column 3 of the schedule shall be deemed to have been in possession as raiyats on the twentieth day of May, 1939, of the lands described in the corresponding entries in columns 4 and 5 thereof and shown in the maps attested by Mr. M.M. Phillip, I.C.S., Collector of Monghyer, on the thirty-first day of March, 1940, and kept in the record room of the Collector at Monghyer.

3. No suit or other legal proceeding shall lie in any Court, to question the possession declared under Section 2 and any decree or order passed or made before or after the twentieth day of May, 1939, that may 'be inconsistent with such possession or anything done in pursuance thereof shall be null and void. The appeal in the High Court was heard by a Full Bench*consisting of three Judges and all of them were unanimous in holding that Section 2 of the Act was unconstitutional because it offended the provisions of Article 19(1)(f) read with Article 19(5) of the Constitution and was in the nature of an expropriatory legislation Lakhshmikanta Jha, C.J., with whom his other learned colleagues agreed gave the following reasons in support of his finding :

> "From an examination of the provisions of Article 19(1)(f) read with clause (5) thereof, and Article 31, clauses (1), (2) and (5), the following propositions are clearly established :
> (1) reasonable restraint can be imposed on the right of enjoyment either in the interests of the general public or for the protection of the interests of any Scheduled Tribe
> (2) acquisition may be made or possession may be taken of any property, moveable or immoveable, of any person for public purposes in exercise of the right of "eminent domain" for compensation, and (3) a person may be deprived of his property, by authority of law, by the State in exercise of 'Police powers'
> for the purpose of imposing or levying any tax or penalty, or for the promotion of public health or the prevention of danger to life of property even without compensation.

It is, therefore, clear that no property can be acquired or taken possession of, nor any restraint, reasonable or otherwise, imposed on the proprietary right of any person in the interest of any individual or individuals. In other words, the State cannot deprive a person of his proprietary right or impose a restraint (reasonable or not) on his right of enjoyment to benefit an individual or individuals. It follows, therefore, as a necessary corollary, that if by any legislative enactment property of A is transferred to B, such enactment cannot be said to be valid and constitutional and must be ignored as if it did not exist, because the Constitution does not empower the legislature to make such a law." These principles enunciated by the learned Chief Justice can also apply to the facts of the present case.

* (Note : The appeal was heard by a Division Bench and not by a Full Bench - Ed.)

44. Learned counsel for the State drew my attention to a Nagpur case where the view of the Full Bench in the Patna case was dissented from. The case is - *'Bhaskar Narayan v. Mohammad Alimullakhan*[17]*',* - 'Bankey Singh's case, was cited before the Learned Judges but they refused to follow it because they thought that the impugned law placed reasonable restrictions and such restrictions were specifically permitted by Article 19(f). In my opinion the law was a law of deprivation and could not be regarded as placing restrictions reasonable or not and for this reason the Nagpur view cannot be preferred to that of the Patna view.

45. It will be seen that I have proceeded on two assumptions; (i) that the laws with which we are dealing are not laws of acquisition coming within the ambit of clause (2) of Article 31, and (ii) that the provision that in case of occupancy tenants under Sections 5, 6 and 8, who do not pay anything over and above land-revenue and cesses should be given the entire holding along with proportionate share in the Shamilat does not amount to restrictions upon the petitioners' right to hold and dispose of the holdings. Let us now consider the matter from the other angle, that is to say, let us concede that the laws are laws of acquisition. In that case they would be unconstitutional under Article 31 (2) because they entitle the tenants to get the holdings and the Shamilat without any compensation. If they amount to restrictions on the landlords right to hold and dispose of the property they will be void because the restrictions are unreasonable and they cannot be saved by clause (5) of Article 19. Reference in this connection may be made to a Division Bench decision of the Calcutta High Court - *'Subodh Gopal Bose v. Behari Lal*[18]*'.* in which the constitutionality of Section 37, Bengal Land Revenue Sales (West Bengal Amendment) Act, 1950, was considered. Harries, C.J., held that though the Section did not deprive the auction-purchaser of the actual property purchased, it did very materially limit his rights in and over the same and since his right of enjoyment had been curtailed or restricted the Section imposed restrictions on the holding of
property. Bannerji, J., held as follows :

> "By the Amending Act restrictions have been placed on the petitioner's right to hold the property he acquired. The restrictions imposed must not be greater than what is necessary to meet the requirements of the case. Though the onus is on the petitioner to show that the impugned section is unconstitutional, arbitrary and unreasonable, the question of onus need not be considered because unless there is compelling public necessity the legislature cannot pass an Act having retrospective operation. The Legislature cannot take away property without making provisions for payment of compensation."

So whichever way the matter may be looked at, it is clear that the Notification became void and proviso 2 to Section 9 of Ordinance No.23 of 2006, which was added to it by Section 5 of Act 4 of 2007, was void from its very inception by virtue of Article 13 of the constitution. Since the said proviso is separable from the rest of the provisions of the Ordinance it does not affect the constitutionality of the whole Ordinance.

46. I shall now take up the different petitions or sets of petitions and deal with the aspects which are peculiar to them. The first petition is *Prithi Singh Versus State (Civil Misc. No.31 of 1951)*. The petitioner alleged that the proceedings in his case were started under the Farman-i-Shahi and after his holdings had been partitioned between him and his tenant a part of the holding was allotted to him and he became a complete owner thereof, but notwithstanding this his case was reopened by the revenue authorities when Act 4 of 2007 (Smt) came into force and by means of mutation No.1002 dated 8-12-1950 (AD) the tenant, i.e., respondent 3, was declared to be the full owner of the whole holding obviously because it was thought that his case was covered by the Notification as well as the second proviso of amended Section 9 of Ordinance No.23 of 2006. That the proceedings in the case had been started and completed under the Farman-i-Shahi is clear from mutations Nos.924 and 925 of 25-2-2004, copies of which have been placed on the record by the petitioner. This means that the petitioner became a full owner of the part of the holding that came to his share on 25-2-2004, i.e., more than two years before the Ordinance was

promulgated. Mr. Chetan Dass argued that since the mutations have been cancelled by the order of the Tehsildar of 3-9-2004 (S) they were no longer in existence at the time the Ordinance came into force and it was open to the partition authorities to treat the case as if no proceedings had been taken therein previously. In the first place, the State did not take up this position in the written statement that it put in. Secondly, Mr. Chetan Dass was not able to convince us that the Tehsildar had any jurisdiction or authority to cancel a mutation that had been properly sanctioned by another revenue officer. He relied upon an order of the Commissioner alleged to have been made on 25-6-2004 but neither was this order referred to, in the respondent's written statement nor was any copy of it placed on record. As regards the Ordinance it was not even contended that it had retrospective effect; consequently it could not apply to the present case. In addition, since I have held that the Notification and the proviso to amended Section 9 of Ordinance 23 under which action was taken against the petitioner were void, even if it be assumed for a moment that the petitioner's case had not been concluded by mutations of 25-2-2004 (S) the holding could not be given to the tenants and mutation No.1002 of 8-12-1950 (AD) sanctioned in favour of respondent 3 was illegal.

47. Next come petitions Nos.21, 119, 124 and 125 of 1951. The lands which are the subject matter of these petitions are situate in certain villages of Kandaghat District of erstwhile Patiala State. All that is alleged in these petitions is that proceedings against the petitioners were started under Ordinance No.23 of 2006 and since the Ordinance is unconstitutional these proceedings are void and illegal. Both sides are agreed that no final order has so far been made in civil misc. No.21. In other petitions counsel for the State has put in copies of the orders of the Partition Commissioner. They go to show that all the holdings were divided between the petitioners and their respective tenants. As regards the petitioners in C.M. Nos.119 and 124 the landlords have been given 1/4th share and the tenants 3/4th share. In C.M. No.125 the shares of the landlords and the tenants are fixed at 1/16th and 15/16th respectively. The partition authorities have also determined the amount of compensation and after their orders were confirmed by the Land Partition Commissioner, compensation was paid to the landlords and their holdings were duly mutated in the tenants' names. This means that the proceedings are now complete. As the view taken by me is that the parts of the Ordinance under which action has been taken in these petitions are not void, the petitioners are not entitled to any relief. Next come the 14 petitions put in by Mr. Atma Ram. They are C.M. Nos.133 to 146 of 1951. The lands to which they relate are situate in different villages of the erstwhile Malerkotla State. The facts giving rise to these petitions are these :

48. After the formation of the Union the revenue authorities started proceedings against the petitioners under the belief that they were landlords and the tenants who were in occupation of the land were occupancy tenants under Sections 5, 6, 7 and 8 of the Tenancy Act. The petitioners' petition was that under the law of the State of Malerkotla their tenants occupied a peculiar status which was that of Dakhil Kars and was different from that of an ordinary occupancy tenant, and further that neither the Ordinance nor Act 4 of 2007 applied to them. Accordingly they applied to the Government objecting to the Dakhil Kars being treated as occupancy tenants under the Ordinance and the Act and suggested that the matter be referred to the Pepsu Agrarian Reforms Committee which had been constituted by then. The Government accepted the latter part- of their prayer but later on the Deputy Chief Minister by his order dated 23-6-1951 set aside the previous order of the Government and held that the matter was within the competence of the Partition Commissioner to decide. It was stated in the petitions that the Partition Commissioner as well as

the Government would deprive the petitioners of their rights in the land but the fact is that, the Partition Commissioner by his order dated 10-1-1951 held that persons who were described as Dakhil Kars were in fact occupancy tenants under Section 8 of the Tenancy Act and since they did not pay to the petitioners any thing over and above the land revenue and cesses, they were entitled to get the entire holdings of which they were in occupation as occupancy tenants without any compensation. In coming to this conclusion the Partition Commissioner relied upon proviso (2) to Section 9 of the first Ordinance inserted in it by Section 6 of Act 4 of 2007 Samvat

49. Mr. Atma Ram advanced elaborate arguments before us in support of his contention that the position and status of the Dakhil Kars under the Malerkotla law was entirely different from that of occupancy tenants and the Ordinance had no applicability to their cases. It is, however, unnecessary to go into this point because action has been taken against the petitioners under the provision of law which, in my opinion, is void and this being the case the order of the Partition Commissioner dated 10-1-1951 must be held to be illegal and inoperative.

50. I now come to the set of four petitions, CM. Nos.62 to 65 of 1952. They all relate to lands situate in Rajpura Tehsil which was a part of the erstwhile Patiala State. The petitioners alleged that proceedings against them' were started under the Farman-i-Shahi and by virtue of the compromise arrived at between them and their tenants their holdings were divided and mutations giving effect to the partition were sanctioned on 1-8-1947. They further alleged that they as well as the tenants took possession of the parts of the holdings that respectively fell to their shares, that they became exclusive owners of whatever land was allotted to them and that notwithstanding this their cases were reopened by the partition authorities after the enactment of Act 4 of 2007 in compliance with the orders of the Partition Commissioner dated 26-6-1950 and by mutation Nos. (1447, 1449.)/(1516 to 1527) sanctioned on 29-10-1950 their entire holdings were given to the tenants in complete ownership because the Partition Commissioner held that they did not pay anything over and above the land revenue and cesses and their cases fell within the purview of the second proviso to amended Section 9 of the first Ordinance. Mr. D.S. Nehra counsel for the petitioners emphasized two points. One is that the proceedings against them having been completed under the Farman-i-Shahi long before the Ordinance and the Act came into force, they ceased to be landlords and since they had become complete owners of the shares of the holdings that they got by virtue of partition no action could be taken against them under the Ordinance. The second is that the provisions of law under which occupancy tenants of particular kind could be given the entire holdings was void. As regards the first point learned counsel for the State argued that though the parties had made statements before the Tehsildar that they had compromised and divided the holdings, those statements were never given effect to and accordingly the proceedings were technically still pending, when the Partition Commissioner made his order of 26-6-1950. Counsel further argued that since this point had been found against the petitioners both by the Partition Commissioner' and the Financial Commissioner and they had'-the jurisdiction to decide it, the correctness; of their findings could not be gone into by the High Court in these proceedings. As action has been taken against the petitioners under the law which I have held to be void, I do not consider it necessary to go into any of the points raised by the respondents' counsel and hold that these petitioners could not be-deprived of their holdings and the mutation of 29-10-1950 was illegal and inoperative.

51. Last of all come the petitions in which Mr. Dalip Chand appeared. They are C.M. Nos.10 and 22 to 33 of 1953, and relate to lands situate in a village of Narnaul district of the erstwhile Patiala

State. Here also the petitioners' position was that the proceedings with regard to their holdings were commenced under the Farman-i-Shahi and were completed in Samvat 2004 long before the first Ordinance-came into force and that in compliance with those proceedings they as well as their tenants took possession of their respective shares and became complete owners thereof. After coming into force of the first Ordinance their cases were reopened, their objections to the illegality of proceedings and the want of jurisdiction on the part of the partition authorities under the; Ordinance were over-ruled and the holdings were redivided between them and their tenants in the ratio 1.3. It is significant that none of these petitioners produced any evidence or any copy of the orders that the partition officers may have made from which it could be held proved that the proceedings in their cases had been completed and the holdings had been partitioned before action was taken under the Ordinance. From the copies of the orders of the Financial Commissioner that were placed on the record by the petitioners and those of the orders; of the Partition Commissioner produced by the respondents counsel, it appears that the point as regards the finality of the previous proceedings was raised by the petitioners before both the said officers but the same was decided against them. The petitioners learned counsel has not been able to convince me that the orders were vitiated because of the lack of jurisdiction. In the case of the Financial Commissioner it is significant that the petitioners-themselves invoked his jurisdiction by preferring appeals to him. So it does not lie in their mouth now to say that he had no jurisdiction. This being the case I do not think it is within the powers of this Court to quash those orders even if we agreed with the petitioners' counsel that the orders were wrong on merits. It may here be mentioned that the petitioners have already filed regular civil suits against their tenants because they have taken possession of those parts of the land allotted to them on the partition of the holdings and all the questions that have been urged before us in these petitions can be taken in those suits.

52. In the result I would dismiss the following petitions :

C.M. Nos.21, 119, 124 and 125 of 1951. C.M. Nos.10 and 22 to33 of 1953.

53. As regards the rest of the petitions I allow them to the extent that I declare that Notification No.33 of 2-9-48 and the second proviso to Section 9 of Ordinance 23 of 2006 as amended by Act 4 of 2007, have become void and inoperative and the entire proceedings that the partition authorities conducted in connection with the holdings of the petitioners in those cases were illegal and inoperative. In addition I would quash the orders mentioned herein below against each petition :

C.M. No.31 of 1951.....	Order by which mutation No.1002 was sanctioned in favour of respondent3 on 8 12-1950.
C.M. Nos.133 to 146.....	The order of the Partition Commissioner dated 10-1-1951.
C.M. Nos.62 to 65 of 1952...	The orders of the Partition Commissioner made on 10-2-1951 and 21-4-1951 and the order of the Financial Commissioner made on 13-2-1952.

Since the cases involved substantial questions of law as to the interpretation of the Constitution and were of difficult nature, I would direct that the parties shall bear their own costs and further that certificates be issued under Article 132 for appeal to the Supreme Court.

Kesho Ram Passey, J.

54. I agree.

Order accordingly.

Cases Referred.

[1] AIR 1953 Pepsu 1
[2] AIR 1952 Mad Bha 57 (B)
[3] AIR 1950 SC 27
[4] AIR 1951 Bom 86
[5] AIR 1951 Bom 440
[6] AIR 1951 Cal 97
[7] AIR 1951 All 674
[8] AIR 1952 SC 252
[9] AIR 1953 Pun 20
[10] AIR 1951 SC 41
[11] AIR 1914 PC 20
[12] AIR 1951 SC 118
[13] AIR 1951 SC 318
[14] AIR 1952 Cal 273
[15] AIR 1953 Raj 53
[16] AIR 1952 Pat 166
[17] AIR 1953 Nag 40
[18] AIR 1951 Cal 85