State Of Tamil Nadu vs Arooran Sugars Ltd on 31 October, 1996

Author: N.P. Singh

Bench: Kuldip Singh, M.M.Punchhi, N.P.Singh, M.K.Mukherjee, Saghir S.Ahmad

CASE NO.:
Appeal (civil) 134 of 1980

PETITIONER:
STATE OF TAMIL NADU

RESPONDENT:
AROORAN SUGARS LTD.

DATE OF JUDGMENT: 31/10/1996

BENCH:
KULDIP SINGH & M.M.PUNCHHI & N.P.SINGH & M.K.MUKHERJEE & SAGHIR S.AHMAD

JUDGMENT:

JUDGMENT (With C.A. Nos. 352-354 of 1980) DELIVERED BY:

N.P. SINGH, J.

N.P. SINGH, J.

The State of Tamil Nadu is the appellant in these appeals. Civil Appeal No. 134 of 1980 has been filed against the judgment of the High Court of madras in Writ Petition 1464 of 1974, whereas Civil Appeal Nos. 352-352-354 of 1980 have been filed against the judgment of the same High Court in Writ Petition 2341-2343 of 1978. All the writ Petitions had been filed on behalf of the respondent which were allowed by the High Court.

The respondent, a public limited company which owned and possessed 3421.14 acres of land, was engaged in composite and integrated activity of raising sugarcane on the aforesaid land and crushing it in its sugar factory. The Tamil Nadu Reforms (Fixation of ceiling on Land) Act, 1961 (Act 58 Of 1961), (hereinafter referred to as the principal Act) was published in the Tamil Nadu government Gazette on

2.5.1962. According to the said Act, a ceiling of 30 standard acres of agricultural land was fixed as the maximum holding. Under Section 18(1) of the principal Act, the surplus land has to be notified as required for public purposes and on such publication in view of Section 18(3) of the Act land specified in the notification shall deemed to have been acquired for a public purpose and shall vest

in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such land shall be deemed to have been extinguished. The relevant part of Section 18 of the Act is as follows:-

> 18. Acquisition of surplus land.-(1) After the publication of the final statement under section 12 or 14, the Government shall, subject to the provisions of sections 16 and 17, publish a notification to the effect that the surplus land is required for a public purpose.

(2).....

(3) On the publication of the notification under sub-section (1), the land specified in the notification together with the trees standing on such land and buildings, machinery plant or apparatus, constructed, erected or fixed on such land and used for agricultural purpose shall, subject to the provisions of this Act, be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances with effect from the date of such publication and right, title and interest of all persons in such land shall, with effect from the said date, be deemed to have been extinguished:

> Provided that where there is any crop standing on such land on the date of such publication, the authorized officer may, subject to such conditions as may be prescribed, permit the harvest of such crop by the person who had raised such crop.
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> Section 50(1) of the Act provides for payment of amount at the rates specified in Schedule III thereto, to person whose right, title or interest in any land is acquired by the Government.
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> Tamil Nadu land Reforms (Reduction of Ceiling on Land) Act 17 of 1970, Under the Principal Act there was provision for grant of Exemption to the lands held by sugar factories in excess of the ceiling area. This provision was deleted by Tamil Nadu Amendment Act 41 of 1971, which came into force from 15.1.1972. Because of such amendment even the sugar factories in general could not hold land in excess of 15 standard acres. The respondent filed its return under Section 8 of the Principal Act on 6.4.1972. The Additional Authorised officer (Land Reforms), Tiruvarur, published the draft statement under section 10(1) of the principal Act on 19.4.1972. The minimum compensation payable for excess Lands vesting in the Government was 9 times of the net annual income. As such when the respondent filed its return on 6.4.1972, it was entitled to compensation at the rare of 9 times of the net annual income. However, the Tamil Nadu land Reforms (Fixation off Ceiling of land) Fourth Amendment Act, 1972(Act 39 of 1972) which came in force with effect from 21.12.1972 amended Schedule III of principal Act reducing the minimum multiples from 9 times to 2 times. The said Amending Act 39 of 1972 purported to reduce the multiple of compensation which was payable in respect of lands which vested in the Government after 21.12.1972. A notification under Section 18(1) of the principal Act

was published on 4.4.1973 declaring as surplus an extent of 3414.87 acres of land held by the respondent. Possession over such excess land were taken over by the state Government between 6.4.1973 and 26.4.1973. The Draft Compensation Assessment Roll was published by the state Government on 5.12.1973 determining the amount payable to the respondent in respect of the surplus lands applying the rate of 2 times the net annual income.

On 15.2.1974, The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act 1972 (Act 7 of 1974) was published in the Tamil Nadu Government Gazette. Sub- section(2) of Section 3 of Act 7 of 1974 amended sub- section (3) of section 18 of the principal Act on and from 1.3.1972. The relevant part thereof is as follows:-

"3(2) in section 18 of the principal Act,-

(a) in sub-section (3), for the words "with effect from the date of such publication," The words "with effect from the date of the commandment of this Act," had been substituted:

(b)..... ..

(c).....

....

The effect of substitution of sub-section (3) of section 18 of the principal Act shall be that whereas under

the original sub-section (3) of section 18 of the principal Act only on publication of the notification under sub- section(1) of section 18, the land specified in the notification together with the trees standing on such land and buildings, machinery plant etc., was deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances `with effect from the date of such publication'; because of the substitution of sub- section (3) of section 18 of the principal Act by Act 7 of 1974 the lands in question shall deemed to have vested in Government' with effect from the date of the commencement' of Act 7 of 1974, i.e. with effect from 1.3.1972. It can be said that as sub-section (3) of section 18 stood prior to amendment by Act 7 of 1974 on publication of the notification under Section 18(1), the vesting of the respondent's sugarcane land in the state Government had taken place with effect from 4.4.1973, but in view of substituted sub-section (3) of section 18 by Act 7 of 1974, it shall be deemed that the vesting of the excess lands took place with effect from 1.3.1972. In Section 3 of the principal Act by Act 7 of 1974 a new sub-section (3-A) was also introduced which is as follows:

> "(3-A) (a) Every person who, after the date of the commencement of this Act, was in possession of, or deriving any benefit from the property vested in the Government under Sub-section (3) shall be liable to pay to the Government, for the period, after such commencement, for which he was in such possession or deriving such benefit, an amount as compensation for the use, occupation or enjoyment of that property as the authorised officer may fix in the prescribed manner. Such officer shall take into consideration such facts as may be prescribed.
>
> (b) Any amount payable to the Government under clause (a) shall be recoverable as arrears of land revenue."

According to the respondent, in view of the amendment introduced by Act 7 of 1974, antedating the date of vesting from 4.4.1973 to 1.3.1972 the respondent was entitled to the payment applying the multiple of 9 times of the net annual income instead of multiple of 2 times which was introduced by aforesaid Act 39 of 1972 with effect from 21.12.1972. Writ petition No. 1464 of 1974 was filed on behalf of the respondent challenging the Draft Compensation Assessment Roll aforesaid, before the High Court which was admitted by the High Court.

It may be pointed out that the learned counsel appearing for the appellant-state, could not explain as to what was the purpose of enacting Act 7 of 1974 aforesaid and what object it purported to achieve. He simply stated that later the legislature itself restored the original position by enacting Tamil Nadu Land Reforms (Fixation of ceiling on Land) Amendment Act 78 (Act 25 of 1978). Section 4 of that Act is as follows:

> "4. Tamil Nadu Act 58 of 1961, as subsequently modified, to have effect subject to modifications-The Principal Act, shall, on and from the 1st day of march 1972, have effect as if, -
>
> (1) in section 18 of the principal Act,-
>
> (a) in sub-section (3), for the words "with effect from the date of the commencement of this Act," the words "with effect from the date of such publication" had been substituted:
>
> (b)..... .....
>
> (c) sub-section (3-A) had been omitted.

....." In view of section 4 aforesaid, in sub-section (3) of section 18 of the principal Act the words "with effect from the date of such publication" was again substituted for the words " with effect from the date of commencement of this Act" which had been introduced by Act 7 of 1974. Sub- section(3-A) which had been introduced by Act 7 of 1974 was also omitted. Sections 5 and 6 of Act 25 of 1978 which are relevant provided:

"5. Certain provisions of Tamil Nadu Act 7 of 1974 not to have effect-

(1) Notwithstanding anything contained in the Tamil Nadu land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act, 1972 (Tamil Nadu Act 7 of 1974) (hereinafter in this section referred to as the 1972 Act), or in any judgment, decree or order of any court or other authority, sub- section(2) of section 3 of the 1972 Act shall be omitted and shall be deemed always to have been omitted and accordingly the modifications made to section 18 of the principal Act by the said sub-section (2),-

(a) shall be deemed never to have been made and the provisions of the said section 18 of the principal Act as they stood prior to the said modifications shall continue in force and shall be deemed always to have continued in force; and

(b) shall be deemed never to have had the effect of vesting in the State Government the surplus lands specified in any notification published under sub-section (1) of the said section 18 of the principal Act on or after the 2nd may 1962 and before the date of publication of this Act in the Tamil Nadu Government Gazette, from a date earlier to the date of the publication of the notification under the said sub-section (1) and shall be deemed always to have had the effect of vesting in the state Government such surplus lands, only with effect from the date of the publication of such notification.
(2) Anything done or any action taken under the principal Act in pursuance of the provisions of sub-

section (2) of section 3 of the 1972 Act, shall be re-opened and determined in accordance with provisions of the principal Act, as modified by this Act.

6. Vesting of certain surplus lands and validation - Notwithstanding anything contained in any judgment, decree, or order of any court or other authority,-

(a) where before the date of publication of this Act in the Tamil Nadu Government (1) of section 18 of the principal Act has been published, the surplus land specified in such notification shall be deemed to have vested in the state Government, with effect from the date of such publication only, and accordingly the provisions of the principal Act, as modified by section 4 of this Act, shall for all purposes apply and be deemed always to have been applied in respect of such surplus lands so vested; and

(b) all acts done and proceedings taken by any officer or authority under the principal Act, on the basis that compensation in respect of surplus lands referred to in clause (a) shall be payable only according to the rates specified in schedule III of the principal Act, as in force on the date of publication of the said notification, shall, for all purposes be deemed to be and to have always been validly Section 4 of this Act had been in force at all material times when such acts or proceedings were done or taken."

As already mentioned the respondent filed Writ Petition No. 1464 of 1974 claiming compensation applying the multiple of 9 times instead of 2 times and for a direction to the authorised officer to prepare the Draft Compensation Assessment Roll in respect of the lands which had vested taking into account the provisions of aforesaid Act 7 of 1974. This stand was taken on behalf of the respondent because the effect of Act 7 of 1974 was that vesting was to take effect with effect from 1.3.1972 as provided in section 3 of Act 7 of 1974. On 1.3.1974, admittedly aforesaid Amendment Act 39 of 1972 by which the compensation amount payable for the surplus lands was reduced from 9 times to 2 times of the net annual income had not come into force, it came into force with effect from 21.12.1972. As such if by virtue of Act 7 of 1974 if the vesting had taken place with effect from 1.3.1972 the date of commencement of Act 7 of 1974, it shall be deemed that vesting had taken place prior to 21.12.1972 when admittedly schedule III provided for payment by applying the multiple of 9 times. The High Court by; its order dated 8.10.1976 quashed the Draft Compensation Assessment Roll published, treating the vesting of the surplus lands with effect from 1.3.1972 because of Act 7 of 1974. Civil Appeal No. 134/80 is directed against aforesaid order of the High Court dated 8.10.1976. The respondent also filed Writ petition No. 624 of 1978 for issuance of mandamus to the authorised officer on basis of the aforesaid judgment and order of the High Court dated 8.10.1976 in writ petition No. 1464/74 to prepare the Draft Assessment Roll as per that a judgment. The High Court by its order dated 3.3.1978 directed the authorised officer to prepare the Assessment Roll accordingly.

The aforesaid Act 25 of 1978 was published in the Tamil Nadu Government Gazette on 18.5.1978 and took effect on and from 1.3.1972. It restored parts of sub-section (3) of section 18 as it stood prior to the amendment in that sub- section by Act 7 of 1974. it reiterated that the date of vesting of the surplus lands shall be date of the publication of the notification under sub-section (1) of section 18 of the Act. so far the respondent is concerned, such notification under sub-section (1) of section 18 had been published on 4.4.1973, i.e. after 21.12.1972 from which date because Amendment Act 39 of 1972 the compensation amount payable for the surplus lands had been reduced from 9 times to 2 times of the net annual income. Section 5 of Act 25 of 1978 also contained non-obstante clause with deeming fiction saying that notwithstanding anything contained in the Tamil Nadu land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act 1972 (Act 7 of 1974) or any judgment, decree or order of any court, sub-section (2) of section 3 of the aforesaid 1972 Act shall be omitted and shall be deemed always to have been omitted. Section 6 thereof said that notwithstanding anything contained in any judgement, decree or order of any court where before the date of the publication of the said Act in Tamil Nadu Government Gazette a notification under sub-section (1) of section 18 of the principal Act had been published the surplus lands specified in such notification ' shall be deemed to have vested in the state Government with effect from the date of such publication only.....' and the provisions of the principal Act as modified by section 4 of Act 25 of 1978 shall for all purposes apply and be deemed always to have applied in respect of such surplus lands so vested and compensation in respect of surplus land shall be paid only according to the rates specified in Schedule III of the principal Act as in force on the date of the publication such notification. In other words, sections 5 and 6 of Act 25 of 1978 purported to efface and obliterate the amendment which had been introduced in sub-section (3) of section 18 by Act 7 of 1974 and purported to validate the notification which had been issued on 4.4.1973 under sub-section (1) of section 18 of the principle Act declaring 3414.78 acres of the land belonging to the respondent as surplus. It need not be

pointed out that this was done because the multiple of 9 times was reduced to 2 times by Act 39 of 1972 with effect from 21.12.1972. If the vesting had taken place by effect of amended sub-section (3) of section 18 by Act 7 of 1974 with effect from 1.3.1972, the date of the commencement of the said Act, then the respondent was entitled for compensation applying the multiple of 9 times.

Writ petition Nos. 2341-2343 of 1978 were filed on behalf of the respondent questioning the validity of the aforesaid provisions of Act 25 of 1978 and for a direction that such provisions which were introduced by the said Act had no effect on the right of the respondent to receive compensation applying the minimum multiple of 9 times of the net annual income. Those writ petitions were allowed by a Division Bench of the High Court on 20.7.1979. Civil Appeal Nos. 352-354/80 have been filed against the said Judgment.

Mr. Venugopal, the learned counsel appearing for the appellant-state, took a stand that civil Appeal No. 134/80 has been filed on behalf of the state challenging the validity of the judgment and order of the High Court dated 8.10.1976 in Writ petition No. 1464/74 directing payment of compensation to the respondent applying the provisions of Act 7 of 1974, after coming into force of the Act 25 of 1978 it shall be deemed that the basis of the judgment in writ petition No. 1464/74 has been taken away as such the respondent cannot claim compensation by applying the multiple of 9 times. It was also submitted on behalf of the appellant-State that the provisions of Act 25 of 1978 being constitutional and valid, High court should have dismissed the writ petition Nos. 2341-2343 of 1978 filed on behalf of the respondent questioning the validity of Act 25 of 1978.

It may be mentioned at the outset that none of the two judgments of the High Court dated 88.10.1976 and 20.7.1979 in writ petition No. 1464/74 and writ petition Nos. 2341- 2343/78 have became final. Civil Appeal No. 134 of 1980 and civil appeal Nos. 352-354 of 1980 are directed against the aforesaid judgments dated 8.10.1976 and 20.7.1979. In this background, it has to be examined whether sections 4, 5 and 6 of Act 25 of 1978 with non-obstante clause and deeming provisions have taken away the effect of the aforesaid judgment of the High Court dated 8.10.1976 directing the appellant-state to apply 9 times multiple in view of the amendments introduced by Act 7 of 1974. The other aspect is as to whether in view of the provisions aforesaid of Act 25 of 1978, this Court while considering the appeal against aforesaid judgment dated 8.10.1976 in writ petition No. 1464/74 has now to proceed as if the amendments in the principal Act by Act 7 of 1974 had never been introduced. There is no dispute in respect of legislative competence of legislature to enact Act 25 of 1978. The only dispute is whether provisions of that Act has achieved the achieved the desired result.

Sections 5 and 6 of Act 25 of 1978 contain deeming fiction in its different clauses while purporting to omit and remove the amendments which had been introduced by Act 7 of 1974 in the principal Act. The role of a provision in a statute creating legal fiction is by now well settled. When a statute creates legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter courts have to give full effect to such a statutory fiction and it has to be carried to its logical conclusion. In the well-known case of East End Dwellings Co. Ltd. V. Finsbury Borough Council, 1952 AC 109 Lord Asquith while dealing

with the provisions of the Town and Country Planning Act, 1947 observed:

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it....The statute says that you must imagine a certain having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

That statement of law aforesaid in respect of a statutory fiction is being consistently followed by this court. Reference in this connection may be made to the cases of state of Bombay V. Pandurang Vinayak, 1953 SCR 773; Chief Inspector of Mines V. Karam Chand Thapar, 1962(1) SCR 9; J.K. Cotton Spinning and Weaving Mills Ltd. V. Union of India,(1988) 1 SCR 700; M. Venugopal V. Divisional Manager, Life Insurance Corporation of India, (1964) 2 SCC 323; and Harish Tandon V. Additional District Magistrate. Allahabad, (1995)1 SCC 537.

Section 5 of Act 25 of 1978 provides that notwithstanding anything contained in Act 7 of 1974, or in any judgment, decree or order of any court , or other authority, sub-section (2) of section 3 of the aforesaid Act' shall be omitted and shall be deemed always to have been omitted and the modifications made to section 18 of the principal Act by the said sub-section (2)-

(a) 'shall be deemed never to have been made and the provisions of the said section 18 of the principal Act as they stood prior to the said modifications shall continue in force and shall be deemed always to have continued in force; and

(b) 'shall be deemed never to have had the effect of vesting in the state Government the surplus lands specified in any notification published under sub-section (1) of the said section 18 of the principal Act on or after the 2nd May 1962 and before the date of publication of this Act in the Tamil Nadu Government Gazette, from a date earlier to the date of the publication of the notification under the said sub-section (1) and shall be deemed always to have had the effect of Vesting in the state Government such surplus lands, only with effect from the date of the publication of such notification.' The legislature by different deeming clauses and through statutory fiction requires the Court to treat that amendments so introduced by Act 7 of 1974 had never been introduced in the principal Act. The power of the legislature to amend, delete or obliterate a statute or to enact a statute prospectively or retrospectively cannot be questioned and challenged unless the court is of the view that such exercise is in in violation of Article 14 of the constitution. It need not be impressed that whenever any Act or amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be effected one way or the other. In every case, it cannot be urged that the exercise by the legislature while introducing a new provision or deleting an existing provision with retrospective effect per se shall be violative of Article 14 of the constitution. If that stand is accepted, then the necessary corollary shall be that legislature has no power to legislate retrospectively, because in that event a vested right is effected; of course, in special situation this court has held that such exercise was violative of Article 14 of the constitution. Reference in this

connection may be made to the cases of state of Gujarat & Another V. Raman Lal Keshav Lal Soni & others,(1983) 2 SCR 287; T. R. Kapur V. State of Haryana, 1986 (Supp) SCC 584; and Union of India V. Tushar Ranjan Mohanty, 1994(5) SCC 450. In the case of state of Gujarat V. Raman Lal (Supra) a Constitution Bench on the facts and circumstances of that case observed:

> "The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history."

In same terms this Court expressed the opinion in the cases of T.R. Kapur V. State of Haryana (supra) and Union of India V. Tushar Ranjan Mohanty (supra) in respect of alterations in rules framed under Article 309 of the constitution retrospectively regarding conditions of service.

So far the facts of the present case are concerned, the provisions of Act 25 of 1978 do not purport to effect any vested or acquired right. It only restores the position which existed when the principal Act was in force. By notification dated 4.4.1973 issued under section 18(1) of the Act as it stood prior to amendment introduced by Act 7 of 1974, 3414.87 acres of land had been declared as surplus which vested in the state Government under section 18(3) of the principal Act as it stood on that date. It can be said that Act 25 of 1978 simply nullifies Act 7 of 1974 which had made amendments in the principal Act after notification gad been issued under section 18(1) and vesting had taken place under section 18(3) of the principal Act as it stood prior to enactment Act 7 of 1974. By Act 7 of 1974 futile attempt had been made by introducing different amendments. in this process not only it created anomaly in the principal Act, but nothing purposeful was achieved. It is true that because of the amendments introduced by that Act 7 of 1974, the respondent could urge before the High Court that as the vesting had taken place on 1.3.1972, in spite of amendment Act 39 of 1972 which had reduced the multiple from 9 times to 2 times of the net annual income with effect from 21.12.1972 the respondent was entitled to compensation to be worked out on basis of 9 times of the net annual income. But on this ground the provisions of Act 25 to 1978 cannot be held to be violative of Article 14 of the constitution and as such ultra vires. Once the provisions are held to be legal and valid, then as pointed out above the wish and desire of the legislature has to be given full effect and to its logical end. The courts have to proceed on the assumption the Act 7 of 1974 had never been enacted and no amendment whatsoever had been introduced in the principal Act directing the vesting to take place with effect from 1.3.1972. This court shall be fully justified in examining the judgment of the High

Court dated 8.10.1976 on Writ Petition No. 1464/74 filed by the respondent, treating that Act 7 of 1974 was never enacted or was in existence. As the aforesaid judgment dated 8.10.1976 is solely based on amendments introduced by Act 7 of 1974, once such amendments have been effected retrospectively, there is no escape from the conclusion that the substratum and basis of the judgment of the High court dated 8. 10.1976 is solely based on amendments introduced by Act 7 of 1974, one such amendments have been effaced retrospectively, there is no escape from the conclusion that the substratum and basis of the judgement of the High Court dated 8.10.1976 has been taken away. The High Court had proceeded on the assumption that because of amendment introduced by Act 7 of 1974 the vesting shall be deemed to have taken place with effect from 1.3.1972 and on that assumption direction was given to calculate the compensation applying 9 times multiples which had been reduced to 2 timed with effect from 21.12.1972 by amendment Act 39 of 1972. But if the provision which directed Vesting with effect from 1.3.1972 does not exist in eyes of law, then there is no question of holding that vesting shall be deemed to have taken place with effect 1.3.1972 when compensation was to be worked out by applying the 9 times to 2 times of the net annual income with effect from 21.12.1972. Thereafter on 4.4.1973 notification under Section 18(1) of the principal Act was issued declaring 3414.87 acres of land of the respondent as surplus which vested in the State Government under Section 18(3) of the principal Act as it stood on that date. As such the compensation has to be worked out on basis of the amendment which had been introduced in schedule III of the Act by amendment Act 39 of 1972. This Court can modify the judgement of the High Court dated 8.10.1976 taking into account No.134 of 1980 is against aforesaid judgment of the High Court dated 8.10.1976.

There is yet another aspect of the matter. Section 6 of the Act 25 of 1978 provides that notwithstanding anything contained in any judgment, decree, or order of any court or other authority where before the date of publication of this Act in the Tamil Nadu Government Gazette, a notification under sub-section (1) of section 18 of the principal Act had been published, the surplus lands specified in such notification shall be deemed to have vested in the state Government, with effect from the date of such publication only, and accordingly the provisions of the principal Act, as modified by section 4 of this Act, shall for all purposes apply and be deemed always to have been applied in respect of such surplus lands so vested.

The scope of a non-obstante clause and of validating Act has been examined by this Court from time to time . Reference in this connection be made to the judgment in the case of Prithvi Cotton Mills Ltd. V. Broach Borough Municipality, (1969) 2 SCC 283 where Hidayatullah, C.J. speaking for the Constitution bench said:

> "When a legislature sets out to validate a tax declared by a court to be illegally collected under and ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless

the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both area invalid or do not sufficiently create the jurisdiction .

Validation of a tax so declared illegal may be known only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-

enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law."

The same view was reiterated in the cases of west Ramnad Electric Distribution Co. Ltd. V. State of Madras, (1963) 2 SCR 747; Udai Ram Sharma v. Union of India,(1968) 3 SCR 41; Tirath Ram Rajindra Nath V. State of U.P,(1973) 3 SCC 585; Krishna Chandra Gangopadhyay v. Union of India, (1975) 2 SCC 302; Hindustan Gum & Chemicals Ltd. V. State of Haryana, (1985), 4 SCC 124; Utkal Contractors and Joinery (P) Ltd. V. State of Orissa, 1987 Supp SCC 751; D. Cawasji & Co. v. state of Mysore, 1984 Supp SCC 490 and Bhubaneshwar Singh V. Union of India, (1994) 6 SCC 77. It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed put in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect. This is what has happened in the present case. The judgment of the High Court in writ petition No. 1464/74, dated 8.10.1976 was solely based on the amendments which had been introduced by Act 7 of 1974 . If those amendments so introduced have been effaced by Act 25 of 1978 with retrospective effect saying that it shall be deemed that no such amendments had ever been introduced in the principal Act, then full effect has to be given to the provisions of later Act unless they are held to be ultra vires or unconstitutional .

On behalf of the respondent, it was pointed out that the High Court in its judgment dated 8.10.1976 in writ petition No. 1464/74 has not declared any provision to be invalid because of which a validating Act was required. The said judgment had also no pointed out any defect in any Act which had to be rectified by a validating Act. It had simply proceeded on the provisions of Act 7 of 1974 and had issued direction to the state Government to proceed in accordance with those provisions. This Court has examined the power of the legislature to amend the provisions of the Act in question after

a court verdict. Reference in this connection may be made to the case of Government of Andhra Pradesh & Anr. v. Hindustan Machine Tools Ltd. (1975) 2 SCC 274 where it was observed:

> "We see no substance in the respondent's contention that by re-
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> defining the term `house' with retrospective effect and by validating the levies imposed under the unamended Act as if notwithstanding anything contained in any judgment, decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial function. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the legislature to enact laws is plenary. In United provinces V. Atiga Begum, Gwyer, C.J. while repelling the argument that Indian Legislatures had no power to alter the existing laws retrospectively observed that within the limits of their powers the Indian legislatures were as supreme and sovereign as the British parliament itself and that those powers were not subject to the "strange and unusual prohibition against retrospective legislation". The power to validate a law retrospectively is, subject to the limitations aforesaid, an ancillary power to legislate on the particular subject.
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> The state legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of `house' by the substitution of a new section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given to the altered circumstances. If the old Section 2(15) were to define `house' in the manner that the amended section 2(15) does, there is no doubt that the decision of the High Court would have been otherwise. In fact, it was not disputed before us that the buildings constructed by the respondent meet fully the requirements of Section 2(15) as amended by the Act of 1974.
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> In Tirath Ram Rajindra Nath v. State of U.P, the Legislature amended the law retrospectively and thereby removed the basis of the decision rendered by the High Court of Allahabad. It was held by this Court that this was within the permissible limits and validation of the old Act by constitute an encroachment on the functions of the judiciary."

Again in the case of Sunder Dass V. Ram Prakash, (1977) 3 SCR 60 it was said:

> "The appellant, however, urged that the introduction of the proviso in section 3 should not be given greater retrospective operation than necessary and it should not be so construed as to affect decrees for eviction which had already become final between the parties. Now, it is true, and that is a settled principle of construction,

> that the court ought not to give a larger retrospective operation to a statutory provision than what can plainly be seen to have been meant by the legislature. This rule of interpretation is hallowed by time and sanctified by decisions, though we are not at all sure whether it should have validity in the context of changed social norms and values. But even so, we do not see how the retrospective introduction of the proviso in section 3 can be construed so as to leave unimpaired a decree for eviction already passed, then the question arises in execution whether it is a nullity.
>
> The logical and inevitable consequence of the introduction of the proviso in section 3 with retrospective effect would be to read the proviso as if it were part or the section at the date when the Delhi Rent Control Act, 1958 was enacted and the legal fiction created by the retrospective operation must be carried to its logical extent and all the consequences and incidents must be worked out as if the proviso formed part of the section right from the beginning. This would clearly render the decree for eviction a nullity and since in execution proceeding, an objection as to nullity of a decree is a nullity, the principle of finality of the decree cannot be invoked by the appellant to avoid the consequences and incidents flowing from the retrospective introduction of the proviso in section 3. Moreover , the words "notwithstanding any judgment, decree or order of any court or other authority" in the proviso make it clear and leave no doubt that the legislature intended that the finality of "judgment, decree or order of any court or other authority" should not stand in the way of giving full effect to the retrospective introduction of the proviso in section 3 and applying the provisions of the Delhi Rent Control Act, 1958 in cases falling within the proviso."

Same was the situation in the case of Bhubaneshwar Singh V. Union of India (supra) where taking note of the subsequent amendments in the concerned Act the Court came to the conclusion:-

"In the present case as already pointed out above, if sub-

section (2) as introduced by the Coal Mines Nationalisation Laws (Amendment) Act 1986 in section 10 had existed since the very inception, there was no occasion for the High Court or this Court to issue a direction for taking into account the price which was payable for the stock of code lying on the date before the appointed day. The authority to introduce sub-section (2) in section 10 of the aforesaid Act with retrospective effect cannot be questioned. Once the amendment has been introduced retrospectively, courts have to act on the basis that such provision was there since the beginning. The role of the deeming provision need not be emphasised in view of series of judgments of this court ....

In the present case, the lacuna or defect has been removed by the introduction of sub-section (2) in section 10 of the Act with retrospective effect. Sub-section (2) of section 10 as well as section 19, both have specified that the amount which is to be paid as compensation mentioned in the schedule shall be deemed to include and deemed always to have included, the amount required to be paid to such owner in respect of all coal in stock on the date immediately before the appointed day. As such the earlier judgment of this court is of no help to the petitioner."

On behalf of the respondent reference was made to the well-known judgment of this court in the case of Madan Mohan Pathak V. Union - of India, (1978) 2 SC 50 and it was pointed out from the judgment of Chief justice Bag who observed:

> "I may, however, observe that even though the real object of the Act may be to set aside the result of the Mandamus issued by the Calcutta High Court, Yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution Itself. These could not be touched by an ordinary act of parliament. Even if section 3 of the Act Seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, i think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion."

The facts of that case were entirely different. In the Act which was being challenged, there was no non-obstante clause purporting to take away the effect of the judgment of the Calcutta High Court. Letters patent Appeal filed against the judgment whose effect was being taken away by the provisions in question had been withdrawn. Bhagwati, J (as he then was) made a special mention of the aforesaid facts for purpose of holding that the effect of the Calcutta High Court had not be nullified by the provisions in question:-

> "It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of objects and Reasons , nor any non-obstante clause referring to a judgment of a court in section 3 of the impugned Act. The attention of parliament does not appear to have been drawn to the fact that the Calcutta High Court has already issued a writ of Mandamus commanding the Life Insurance Corporation to pay the amount of Bonus for the year April 1, 1975 to March 31,1976. It appears that unfortunately the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act or issued that the provisions of the settlement in so far as they relate to payment of annual cash bonus to class III and class IV employees shall not have any force or effect and shall not to deemed to have had any force or effect from April 1,1975 to March 31,1976 was concerned, it became crystalised in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year April 1, 1975 to Mandamus. The error committed by the Life Insurance Corporation was that it withdrew the Letters patent Appeal and allowed the judgment of the learned single judge to become final. By the time the Letters Patent Appeal came up for hearing, the

> impugned Act had already come into force and the Life Insurance Corporation could, therefore , have successfully contended in that letters Patent Appeal that, since the settlement, in so far as it provided for payment of annual cash bonus, was annihilated by the impugned Act with effect from April 1,1975 to March 31,1976 and hence no writ of mandamus could issue directing the life Insurance Corporation to make payment of such bonus . If such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act , that the judgment of the learned single judge would have been upturned and the writ petition dismissed. But on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the letters patent Appeal and the result was that the judgment of the learned single judge granting writ of mandamus became final and binding on the parties. It is difficult to see how in these circumstances the Life Insurance Corporation could claim to be absolved from the obligation imposed by the judgment to carry out the writ of mandamus by relying on the impugned Act."

(emphasis supplied) Because of the aforesaid factual position of that case the view expressed by the Constitution Bench in the Prithvi Cotton Mills Ltd. V. Broach Borough Municipality (Supra) was held to be of no help to the life insurance Corporation.

Reference was also made on behalf of the respondent to the judgment of this court in the case of A.V. Nachane & Another V. Union of India & Another,(1982) 2 SCR 246 where it was observed in respect of the Amendment Act, which was the subject matter of controversy in that case, that it could not nullify the effect of the writ issued by this Court in D.J. Bahadur's case, relying on aforesaid judgment in the Madan Mohan Pathak (Supra). From a bare reference to page 267 of the report, it appears that the learned judges placed reliance on the defect pointed out in the case of Madan Mohan Pathak by Bhagwati, J quoted above. In other words, on peculiar facts and circumstances of the case it was held that the effect of the judgment in the case of D.J. Bahadur had not been taken away by the Amending Act. On behalf of the respondent, reliance was also placed on the cases of Janapada Sabha Chhindwara v. The Central Provinces Syndicate Ltd. and Another, (1970) 1 SCC 509; The municipal Corporation of the City of Ahmedabad and Another, etc. etc. v. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.,(1970) 2 SCC 280. In the case of Government of Andhra Pradesh V. Hindustan Machine Tools Ltd.,(1975) 2 SCC 274 the aforesaid judgments in the cases of Janapada Sabha Chhindwara v. The Central Provinces Syndicate Ltd. and Another (supra) and The Municipal Corporation of the city of Ahmedabad and Another, etc. etc. (supra) were distinguished by pointing out:

> "The decisions on which the respondent relies are clearly distinguishable. In the Municipal Corporation of the city of Ahmedabad V. New Shrock Spg. & Wvg. Co. Ltd., the impugned provision commended the corporation to refuse to refund the amount illegally collected by it despite the orders of the Supreme Court and the High Court. As the basis of these decisions remained unchanged even after the amendment, it was held by this Court the Legislature had made a direct inroad into the judicial powers. In Janapada Sabha, Chhindwara V. Central provinces Syndicate Ltd., the Madhya

> Pradesh Legislature passed Validation Act in order to rectify the defect pointed out by this court in the imposition of a cess. But the Act did not set out the nature of the amendment nor did it provide that the notifications issued without the sanction of the state Government would be deemed to have been issued validly. It was held by this court that this was tantamount to saying that the judgment of a court rendered in the exercise of its legitimate jurisdiction was to be deemed to be ineffective. The position in State of Tamil Nadu V. M. Ravappa Gounder , was similar. In that case the reassessments made under an Act which did not provide for reassessments were attempted to be validated without changing the law retrospectively. This was considered to be an encroachment on the judicial functions.
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> In the instant case, the Amending Act of 1974 cures the old definition contained in section 2(15) of the vice from which it suffered. The amendment has been given retrospective effect and as stated earlier the Legislature has the power to make the laws passed by it retroactive. As the Amending Act does not ask the instrumentalities of the State to disobey or disregard the decision given by the High Court but removes the basis of its decision, the challenge made by the respondent to the Amending Act must fail. The levy of the house-tax must therefore be upheld."

In view of sections 4,5 and 6 of Act 25 of 1978 which cannot be held to be unconstitutional, there is no escape from conclusion that the provisions which had been introduced in the principal Act 7 of 1974 have been effaced and courts have to proceed as if they had never been introduced in the principal Act. If this is the effect of sections 4,5 and 6 of Act 25 of 1978 then as a corollary it has to be held that under the amendment Act 39 of 1972 the compensation amount payable for the surplus land under schedule III to the Act was reduced from 9 times to 2 times of the net annual income w. e. f 21.12.1972. Notification under section 18(1) of the Act declaring 3414.78 acres of land of the respondent-Company as surplus was issued on 4.4.1973 after coming into force of amended Act 39 of 1972 aforesaid and because of the notification dated 4.4.1973 the surplus lands vested in the State Government in view of section 18(3) of the Act as it stood on that date. Thereafter, the Draft Assessment Roll had to be published applying the rate of 2 times of the net annual income.

On behalf of the respondent, a stand was taken that sections 4, 5 and 6 Act 25 of 1978 shall not revive the notification dated 4.4.1973 which stood exhausted and a fresh notification had to be issued, even if the different provisions of Act 7 of 1974 shall be deemed to have been obliterated. In this connection, it may be pointed out that section 5 (b) of Act 25 of 1978 provided in clear and unambiguous terms that modification made to section 18 of the principal Act by Act 7 of 1974 "Shall be deemed never to have had the effect of vesting in the state Government the surplus lands specified in any notification published under sub-section (1) of the said section 18 of the principal Act on the after the 2nd May 1962 and before the date of publication of this Act in the Tamil Nadu Government Gazette, from a date earlier to the date of the publication of the notification under the said sub-section (1) and shall be deemed always to have had the effect of vesting in the State Government such surplus lands, only with effect from the date of the publication of such notification." Again section 6(a) provides that notwithstanding anything contained in any judgment, decree or order of any Court "where before the date of publication of this Act in Tamil Nadu

Government Gazette, a notification under sub-section (1) of section 18 of the principal Act has been published, the surplus land specified in such notification shall be deemed to have vested in the state Government, with effect from the date of such publication only, and accordingly the provisions of the principal Act, as modified by section 4 of this Act, shall for all purposes apply and be deemed always to have been applied in respect of such surplus lands so vested" . In view of the aforesaid deeming provisions, the notification which was issued on 4.4.1973 under sub-section (1) of section 18 of the principal Act shall be deemed to be valid and shall have the effect of vesting the lands in question in the state Government under sub-section (3) of section 18 of the Principal Act w.e.f. 4.4.1973.

An objection was taken on behalf of the respondent that on 3.3. 1978 the High Court had allowed the Writ petition No. 624 of 1978 filed on behalf of the said respondent and issued a writ of mandamus directing the State to comply with the judgment dated 8.10.1976 of the High Court in writ petition No.1464 of 1978 and as no appeal has been filed on behalf of the state before this Court against the aforesaid order dated 3.3.1978, the said order has attained finality and if the appeals filed on behalf of State are allowed, it small lead to an anomalous position. It appears that the respondent had filed the aforesaid writ Petition No. 624 of 1978 for a direction by the High Court to comply with the aforesaid order dated 8.10.1976 in writ Petition No. 1464 of 1974. In that writ petition a grievance had been made that respondents of that writ petition were delaying preparation of the Draft Compensation Roll on the plea that special Leave Petition to Appeal to the supreme Court along with an application for stay had been filed on behalf of the state. In that writ petition, a learned judge of the High Court directed to consider the determination of the compensation and the preparation of the Draft Compensation Assessment Roll, under section 50(3) (a) of the Act 58 of 1961 in respect of the excess lands of the respondent. A copy of the writ of mandamus issued by the High Court in the said Writ Petition is on the record and the operative part thereof is as follows:-

> "the Respondents herein, are hereby directed to consider the determination of the compensation and the preparation of the Draft Compensation Assessment Roll under section 50{3}{a} of the Act 58 of 1961, in respect of the excess lands of the petitioner, acquired by you , in due compliance, fully and properly of the judgment of this court dated 8.10.76 and passed in W.P.Nos. 346 and 1464 of 1974 on or before 30.6.1976 and you, the second respondent herein, are hereby directed to call upon the petitioner to furnish whatever information is required on or before 30.3.1978 (which information will be supplied to you by the petitioner within 15 days from the date of receipt of the said notice) and thereupon to proceed forthwith to comply with the aforesaid directions of this Court dated and 1464 of 1974."

It cannot be disputed that by the aforesaid order dated 3.3.1978 the High Court had not determined any right or liability inter se between the parties. It simply directed the state Government to comply with the direction given by order dated 8.10.1976 in writ Petition No. 1464 of 1974 against which civil Appeal No. 134 of 1980 has been filed. If an order dated 8.10.1976 is set aside by this court, any direction given on 3.31978 in writ petition No. 624 of 1978 shall be of no consequence. It can be said that the direction which was given on 3.3. 1978 was in the nature of execution order.

It was then pointed out on behalf of the respondent that on 15.6.1978 writ Misc. Petition No. 3153 in Writ Petition No. 624 of 1978 was filed on behalf of the state for recall of the aforesaid order dated 3.3.1978 which was dismissed on 23.6.1978. It was stated that in the said petition on behalf of the state, attention of the learned judge was drawn to the fact that in the meantime Act 25 of 1978 had come in force and as such there was no question of payment of compensation to the respondent in terms of the order dated 8.10.1976 as directed in writ Petition No. 1464 of 1974. It was urged that as no appeal has been filed against the order dated 23.6.1978 on behalf of the state, the said order shall be deemed to have become final in respect of the scope and effect of Sections 4 ,5 and 6 of Act 25 of 1978. The relevant part of order dated 23.6.1978 is as follows:-

"Even otherwise, the respondent herein has challenged the validity of Tamil Nadu Act 25 of 1978 and till the validity is upheld, it is not open to the state of Tamil Nadu to maintain an application of this character.....

Whatever may be said about the validity of the Act, which question need not concern me at this stage, I find great force in what Mr. M.R. Narayanaswamy submits. In my judgment rendered in W.P. 624 of 1978, I merely directed that state of Tamil Nadu to give effect to the judgment of the Division Bench of this Court in W.P Nos. 346 and 1464 of 1974. I directed full compliance of that judgment on or before 30th of June , 1978."

From a bare reference to the aforesaid order it appears that the learned judge having clearly said that he was not considering the effect of provisions of Act 25 of 1978, he dismissed the said writ Misc. Petition in view of the order passed on 3.3.1978. When the learned judge refused to consider the effect of the provisions of Act 25 of 1978, there is no question of the order dated 23.6.1978 having any effect, on the special Leave Petitions which had been filed on behalf of the state giving rise to Civil Appeal No. 134 of 1980 and civil Appeal Nos. 352-354 of 1980 .

It may be mentioned that a plea was taken on behalf of the appellant state that as Act 25 of 1978 provides for the vesting of the land on a particular date, it shall be deemed to be law relating to agrarian reform and as such protected by Article 31-A of the Constitution. As such no challenge based on Article 14 is available to the respondent. It was stated that at the said Act had been reserved for the consideration of the president and has received his assent and as such it shall not be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by; Article 31-c which says that notwithstanding anything contained in Article 13, no law giving effect to the policy of the state towards securing all or any of the principles laid down in part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14. In this connection, our attention was drawn to the fact that in section 2 of Act 25 of 1978 it has been specifically declared that the said Act was being enacted for giving effect to the policy of the State towards securing the principles laid down in particular clauses {b} and {c} of Article 39 which is in chapter IV of the constitution i.e. ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. A stand was also taken on behalf of the appellant-state that Act 25 of 1978 has been included in the Ninth schedule of the Constitution and

as such it has the protection of Article 31-B of the constitution and its validity cannot be questioned on basis of Article 14 of the constitution. In View of the findings recorded above that sections 4, 5 and 6 of 25 of 1978 are constitutionally valid and it has effaced the amendments which had been introduced by Act 7 of 1974 in the principal Act because of which it shall be deemed that notification issued under section 18{1} of the principal Act on 4.4.1973 was legal and valid and because of the said notification the lands declared as surplus vested in the state under section 18{3} of the principal Act, there is no necessity to decide as to whether Act 25 of 1978 has the protection of Articles 31-A, 31-B and 31-C of the constitution.

Once it is held that vesting of the surplus land had taken place on 4.4.1973, then the respondent shall be entitled to the compensation amount which is to be worked out at 2 times of the net annual income because of Act 39 of 1972 which had reduced the multiple of the compensation from 9 times to 2 times of the net annual income w.e.f. 21.12.1972. Accordingly, civil Appeal No. 134 of 1980 are allowed . The Judgement dated 8.10.1976 in writ Petition No. 1464 of 1974 and judgment dated 20.7.1979 in writ petition No. 2341-2343 of 1978 of the High Court area set aside and the writ petitions filed on behalf of the respondent are dismissed. There shall be no order as to costs.