# Rajiv Sarin & Anr vs State Of Uttarakhand & Ors on 9 August, 2011

## Equivalent citations: AIR 2011 SUPREME COURT 3081, 2011 AIR SCW 4756, 2011 (6) ALL LJ 92, AIR 2011 SC (CIVIL) 2070, (2012) 1 LANDLR 59, (2011) 114 REVDEC 130, 2011 (8) SCC 708, (2011) 8 SCALE 446, (2011) 6 ALL WC 5920

## Author: Mukundakam Sharma

## Bench: S.H. Kapadia, Mukundakam Sharma, K.S. Radhakrishnan, Swatanter Kumar, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4772 OF 1998

Rajiv Sarin & Anr. ....

Appellants

Versus

State of Uttarakhand & Ors. ....

Respondents

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

The present Civil Appeal emanates from the judgment

1. and order dated 12th August 1997 passed by the High Court of Judicature at Allahabad in Writ Petition No. 8927 of 1988, whereby the Division Bench of the High Court dismissed the writ petition filed by the appellants.

Whether the High Court was justified in holding that the appellants were not entitled to any compensation even when their forest land is acquired by the government, merely because the appellants had not derived any income from the said forest, is one of the several important questions of law which has arisen for consideration in the present appeal.

The appellant's father Shri P. N. Sarin had in the year

2. 1945 acquired proprietary right in an Estate known as Beni Tal Fee Simple Estate situated in Pargana Chandpur, Tehsil Karan Prayag, District Chamoli, Uttarakhand (hereinafter referred to as "the property in question") which comprised of large tracts of forest spanning in and around 1600 acres. On the death of Shri P.N. Sarin in the year 1976 appellants succeeded to the property in question. By a Gazette Notification dated 21st December, 1977 under Section 4-A of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (hereinafter referred to as "KUZALR Act") as amended by the U.P. Act No. 15 of 1978, the rights, title and interest of every hissedar in respect of forest land situated in the specified areas ceased with effect from 01st January, 1978 and the same were vested in the State Government. A notice issued by the Assistant Collector, Karan Prayag, District Chamoli, under Rule 2 of the Kumaun and Uttrakhand Zamindari Abolition and Land Reform Rules, 1965 (hereinafter referred to as "the KUZALR Rules") framed under the KUZALR Act was served upon the appellants intimating them that effective from 1st January, 1978, the rights, title and interest of hissedar in respect of the property in question had vested in the State Government free from all encumbrances and it invited objections and statement, if any, relating to the compensation qua the property in question.

Assailing the aforesaid notice issued by the Assistant

3. Collector, the appellants preferred a writ petition under Article 32 of the Constitution before this Court. On 13th December 1978 while disposing the aforesaid writ petition, this Court passed the following order "We are of the opinion that it will be better if the Petitioner files a petition under Article 226 of the Constitution in the High Court. This Petition is therefore allowed to be withdrawn."

Subsequently, on 02nd April 1979 the appellants filed

4. objections to the notice issued by the Assistant Collector challenging the vires of the KUZALR Act and also stating that no profit was being made from the property in question. By an order dated 11th April 1988, the Assistant Collector dismissed the objections of the appellants by observing that that

he had no jurisdiction to consider the legal validity of the KUZALR Act. With regard to the issue of compensation, the Assistant Collector held that since the KUZALR Act does not provide for a method to compute compensation in cases where no income has been derived from the forests, the appellants were not entitled to any compensation.

Feeling aggrieved, the appellants preferred a writ petition in

5. the High Court of Judicature at Allahabad questioning the legality and validity of the order of the Assistant Collector and also challenging the constitutional validity of Sections 4A, 18(1)(cc) and 19(1)(b) of the KUZALR Act. By impugned judgment dated 12th August 1997, the High Court dismissed the writ petition.

Not satisfied with the judgment rendered by the High

6. Court, the appellants preferred a Special Leave Petition in which leave was granted by this Court by order dated 11th September 1998. By an order passed on 11th August, 2010, this appeal was directed to be listed before the Constitution Bench. This matter was thereafter listed before the Constitution Bench alongwith other connected matters wherein also the issue of scope and extent of right under Article 300A of the Constitution of India was one of the issues to be considered.

7. We heard the learned senior counsel appearing for the parties in respect of all the contentions raised before us.

Before addressing the rival contentions advanced by the parties, it will be useful to throw some light on the relevant legal position which is intrinsically complex and requires closer examination.

The Uttar Pradesh Zamindari Abolition and Land Reforms

8. Act, 1950 (hereinafter to be referred as "UPZALR Act") was enacted in the year 1950 and the UPZALR Act was made applicable to the whole of the State of U.P. except inter-alia the areas of Kumaon, Uttarakhand. The object of the UPZALR Act as quite evident from its statements and objects are to provide for the abolition of the Zamindari System which involves intermediaries between the tiller of the soil and the State in Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith.

Subsequently, on 02nd August 1960 Kumaun and

9. Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 was enacted. The object of the KUZALR Act is to provide for the acquisition of the rights, title and interests of persons between the State and the tiller of the soil in certain areas of the Kumaun and Garhwal Divisions and for the introduction of land reforms therein. It is important to notice that the original KUZALR Act did not provide for vesting of private forests, and the definition of the word "land" in Section 3(10) thereof excluded forest. Section 3(10) of the KUZALR Act reads as follows:-

> "3(10). "land" means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming but shall not include a forest;"

However, after the commencement of the Constitution (42nd

10. Amendment) Act, 1976 which came into effect from 03rd January 1977 wherein inter-alia the subject "forests" was included in the Concurrent List of the Seventh Schedule of the Constitution as Entry 17A; the U.P. Zamindari Abolition (Amendment) Act, 1978 (U.P. Act 15 of 1978) was passed on 30th November 1977 whereby KUZALR Act was amended.

In the preamble and Statement of Objects and Reasons necessitating the amendment, it is stated that the amendment act amends Kumaun and Uttarakhand Zamindari abolition and Land Reforms Act, 1960 also. It goes on to state that in the areas governed by the Principal Act namely the Uttar Pradesh Zamindari Abolition and Land Reforms Act, the rights, title and interest of ex-

intermediaries in respect of their private forests were abolished and vested in State. It also states that in the areas to which the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 apply, the hissedars (Intermediaries) continued to enjoy their rights in respect of their private forests and therefore it was necessary to remove the disparity as well by introducing an amendment in the nature of Section 4A. Under the aforesaid amendment to the KUZALR Act, Section 4A was added to the KUZALR Act and private forests were brought within its purview. It will be useful to reproduce Section 4A, 18(1)(cc) and 19(1)(b) of the KUZALR Act which reads as follows:

> "4-A. Vesting of interest of hissedar in the forest land - With effect from January 1, 1978 the rights, title and interest of every hissedar in respect of forest land shall cease and shall vest in the State Government free from all encumbrances, and the provisions of this Chapter and Chapter V shall mutatis mutandis apply to a forest land as they apply to a khaikari land."

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "18 (1) (cc) in the case of a private forest, the average annual income from such forest for a period of twenty agricultural years immediately preceding the date of vesting;"

> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "19(1) (b) - in the case of a private forest, eight times of the amount of average annual income from such forest."

Kumaun and Uttarakhand Zamindari Abolition and Land

11. Reforms Act, 1960, which is a State legislation received the assent of the President of India on 10th September, 1960.

The amendment brought in 1978 through UP Act 15 of 1978 to the said Act also received the assent of the President on 26th April, 1978.

12.At the outset we would like to mention that there is no specific whisper of defence raised under Articles 31A, 31B and 31C of the Constitution in the Counter-Affidavit/Reply filed by the State of Uttarakhand to the writ petition filed by the appellants in the High Court nor even before this Court but an attempt was made to argue the case on those grounds on behalf of the respondents. As there is no mention of any of the aforesaid Articles of the Constitution in the arguments or specific pleadings by the respondents in the writ petition, the question of deciding the applicability of those provisions of the Constitution and consequent protection of the Act, therefore, does not arise.

13.It was contended by Shri K.K. Venugopal, learned senior counsel appearing for the appellants that the original KUZALR Act, 1960 excluded private forests [Section 6(1) (4)], since the vesting of private forests in the State would not be by way of agrarian reform. It was further contended that the provision for agrarian reforms, therefore, should be a part of the Act, but, in the present case, the private forests so acquired under Section 4A of the KUZALR Act becomes the property of the State which is untenable.

14.It was further argued that in any event, under Section 4A of the KUZALR Act, it is only the provisions of Chapter-II and Chapter-V which shall apply to forests land while Rule 41 occurs in Chapter IV and has no application to the forests covered by Section 4A, and hence Rule 41 will not apply to forests acquired under Section 4A of the KUZALR Act. Further, if Article 31A of the Constitution has no application, then the law has to be tested against the Constitution as it stood on the date of its enactment, i.e. the U.P. Amendment Act, 1978 bringing forth amendment to KUZALR Act has to stand the test of Articles 14, 19 and 21 of the Constitution. It was further contended that the said Amendment Act would be invalid since the mere transfer of the private forests to the State would by itself not be a public purpose and, furthermore, non-grant /total absence of compensation to the appellants, while granting full compensation to other owners of private forests who have mismanaged the forests or clear-felled the forests, would be violative of Article 14 of the Constitution.

Per contra Shri Parag P. Tripathi, Ld. Additional Solicitor

15. General strenuously argued that that the entry "Acquisition and Requisitioning of property" which was earlier in the form of Entry 36/List-II of the Seventh Schedule of the Constitution [which was subject to Entry 42/List-III of the Seventh Schedule of the Constitution] and Entry 33/List-I of the Seventh Schedule of the Constitution provided only the field of legislative power and did not extend to providing or requiring compensation. The requirement of compensation in the event of "taking" flows only from Article 31(2) of the Constitution, which was repealed by the Constitution (44th Amendment) Act, with effect from 26th September, 1979.

16.As far as the question of alleged discrimination i.e. giving compensation to other owners and nil compensation to the appellants herein is concerned, it was contended by Learned Additional Solicitor General that merely because there may be two compensation laws, which may be applicable, one of which provides for a higher compensation than the other, would not by itself make the provisions discriminatory or violative of Article 14 of the Constitution.

17.It is settled law that Agrarian Reforms fall within Entry 18/List-II read with Entry 42/List-III of the Seventh Schedule of the Constitution.

In the instant case, it cannot be denied that KUZALR Act,

18. 1960 is a statutory enactment, dealing with the agrarian reforms. Section 4 of the KUZALR Act provides that in respect of non-forest land, State Government may by notification take over the rights, title and interests of hissedar. The land so released is then dealt with by giving bhumidhari rights/asami rights to the tillers and thereby effectuating the purpose of agrarian reforms.

It is important to notice that Section 4A introduced in

19. KUZALR Act by the UP Amendment Act 1978 does not require any notification but it specifies the date i.e. 01st January 1978 and provides that the right, title and interest of a hissedar in respect of forest land shall cease and vest by the application of the statute itself in the State Government. Section 8 of the KUZALR Act mandates that such "hissedar" becomes by operation of the statute a "bhumidhar". The aforesaid amendment was introduced by way of amendment so as to bring the said act in parity with the Principal Act, namely UP Zamindari Abolition and Land Reforms Act wherein the rights, title and interest of an intermediary (hissedar) was abolished and vested with the State from the very inception of the said Act as such provision was part of the principal Act itself.

20.Further, Rule 41 of the KUZALR Rules, 1965 framed under the KUZALR Act declares that the forests belonging to the State shall be managed by "Goan Sabha or any other local authority established" upon a notification issued by the State Government. The Rule 41 of the KUZALR Rules, 1965 reads as follows:-

> "41. Section 41 : Management of land and things belonging to State - At any time after the appointed date, the State Government, may, by notification published in the Gazette, declare that as from the date to be specified, all or any of the following things, namely, -
>
> (i) lands, whether cultivable or otherwise, except land for the time being comprised in any holding or grove,
>
> (ii) forests, trees, other than trees in a holding or in a grove
>
> (iii) or in abadi,
>
> (iv) fisheries, Hats, bazars and melas, except hats, bazars and
>
> (v) melas held on land referred to in Section 7 or which is for the time being comprised in the holding of a bhumidar, and Tanks, ponds, ferries, water-channels, pathways

(vi) and abadi sites;

Belonging to the State, shall be managed by the Goan Sabha or any other local authority established for the whole or part of the village in which the things specified in clauses (i) to (vi) are situate, subject to and in accordance with the provisions of Chapter VII of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, and the rules made thereunder, as applicable to Kumaun and Uttarakhand Divisions:

> Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions or conditions as may be specified in the notification."

21. This being so, it clearly brings out that the vesting of forest land under the KUZALR Act are directly linked with the agrarian reforms, as the land as also the forest are managed by the Goan Sabha or any local authority dealing with the rights of villagers for betterment of village economy. So, where the land acquired by the State is to be transferred to a Goan Sabha/Village Panchayat for its management and use of land leading to betterment of village economy, the legislation is in the nature of agrarian reforms.

22. The aforesaid conclusions arrived at by us find support from the Constitution Bench decision of this Court in Ranjit Singh and Others Vs. State of Punjab and Others reported in [1965] 1 SCR 82. In the said decision, the Constitution Bench has stated thus:-

> ".....The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. ensure for the benefit of rural population must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands...."

It is true that Section 4A of KUZALR Act, 1960, as

23. amended by the UP Amendment Act 1978, provides that Chapter II and Chapter V of the KUZALR Act would apply mutatis mutandis and Rule 41 of the KUZALR Rules is relatable to Chapter IV of the KUZALR Act. However, the necessary consequence of Section 4A of the KUZALR Act is that the forest land vests in the State and all that Rule 41 of the KUZALR Rules does is to provide how the lands vested in the State including forest and non-forest land is to be dealt with. Thus, Rule 41 of the KUZALR Rules clearly applies to forest lands as it has been specifically so

mentioned in the said Rules as well which are vested in the State under Section 4A of the KUZALR Act and therefore have become the land/property of the State, which would be managed by the Goan Sabha.

Repugnancy and Article 254 of the Constitution Learned senior counsel appearing for the appellants raised

24. two contentions in the context of the inter-relation of the Indian Forest Act 1927 and the KUZALR Act; firstly, the case of alleged discrimination in as much as the Central Act i.e. the Indian Forests Act provides for compensation under the Land Acquisition Act 1894, which is higher; and secondly, the case of alleged repugnancy.

It was submitted that the provisions of Section 18(1)(cc)

25. read with Section 19(1)(b) of KUZALR Act as amended by the UP Amendment Act 1978 are repugnant to Section 37 and Section 84 of the Indian Forests Act 1927, in so far as no compensation is provided for under the U.P. Amendment Act, 1978 for private forests which are preserved and protected through prudent management, while a private forest which is neglected or mismanaged to which Section 36 of the Indian Forest Act, 1927 applies, can be acquired under the Land Acquisition Act, 1894 by paying market value and solatium.

However, per contra the Learned Additional Solicitor

26. General appearing for the respondents contended that the issue of repugnancy does not arise at all in the instant case as there is in fact no repugnancy between the Central Act i.e. the Indian Forest Act, 1927 and KUZALR Act in as much as the Central Act and KUZALR Act in pith and substance operates in different subject matters.

It was submitted by Learned Additional Solicitor General

27. that once the pith and substance of the aforesaid two legislations viz. KUZALR Act and the Indian Forest Act, 1927 is examined, the following picture would emerge:

> firstly, the KUZALR Act is an enactment under Entry 18/List-II, i.e. "land" read with Entry 42/List-III of the Seventh Schedule of the Constitution. It was further submitted that at the highest, it can be said that KUZALR Act is relatable to Entry 18 of List II and 42 of List-III of the Seventh Schedule of the Constitution and if at all, only incidentally trenches in the legislative field of Entry 17A/List-III of the Seventh Schedule of the Constitution; and secondly, the Indian Forest Act, 1927 on the other hand, is in pith and substance a legislation under Entry 17-A/List-III i.e. "Forests" read with Entry 42/List-III of the Seventh Schedule of the Constitution.

28.It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule of the Constitution. Under Article 254 of the

Constitution, a State law passed in respect of a subject matter comprised in List III i.e. the Concurrent List of the Seventh Schedule of the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by the Parliament and that too only in a situation if both the laws i.e. one made by the State legislature and another made by the Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by the Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by the Parliament and of State legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject matter or different.

It is by now a well-established rule of interpretation that

29. the entries in the list being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. This Court in the cases of Navinchandra Mafatlal v. CIT, reported in AIR 1955 SC 58 and State of Maharashtra v. Bharat Shanti Lal Shah, reported in (2008) 13 SCC 5 held that each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. In those decisions it was also reiterated that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature.

30.As and when there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it would also be necessary for the courts to examine the true nature and character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. In the aforesaid context we now proceed to examine the nature and character of the KUZALR Act and examine and scrutinize the same in the context of the Central Act, namely, the Indian Forests Act, 1927.

As noted hereinbefore, Section 4A was introduced in

31. KUZALR Act by an amendment in the year 1978 as a part of agrarian reforms and not by a separate enactment, as was done in the case of the UP Private Forests Act, 1948.

Significantly, the agrarian reforms introduced by the UPZALR Act were not brought about by amending the UP Private Forests Act, 1948. It is to be noticed that the Indian Forest Act, 1927 and the UP Private Forests Act, 1948 that deal broadly with the same field of, inter-alia conservation, regulation, etc., of forests. It is to be further noticed that the UPZALR Act and after the 1978

amendment, KUZALR Act do not deal with conservation or regulation of forests but with agrarian reforms. In order to find out the subject matter of an enactment, even in the context of enactments relatable to List III of the Seventh Schedule of the Constitution, passed by different legislatures, the doctrine of pith and substance can be relied upon and would apply.

As discussed hereinbefore KUZALR Act is a law principally

32. relatable to Entry 18 (land) of List II read with Entry 42 in List III of the Seventh Schedule of the Constitution and only incidentally trenches upon "forest" i.e. Entry 17A/List-III of the Seventh Schedule of the Constitution. This is so because it is an enactment for agrarian reforms and so the basic subject matter is "land". Since the land happens to be forest land, it spills over and incidentally encroaches on Entry 17A i.e. "forest" as well. On the other hand, the Central Act i.e. the Indian Forests Act 1927 is relatable to Entry 17A read with entry 42, both of List III of the Seventh Schedule of the Constitution. It is in pith and substance relatable to Entry 17A, as it deals with "forests" and not with "land" or any other subject. It only incidentally spills over in the field of Entry 42, as it deals with "control over forest land and not property of the Government" and in that context Section 37, as an alternative to management of forests under Section 36 of the Indian Forests Act 1927, deals with the grant of power to acquire land under the Land Acquisition Act 1894.

This Court in the case of Glanrock Estate Private

33. Limited v. State of Tamil Nadu, reported in (2010) 10 SCC 96 observed in paragraph 45 of the Judgment as follows:

> ".....we are of the view that the requirement of public purpose and compensation are not legislative requirements of the competence of legislature to make laws under Entry 18 List II or Entry 42 List III, but are conditions or restrictions under Article 31(2) of the Constitution as the said article stood in 1969. ..... Lastly, in pith and substance, we are of the view that the Janmam Act (24 of 1969) was in respect of "land" and "land tenure" under Entry 18 List II of the Constitution.
>
> It is quite clear that the KUZALR Act relates to agrarian

34. reforms and therefore it deals with the "land"; however, the Central Act i.e. the Indian Forests Act 1927 deal with "forests" and its management, preservation and levy of royalty/fees on forest produce. KUZALR Act further provides for statutory vesting, i.e., statutory taking over of property of hissedar, which happens to be 1st January 1978, i.e. the statutorily fixed date. Therefore, this forest land becomes the property of the State Government and is dealt with like land, which is acquired under Section 4A of KUZALR Act. This emerges from a reading of Rule 41 of the KUZALR Rules itself. Further, the acquisition under the KUZALR Act is a case of "taking" upon payment of an amount, which is not intended to be the market price of the rights acquired. On the other hand, the power of acquisition under Section 37 of the Indian Forests Act 1927 i.e. the Central Act is an acquisition based on the principles of public purpose and compensation.

Thus, not only do the aforesaid Acts relate to different

35. subject matters, but the acquisitions mentioned therein are conceptually different. The Central Act i.e. the Indian Forests Act 1927 mainly deals with the management, preservation and levy of royalty on transmit of forest produce. The Indian Forests Act 1927 also incidentally provides for and empowers the State Government to acquire any land which might be required to give effect to any of the purposes of the Act, in which case such land could be acquired by issuing a notification under Section 4 of the Indian Forests Act 1927. This however is to be understood as an incidental power vested on the State Government which could be exercised for giving effect to the purposes of the Indian Forests Act 1927. While considering the issue of repugnancy what is required to be considered is the legislation in question as a whole and to its main object and purpose and while doing so incidental encroachment is to be ignored and disregarded.

In fact, it is the UP Private Forest Act, 1948, which is an

36. enactment relatable to Entry 17A of List III, i.e., Forests, read with Entry 42 of List III of the Seventh Schedule of the Constitution, i.e., acquisition to the extent of "vested"

forests. It is this Act which covers a field similar to that of the Central Act and therefore, sought and obtained the permission of the President under Section 76 of the Government of India Act.

Thus, in the State, there are two Acts, which are applicable

37. viz. the UP Private Forests Act, 1948, which is in the same field as the Central Act i.e. the Indian Forest Act 1927 and the KUZALR Act, which is in respect of a different subject matter.

38.For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of the both legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject.

Repugnancy in the context of Article 254 of the

39. Constitution is understood as requiring the fulfillment of a "Triple test" reiterated by the Constitutional Bench in M. Karunanidhi v. Union of India, (1979) 3 SCC 431 @ page 443-444, which reads as follows:-

> "24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:
>
> 1. That there is a clear and direct inconsistency between the Central Act and the State Act.
>
> 2. That such an inconsistency is absolutely irreconcilable.
>
> 3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

In other words, the two legislations must cover the same

40. field. This has to be examined by a reference to the doctrine of pith and substance. In the instant case, the KUZALR Act deals with agrarian reforms and in the context deals with the private forests, this vests with the State and would therefore be managed by the Goan Sabha. The Indian Forest Act, 1927 which is the existing Central law, has nothing to do with agrarian reforms but deals with forest policy and management, and therefore is in a different field. Further, there is no direct conflict or collision, as the Indian Forest Act, 1927 only gives an enabling power to the government to acquire forests in accordance with the provisions of the Land Acquisition Act 1894, whereas KUZALR Act results in vesting of forests from the dates specified in Section 4A of the KUZALR Act. Consequently, it could be deduced that none of the aforesaid three conditions as mentioned in the decision of M. Karunanidhi case (supra) is attracted to the facts of the present case.

The only other area where repugnancy can arise is

41. where the superior legislature namely the Parliament has evinced an intention to create a complete code.

This obviously is not the case here, as admittedly even earlier, assent was given under Section 107(2) of the Government of India Act by the Governor General to the U P Private Forests Act, 1948.

This Court succinctly observed as follows in Hoechst

42. Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45, at page 87:

> "67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and

> a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is `repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the `same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See Zaverbhai Amaidas v. State of Bombay; M. Karunanidhi v. Union of India and T. Barai v. Henry Ah Hoe."

Again a five-Judge Bench of this Court while discussing

43. the said doctrine in Kartar Singh v. State of Punjab, (1994) 3 SCC 589 @ page 630 observed as under:

> "60. This doctrine of `pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden."

Further in Govt. of A.P. v. J.B. Educational Society, (2005) 3

44. SCC 212, this Court while explaining the scope of Articles 246 and 254 of the Constitution and considering the proposition laid down by this Court in M. Karunanidhi case (supra) with respect to

the situations in which repugnancy would arise, held as follows at page 219:

> "9. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule.
>
> 10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.
>
> 11. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict."

Thereafter, this Court, in para 12, held that the question of repugnancy between the parliamentary legislation and the State legislation could arise in the following two ways: (SCC p. 220) "12. ... First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation."

The aforesaid position makes it quite clear that even if

45. both the legislations are relatable to List-III of the Seventh Schedule of the Constitution, the test for repugnancy is whether the two legislations "exercise their power over the same subject matter..." and secondly whether the law of Parliament was intended "to be exhaustive to cover the entire field". The answer to both these questions in the instant case is in the negative, as the Indian Forest Act 1927 deals with the law relating to forest transit, forest levy and forest produce, whereas the KUZALR Act deals with the land and agrarian reforms.

46.In respect of the Concurrent List under Seventh Schedule to the Constitution, by definition both the legislatures viz. the Parliament and the State legislatures are competent to enact a law. Thus, the only way in which the doctrine of pith and substance can and is utilised in determining the question of repugnancy is to find out whether in pith and substance the two laws operate and relate to the same matter or not. This can be either in the context of the same Entry in List III or different Entries in List III of the Seventh Schedule of the Constitution. In other words, what has to be examined is whether the two Acts deal with the same field in the sense of the same subject matter or deal with different matters.

47.The concept of repugnancy does not arise as far as the American and Canadian Constitutions are concerned, as there is no Concurrent List there, nor is there any provision akin to Article 254 of the Constitution of India.

Repugnancy arises in the Australian Constitution, which has a Concurrent List and a provision i.e. Section 107, akin to Article 254 of the Constitution of India.

48.In the Australian cases, the concept of Repugnancy has really been applied in the context of Criminal Law where for the same offence, there are two inconsistent and different punishments, which are provided and so the two laws cannot co-exist together. To put it differently, an area where the two Acts may be repugnant is when the Central Act evinces a clear interest to be exhaustive and unqualified and therefore, occupies the entire field.

In a Full Bench decision of this Court in the case of

49. State of Maharashtra v. Bharat Shanti Lal Shah, (2008) 13 SCC 5, this Court observed as follows at page 23 :

> "48. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by Parliament and the State Legislature. The question of repugnancy under Article 254 will arise when a law made by Parliament and a law made by the State Legislature occupies the same field with respect to one of the matters enumerated in the Concurrent List and there is a direct conflict in two laws. In other words, the question of repugnancy arises only in connection with subjects enumerated in the Concurrent List. In such situation the provisions enacted by Parliament and the State Legislature cannot unitedly stand and the State law will have to make way for the Union law. Once it is proved and established that the State law is repugnant to the Union law, the State law would become void but only to the extent of repugnancy. At the same time it is to be noted that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that the State law is repugnant to the Union law."

50.In a nutshell, whether on account of the exhaustive code doctrine or whether on account of irreconcilable conflict concept, the real test is that would there be a room or possibility for both the

Acts to apply.

Repugnancy would follow only if there is no such room or possibility.

Having discussed the law, as applicable in the aforesaid

51. manner and upon scrutiny of subject matters of both the concurrent Acts, it is crystal clear that no case of repugnancy is made out in the present case as both the Indian Forest Act, 1927 and the KUZALR Act operate in two different and distinct fields as pointed out hereinbefore. Accordingly, both the Acts are legally valid and constitutional. That being so, there was no requirement of obtaining any Presidential assent.

Consequently, Article 254(2) of the Constitution has also no application in the instant case. However, it would be appropriate to discuss the issue as elaborate argument was made on this issue as well.

Presidential Assent and Article 254(2) of the Constitution The issue argued was whether "General Assent" can

52. always be sought and obtained by the State Government.

Reference was made to a Constitutional Bench decision of this Court in Gram Panchayat Jamalpur v. Malwinder Singh, (1985) 3 SCC 661; which was subsequently further interpreted and followed in the case of P.N. Krishna Pal v. State of Kerala, (1995) Suppl. 2 SCC 187.

In the Gram Panchayat Jamalpur case (supra), the

53. Constitution Bench observed as follows at page 669:

> "13. This situation creates a conundrum. The Central Act of 1950 prevails over the Punjab Act of 1953 by virtue of Article 254(1) of the Constitution read with Entry 41 of the Concurrent List; and, Article 254(2) cannot afford assistance to reverse that position since the President's assent, which was obtained for a specific purpose, cannot be utilised for according priority to the Punjab Act. Though the law made by the Parliament prevails over the law made by the State Legislature, the interest of the evacuees in the Shamlat-deh lands cannot be dealt with effectively by the Custodian under the Central Act, because of the peculiar incidents and characteristics of such lands. The unfortunate result is that the vesting in the Custodian of the evacuee interest in the Shamlat- deh lands is, more or less, an empty formality. It does not help the Custodian to implement the provisions of the Central law but, it excludes the benign operation of the State law.
>
> 14. The line of reasoning of our learned Brother, Chinnappa Reddy, affords a satisfactory solution to this constitutional impasse, which we adopt without

> reservation of any kind. The pith and substance of the Punjab Act of 1953 is "Land" which falls under Entry 18 of List II (State List) of the Seventh Schedule to the Constitution. That Entry reads thus:
>
> "18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation."

Our learned Brother has extracted a passage from a decision of a Constitution Bench of this Court in Ranjit Singh v. State of Punjab3 which took the view that since, the Punjab Act of 1953 is a measure of agrarian reform, it would receive the protection of Article 31-A. It may be recalled that the Act had received the assent of the President as required by the first proviso to that article. The power of the State Legislature to pass laws on matters enumerated in the State List is exclusive by reason of the provision contained in Article 246(3). In a nutshell, the position is that the Parliament has passed a law on a matter which falls under Entry 41 of the Concurrent List, while the State Legislature has passed a law which falls under Entry 18 of the State List. The law passed by the State Legislature, being a measure of agrarian reform, is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the Village Panchayats will be able to meet the needs of the village community and secure its welfare. Accordingly, the Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950, even insofar as Shamlat-deh lands are concerned."

Following the ratio of Gram Panchayat Jamalpur case

54. (supra) this Court in the case of P.N. Krishna Pal v. State of Kerala, (1995) Suppl. 2 SCC 187 observed as follows at page 200.

> "14. In Jamalpur Gram Panchayat case3 the facts were that specific assent of the President was sought, namely, Article 31 and Article 31-A of the Constitution vis-`-vis Entry 18 of List II of the Seventh Schedule of the Constitution. The President had given specific assent. The Shamlat-deh lands in Punjab were owned by the proprietors of the village, in proportion to their share in the property of the lands held by them. After the partition, the proprietary interests in the lands of the migrants and proportionate to share of their lands vest in the Union of India. The question arose whether the Punjab Village Common Lands (Regulation) Act, 1953 prevails over Evacuee Property Act, 1950. It was contended that in view of the assent given by the President, the State Act prevails over the Central Act. This Court in that context considered the scope of the limited assent. Chandrachud, C.J. speaking for majority, held that the Central Act, 1950 prevails over the Punjab Act, 1953 and the assent of the President which was obtained for a specific purpose cannot be utilised for according precedence to the Punjab Act. At page 42, placitum `B' to `E', this Court held that "the assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the

> assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise."

Thus it is clear that this Court did not intend to hold that it is necessary that in every case the assent of the President in specific terms had to be sought and given for special reasons in respect of each enactment or provision or provisions. On the other hand, the observation clearly indicates that if the assent is sought and given in general terms it would be effective for all purposes. In other words, this Court observed that the assent sought for and given by the President in general terms could be effective for all purposes unless specific assent is sought and given in which event it would be operative only to that limited extent."

Further, in the case Kaiser-I-Hind (P) Ltd. v. National Textile

55. Corporation (Maharashtra North), (2002) 8 SCC 182, this Court made it clear that it was not considering; whether the assent of the President was rightly or wrongly given?;

and whether the assent given without considering the extent and the nature of the repugnancy should be taken as no assent at all? It observed as follows at page 203:

> "27. In this case, we have made it clear that we are not considering the question that the assent of the President was rightly or wrongly given. We are also not considering the question that -- whether "assent" given without considering the extent and the nature of the repugnancy should be taken as no assent at all. Further, in the aforesaid case, before the Madras High Court also the relevant proposal made by the State was produced. The Court had specifically arrived at a conclusion that Ext. P-12 shows that Section 10 of the Act has been referred to as the provision which can be said to be repugnant to the provisions of the Code of Civil Procedure and the Transfer of Property Act, which are existing laws on the concurrent subject. After observing that, the Court has raised the presumption. We do not think that it was necessary to do so. In any case as discussed above, the essential ingredients of Article 254(2) are: (1) mentioning of the entry/entries with respect to one of the matters enumerated in the Concurrent List; (2) stating repugnancy to the provisions of an earlier law made by Parliament and the State law and reasons for having such law; (3) thereafter it is required to be reserved for consideration of the President; and (4) receipt of the assent of the President."

It is in this context, that the finding of this Court in

56. Kaiser-I-Hind (P) Ltd. (supra) at para 65 becomes important to the effect that "pointed attention" of the President is required to be drawn to the repugnancy and the reasons for having such a law, despite the enactment by Parliament, has to be understood. It summarizes the point as follows at page 215 as follows:

> "65. The result of the foregoing discussion is:

> 1. It cannot be held that summary speedier procedure prescribed under the PP Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution.
>
> 2. (a) Article 254(2) contemplates "reservation for consideration of the President" and also "assent".

Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.

(b) The word "assent" used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

(c) In case where it is not indicated that "assent"

is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.

3. Extending the duration of a temporary enactment does not amount to enactment of a new law.

However such extension may require assent of the President in case of repugnancy."

If it is to be contended that Kaiser lays down the

57. proposition that there can be no general Presidential assent, then such an interpretation would be clearly contrary to the observation of the Bench in Para 27 itself where it states that it is not examining the issue whether such an assent can be taken as an assent.

Such an interpretation would also open the judgment to

58. a charge of being, with respect, per in curium as even though while noting the Jamalpur case - (1985) 3 SCC 661, it overlooks the extracts in the Jamalpur case dealing with the aspect of general assent:

> "The assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President is sought to the Law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it."

Article 300A of the Constitution and Compensation

59. After passing of the Constitution (Forty Forth) Amendment Act 1978 which deleted Article 19(1)(f) and Article 31 from the Constitution and introduced Article 300A in the Constitution, the Constitution (44th Amendment) Act inserted in Part XII, a new chapter: "Chapter IV - Right to Property" and inserted a new Article 300A, which reads as follows:-

> "No person shall be deprived of property save by authority of law"

60. It would be useful to reiterate paragraphs 3, 4 and 5 of the Statement of Objects and Reasons of the Constitution (44th Amendment) Act which reads as follows:-

> "3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one Amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to Article 19 and Article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.
>
> 4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.
>
> 5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law."

61. The incident of deprivation of property within the meaning of Article 300A of the Constitution normally occurred mostly in the context of public purpose. Clearly, any law, which deprives a person of his private property for private interest, will be amenable to judicial review. In last sixty years, though the concept of public purpose has been given quite wide interpretation, nevertheless, the "public purpose"

> remains the most important condition in order to invoke Article 300A of the Constitution.

62. With regard to claiming compensation, all modern constitutions which are invariably of democratic character provide for payment of compensation as the condition to exercise the right of expropriation. Commonwealth of Australia Act, a French Civil Code (Article 545), the 5th Amendment of the Constitution of U.S.A. and the Italian Constitution provided principles of "just terms", "just indemnity", "just compensation" as reimbursement for the property taken, have been provided for.

63. Under Indian Constitution, the field of legislation covering claim for compensation on deprivation of one's property can be traced to Entry 42 List III of the Seventh Schedule of the Constitution. The Constitution (7th Amendment) Act, 1956 deleted Entry 33 List I, Entry 36 List II and reworded Entry 42 List III relating to "acquisition and requisitioning of property". The right to property being no more a fundamental right, a legislation enacted under the authority of law as provided in Article 300A of the Constitution is not amenable to judicial review merely for alleged violation of Part III of the Constitution. Article 31A was inserted by the Constitutional (1st Amendment) Act, 1951 to protect the zamindari abolition laws. The right to challenge laws enacted in respect of subject matter enumerated under Article 31A (1) (a) to (g) of the Constitution on the ground of violation of Article 14 was also constitutionally excluded.

Further, Article 31B read with Ninth Schedule of the Constitution protects all laws even if they are violative of the Part III of the Constitution. However, it is to be noted that in the Constitutional Bench decision in I. R. Coelho v. State of Tamil Nadu (2007) 2 SCC 1, this Court has held that the laws added to the Ninth Schedule of the Constitution, by violating the constitutional amendments after 24.12.1973, would be amenable to judicial review on the ground like basic structure doctrine.

64. It has been contended by ld. senior counsel appearing for the appellants that the action taken by the respondents must satisfy the twin principles viz. public purpose and adequate compensation. It has been contended that whenever there is arbitrariness by the State in its action, the provisions of Article 14, 19 and 21 would get attracted and such action is liable to be struck down. It was submitted that the KUZALR Act does not provide for any principle or guidelines for the fixation of the compensation amount in a situation when no actual income is being derived from the property in question. It was further submitted that the inherent powers of public purpose and eminent domain are embodied in Article 300A, and Entry 42 List III, "Acquisition and Requisitioning of Property" which necessarily connotes that the acquisition and requisitioning of property will be for a public use and for compensation and whenever a person is deprived of his property, the limitations as implied in Article 300A as well as Entry 42 List III will come into the picture and the Court can always examine the legality and validity of the legislation in question. It was further submitted that awarding nil compensation is squarely amenable to judicial review under Articles 32 and 226 of the Constitution of India.

65. It is the case of the State that the statutory scheme under the UPZALR Act, 1950 is provided in Section 39(1) (e) in respect of forests. The said section provides for two methods for computation of compensation, namely, the average annual income of last 20 to 40 years as provided in Section 29(1) (e)

(i) and the estimate of annual yield on the date of vesting as provided in Section 39(1) (e) (ii). It was further argued that in respect of KUZALR Act, the same U.P. Legislature which had the example of Section 39(1)(e) deliberately dropped the second sub-clause and limited the compensation only to the average annual income of the last 20 years. From this it was argued that where there is no annual income, there would be no compensation.

66. It had been further argued that since the expression "average annual income" under Section 39(1) (e) (i) has already been judicially interpreted in the case of Ganga Devi v. State of U.P. (1972) 3 SCC 126 to mean "actual" annual income and not an estimate, therefore, if the forest land is not earning any income, then in the statutory formula set out in KUZALR Act, it would not be entitled to any compensation.

67. The Government is empowered to acquire land by exercising its various statutory powers. Acquisition of land and thereby deprivation of property is possible and permissible in accordance with the statutory framework enacted. Acquisition is also permissible upon exercise of police power of the State. It is also possible and permissible to acquire such land by exercising the power vested under the Land Acquisition Act. This Act mandates acquisition of land for public purpose or public use, which expression is defined in the Act itself. This Act also empowers acquisition of land for use of companies also in the manner and mode clearly stipulated in the Act and the purpose of such acquisition is envisaged in the Act as not public purpose but for the purpose specifically enumerated in Section 40 of the Land Acquisition Act. But, in case of both the aforesaid manner of acquisition of land, the Act envisages payment of compensation for such acquisition of land and deprivation of property, which is reasonable and just.

68. Article 31(2) of the Constitution has since been repealed by the Constitution (44th Amendment) Act 1978. It is to be noted that Article 300A was inserted by the Constitution (44th Amendment) Act, 1978 by practically reinserting Article 31(1) of the Constitution. Therefore, right to property is no longer a fundamental right but a right envisaged and conferred by the Constitution and that also by retaining only Article 31(1) of the Constitution and specifically deleting Article 31(2), as it stood. In view of the aforesaid position the entire concept to right to property has to be viewed with a different mindset than the mindset which was prevalent during the period when the concept of eminent domain was the embodied provision of fundamental rights. But even now as provided under Article 300A of the Constitution the State can proceed to acquire land for specified use but by enacting a law through State legislature or by Parliament and in the manner having force of law. When the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision is generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It must be understood in this context that the acquisition of the property by the State in furtherance of the Directive Principles of State Policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It is true that the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory.

69. Further, it is to be clearly understood that the stand taken by the State that the right, title or interests of a hissedar could be acquired without payment of any compensation, as in the present case, is contrary to the express provisions of KUZALR Act itself. Section 12 of the KUZALR Act, 1960 states that every hissedar whose rights, title or interest are acquired under Section 4, shall be

entitled to receive and be paid compensation. Further, Section 4A of the KUZALR Act makes it clear that the provisions of Chapter II (Acquisition and Modifications of existing rights in Land), including Section 12, shall apply mutatis mutandis to a forest land as they apply to a khaikhari land. Further, the intention of the legislature to pay compensation is abundantly clear from the fact that Section 19 itself prescribes that the compensation payable to a hissedar under Section 12 shall, in the case of private forest, be eight times the amount of average annual income from such forest. In the instant case, income also includes possible income in case of persons who have not exploited the forest and have rather preserved it.

Otherwise, it would amount to giving a licence to owners/persons to exploit forests and get huge return of income and not to maintain and preserve it. The same cannot be said to be the intention of the legislature in enacting the aforesaid KUZALR Act. In fact, the persons who are maintaining the forest and preserving it for future and posterity cannot be penalised by giving nil compensation only because of the reason that they were in fact chose to maintain the forest instead of exploiting it.

70. We are of the considered view that the decision of this Court in Ganga Devi (supra) is not applicable in the present case in as much as this Court in Ganga Devi (supra) never dealt with a situation of unexploited forest and the interpretation of actual income was done in the peculiar facts and circumstances of the said case. The said case does not deal with a situation where there could be such income possible to be derived because it was unexploited but there could be no income derived immediately even if it is used or exploited. Therefore, the said case is clearly distinguishable on facts. A distinction and difference has been drawn between the concept of `no compensation' and the concept of `nil compensation'. As mandated by Article 300A, a person can be deprived of his property but in a just, fair and reasonable manner. In an appropriate case the Court may find `nil compensation' also justified and fair if it is found that the State has undertaken to take over the liability and also has assured to compensate in a just and fair manner. But the situation would be totally different if it is a case of `no compensation' at all. As already held `a law seeking to acquire private property for public purpose cannot say that `no compensation' would be paid. The present case is a case of payment of `no compensation' at all. In the case at hand, the forest land which was vested on the State by operation of law cannot be said to be non-productive or unproductive by any stretch of imagination. The property in question was definitely a productive asset. That being so, the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighboring forests on the date of vesting. Even otherwise, revenue authority can always make an estimation of possible income on the date of vesting if the property in question had been exploited by the appellants and then calculate compensation on the basis thereof in terms of Sections 18(1) (cc) and 19(1) (b) of KUZALR Act. We therefore find sufficient force in the argument of the counsel for the appellants that awarding no compensation attracts the vice of illegal deprivation of property even in the light of the provisions of the Act and therefore amenable to writ jurisdiction.

71. That being so, the omission of the Section 39(1) (e) (ii) of the UPZALR Act 1950 as amended in 1978 is of no consequence since the UPZALR Act leaves no choice to the State other than to pay compensation for the private forests acquired by it in accordance with the mandate of the law.

72. In view of the above, the present appeal is partly allowed while upholding the validity of the Act and particularly Sections 4A, 18(1) (cc) and 19 (1) (b) of the KUZALR Act, we direct the second respondent, i.e. Assistant Collector to determine and award compensation to the appellants by following a reasonable and intelligible criterion evolved on the aforesaid guidelines provided and in light of the aforesaid law enunciated by this Court hereinabove. The appellants will also be entitled to interest @ six percent per annum on the compensation amount from the date of dispossession till the date of payment provided possession of the forest was handed and taken over formally by the Respondent physically and provided the appellant was totally deprived of physical possession of the forest. However, we would like to clarify that in case the physical/actual possession has not been handed over by the appellants to the State government or has been handed over at some subsequent date i.e. after the date of vesting, the interest on the compensation amount would be payable only from the date of actual handover/physical possession of the property in question and not from the date of vesting. In terms of the aforesaid findings, the present appeal stands disposed of. No costs.

.....CJI [ S.H. Kapadia ] .....J [Dr. Mukundakam Sharma] .....J [ K. S. Radhakrishnan ] .....J [ Swatanter Kumar ] .....J [ Anil R. Dave ] New Delhi, August 9, 2011.