

Mosammat Bibi Sayeeda & Ors. Etc vs The State Of Bihar & Ors. Etc on 25 April, 1996

Equivalent citations: 1996 AIR 1936, JT 1996 (4) 637, AIR 1996 SUPREME COURT 1936, 1996 AIR SCW 2283, (1996) 4 JT 637 (SC), 1996 (9) SCC 516, 1996 (2) BLJR 1043, (1996) 2 PAT LJR 72, (1996) 2 BLJ 475

Author: K. Ramaswamy

Bench: K. Ramaswamy, S.P Bharucha, K.S. Paripoornan

PETITIONER:

MOSAMMAT BIBI SAYEEDA & ORS. ETC.

Vs.

RESPONDENT:

THE STATE OF BIHAR & ORS. ETC.

DATE OF JUDGMENT: 25/04/1996

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

BHARUCHA S.P. (J)

PARIPOORNAN, K.S.(J)

CITATION:

1996 AIR 1936 JT 1996 (4) 637

1996 SCALE (4)232

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NOS. 5046 OF 1984 & 332 OF 1985 AND CIVIL APPEAL NO. 7547 OF 1996 (Arising out of SPECIAL LEAVE PETITION (C).7495 OF 1985) J U D G M E N T K. RAMASWAMY,J.

Leave granted in SLP (C) No.7495/85.

These appeals by certificate granted by Patna. High Court under Articles 133(1) and 134-A of the Constitution arise from judgment and order of the Full Bench made on November 16, 1984 in CWJC No.45 of 1968 and batch. They raise common substantial question of law as to the meaning of the word "Bazar", namely, Tilak Babu Hatia " in Bhagalpur, "Hasan Bazar" in Piro, Gudari Katra Bazar" in Arrah and "Patna Market" in Patna, within the meaning of Section 4(a) of the Bihar Land Reforms Act 30 of 195 or short the 'Act'. The facts in Civil appeal No.5046 of 1984 are sufficient for decision. 'Hence' They are stated as under:

Municipal plot Nos . 51 etc . with construction standing thereon along with Zamindari interest held therein, were transferred to S. Sayed Haider Imam father of Sayed Abid Imam by his predecessor Zamindar. Sayed Hassan Imam had constructed several shops in 4 plots of the land and let them out to diverse tenants on monthly rentals. there are as many as 132 shops known as Patna Market in Patna, The estate has been given Touzi no. I-21 by the Collector at Patna. Notifications under sections, 3, 3A and 3B of the Act were published on January 1, 1956. The Deputy Collector, Lend reforms, after following the procedure under the Act by order dated August 10, 1968 dismissed the appeal. The appellant, Sayed Hasan Imam filed a writ petition in the High Court which was dismissed by the Full Bench pending appeal, he died and his legal representatives have been brought on record.

The appellants claimed in the writ petition that the shops are "homestead" within the meaning of Section 2(j) of the Act. They do not vest in the State and, therefore, they remain to be the property of the appellants. Similar are the facts in all other cases. Therefore, it is not necessary to narrate the facts of all the cases separately.

The Full Bench has held that by operation of the notifications under Section 3, 3A and 3B of the Act the bazars stand vested in the State . It has held that the constitutionality of the provisions of the Act has not been challenged. It was disputed that hats and bazars are not vested in the State under Section 3, as the buildings let out. to several tenants are not bazars. They were homesteads at one point of time i.e., prior to the abolition of the Zamindari and remained to be so as on the date of the issuance of the notification. They must therefore, be deemed to have been settled with the appellants under Section 5. The High Court repelling the contention held that on a conjoint reading Section 3 to 7-A and 7-B of the Act hats or bazars stand vested in the State. Prima facie, melas and hats are distinguished from bazar; a hat generally is a congregation of buyers and sellers on specified days of a week and mela is held on special festive occasions in a year, associated with religious festivals, for example, Monday Mela in the month of Shravan (July) and on the occasion of Urs. Bazar is a daily feature and is held day after day. There are rows and rows of shops in the markets and they are nothing but markets. Bazars are complex of shops. In Hasan Bazar, there are as many as 132 shops; some of them brick built and some are Kachha (temporary) or mud- made. In Patna Market, huge complex of shops are existing. All

of them are famous as bazar or market consisting of whole complex of shops in rows. Buying and selling operations are the main commercial activities. Daily, weekly or monthly rents are collected from the occupants. Realization of toll is not a pre-condition to conclude that they are bazars. The essential feature is regular conduct of buying and selling as a permanent feature which is the primary condition. These markets satisfy the above conditions. Therefore, they are nothing but markets and they are bazars within the meaning of Section 4(a) of the Act.

S/Shri Shanti Bhushan, A.K. Sen and Soli Sorabjee, learned senior counsel for the appellants, contended that the view of the High Court is wholly unsustainable. The Act is an agrarian reform intending to acquire the estate covered under Act and confers permanent tenancy right to the Raiyats. Hats, bazars or melas held by intermediaries, though stand vested in the State after the notification under Section 3 of the Act is published, Section 4(a) envisages vesting only of any building or a part of a building comprised in such an estate or tenure used primarily as office or cutchery for the collection of revenue of such an estate or tenure and his interests therein stand vested in the State. Shops are used for commercial purpose in urban areas, in contra distinction to those in rural area. The legislature was aware of this distinction between the English language used for market and that used towards bazar in Hindi language employed in Section 4(a), i.e., hats, bazars and melas commonly known in rural India as part of the State. It would indicate that the Intermediary conducts hats, bazars and melas not as a regular business or avocation but as periodical bazars and collects tolls from the occupants in the hats or bazars, be it for a day in a week or bi-weekly bazars. Bazars mean rural bazars but not commercial shops in urban towns governed by the Rent Control Act. The homestead includes any building let out on rent. It is not necessary that such buildings should be in persona] occupation for residence of the intermediary/tenure-holders. The Act does not intend to divest right, title and interest in such hats or bazars held by intermediary nor vests the same in the State. Only those bazars, run in rural villages as incidental to the main agrarian reform envisaged under the Act, are intended to vest in the State. The commercial complexes in the urban areas owned by intermediaries are, thereby, not intended to be abolished as part of agrarian reform. The Act does not intend to enrich the coffers of the State by abolishing the commercial complexes of intermediaries situated in urban areas. Though the Act receives protective umbrella of Ninth Schedule, Article 3 must be understood in the context of the purposes envisaged under Article 31-A. If the commercial complexes are held to be within the sweep of the Act, the Act is ultra vires Articles 14, 19 and 300A. They are not saved by reason of its inclusion in the Ninth Schedule. In support thereof, the learned senior counsel placed strong reliance on the majority judgment in State of Bihar vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga & Ors. [(1952) SCR 889], Malankara Rubber and Produce Co. & Ors etc. etc. vs. State of Kerala & Ors. etc.etc. [(1973) 1 SCR 399], Brij Kishor Prasad Singh & Ors. vs. Jaleshwar Prasad Singh & Ors. [(1973) 3 SCR 562], Balmadies Plantations Ltd, & Anr. vs. State of Tamil Nadu [(1973) 1 SCR 258] and Gulabhai Vallabhbbhai Desai etc. vs. Union of India & Ors. [(1967) 1 SCR 602].

Shri Sanyal, learned senior counsel for the State, has contended that though the primary object of the Act is land reform for transference of the entire rights, titles and interests in the estate of zamindar or tenure holder irrespective of the land-or buildings, hats, bazars, melas etc. whether situated in rural or urban area and vested in the State Free from all encumbrances except to the extent saved by the Act, the vesting of estate is complete under Section 4(a) of the Act. There is no question of only partial vesting of agricultural lands, rights in or the land tenures including interests of the intermediaries or tenureholders. The case of the appellants, as manifested from their pleadings in the High Court, is that the bazars are homestead land saved by Section 5 claiming that the intermediaries have title to the bazars subject to settlement on them by the State. It is not their case that the shops in urban land is not vested in the State. Bazars are nothing but markets in which commercial activity is carried on in a regular course. Though the Act makes a distinction between hats, mela and bazar, bazar used in Section 4(a) must be construed in its etymological sense. The Act does not intend to have partial vesting of Touzi situated in rural area while excluding urban area. Under the Act, the concept of rural or urban estate was neither intended nor contemplated. On publication of the notification under Section 3, the totality of the right, title and interest held by an intermediary in touzi stands abolished. By operation of Section 4(a), it stands vested in the State. Homestead is distinguished from bazar. The shops are not used for the purpose of dwelling, though it is not necessary that intermediary should use the shops personally for dwelling. If it is held that the bazars are markets, it is enough that Section 4(a) of the Act stands attracted. Holding of the bazar connotes having possession, but not conducting business like hats or melas. The legislature has used the three expressions with the intention to cover all the three activities, namely, conducting malas at periodical festive occasions or weekly hats, be it in rural or Urban areas or "bazars"; the expression bazars" used as a systematic and organized commercial activity which would come within the sweep of Section 4(a) of the Act. Collection of the toll is understood in its conducting hats or melas. Even if rents are collected on daily weekly or monthly basis, it amounts to collection of the amount for consideration of letting shop; the premises are used for the merchandise. Shops or buildings may be permanently built or sheds or kaccha (temporary) structure. Transaction of buying and selling is a condition which is being done as a permanent feature.

Intermediary need not necessarily hold hat and bazar on land, though business transactions are conducted in any building in a touzi, be it in rural or urban areas. In Bihar, landlords hold hats or bazars in urban areas. Without shops, there would be no bazar. Realization of the rent for shops let out to the tenants in the form of toll or rent is consideration for use and occupation. Even if Independent shops are constructed and bazar is run, they are incidental to the enjoyment of the estate. Therefore they stand vested in the State. They are saved by Article 31-B of the Constitution. Shri Shanti Bhushan raised a further contention that Section 4(a) and Section 4(h) made a distinction between the buildings held for office or cutchery purposes and other buildings. If the same are sold by intermediary prior to January 1, 1946, they are

excluded from vesting in the State, though at one time they were used for official purpose by zamindars or tenure holder. If the Collector, after enquiring under sections 5, 7, 7A and 7B, holds that it was sold after January 1, 1946, such sale does not bind the State and the same stands vested. In other words, the legislature made a distinction between building used exclusively for official purpose by the intermediary and any other building and the latter would be governed by Section 5 to 7 of the Act.

The diverse contentions give rise to the questions whether the bazars governed by the provisions of the Act stand vested in the State under Section 4(a) of the Act? At the outset, we would state that the High Court in the judgment has specifically pointed out that constitutionality of the provisions of the Act has not been challenged. That is not disputed before us. It would, therefore, be unnecessary for us to go into the constitutionality of the provisions of the Act.

The controversy is no longer *res integra*. In Kameshwar Singh's case [supra], per majority, this Court had held that the Act is not a law in respect of a matter mentioned in Entry 18 of List II. Mahajan, J. with whom Mukherjee and Chandrasekhara Aiyar, JJ. had concurred, held that the dominant purpose of the Act is the transference to the State of the interest of proprietors and tenure holders in land and of the mortgages and lessees of such interests including the interests in trees, forests, fisheries, jalkars, ferries, hats, bazars. mines and minerals. The law relates to several items in the legislative list, that is, rights in or over land and also property. The pith and substance of the legislation is the transference to the State of the interest of the proprietor and tenure Holders and acquisition of estate within Entry 36 of List II, as it stood then There is no scheme of land reform within the framework of the statute except as a pious hope expressed that commission may produce it. The Bihar Legislature was competent to make the law on the subject of transference of estate and such transfer under the Act is constitutionally valid. It was also further held that the concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of the statute is to bring out the objectives of Article 38 and 39 of the Constitution. The purpose of the Act is acquisition of the estate for a public purpose. Patanjali Sastri, C.J. assumed, without discussion, that the Act is an agrarian reform and upheld the Act. S.R. Das, J. had held that the Act is an agrarian reform. The majority had held that Sections 4(b) and 23(f) acquiring arrears of rent payable to the intermediaries without compensation and deduction of 50% of the recoveries as administrative charges was held to be unconstitutional.

In *State of Bihar v. Rameshwar Pratap Narain Singh & ors.* [(1962) 2 SCR 382], Section 7A to 7C were impugned as unconstitutional and the right of ex-proprietors to hold melas after abolition of proprietary tenures and acquisition of mela was without public purpose. At page 392, it was contended that the right to hold melas is not a right in the land and, therefore, cannot be acquired as a right in an estate. Another Constitution Bench had held that holding a hat or bazar or mela is only a

mode of user by the owner of his land. Just as he can enjoy the land belonging to him in other ways, he can use it for the purpose of having a concourse of people - buyers and sellers and others for a hat, or bazar or mela ~ subject, as in the case of other user, to the requirement of other use. The right to hold mela has always been considered in this country to be an interest in land, an interest which the owner of the land can transfer to another along with the land or without the land. There can be no doubt, therefore, that the right of the proprietor of an estate to hold a mela on his own land is a right in the 'estate' being appurtenant to his ownership of land; so also the right of a tenure-holder, who, it has to be remembered, is the owner of the land subject only to the payment of the rend to the proprietor, to hold a mela on land forming part of the tenure. The validity of Sections 7A to 7C read with Sections 4 and 6 of the Act was upheld.

Section 3(1) of the Act empowered the State Government to declare by notification that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State. Such vesting took place as on January 1, 1956. Section 4 of the Act mentions the consequences which flow from the publication of the notification under Section 3(1) of the Act. Section 4(a) envisages vesting of such an estate or tenure including the interest of the proprietor or tenure-holder as under:

"Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jelkars, hats, bazars, mela and ferries and all other sairati interests, as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether been worked or not, inclusive of such rights of a lessee of mines and minerals comprised in such estate or tenure (other than the interests of raiyats or raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such state or other than the interests expressly saved by or under the provisions of this Act."

It would thus be seen that the pre-existing right, title or interest of the intermediary in the estate or tenure including intermediary interests in various subjects mentioned therein, namely, trees, forests, fisheries, jelkars, hats, bazars mela and ferries and all other sairati interests, as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether been worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure other than the interests of raiyats or under-raiyats shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of the Act. It would, therefore, be clear that such of the interests expressly saved by or under the respective provisions of the Act alone remain with the intermediary, proprietor or tenure-holder. A building or a part of building comprised in such an

estate or tenure and used primarily as office or cutchery for collection of rent of such estate also became vested in the state.

Section 5 gives an exception to the interest held by proprietor or tenure-holder in respect of homesteads and allows the intermediaries to retain them as tenants. Issuance of notification under Section 3 divests their right and title therein. The sequential operation of Section J. is vesting of right, title and interest of all enumerated items absolutely in the State free from all encumbrances except to the extent of interests of the intermediary saved by the provisions of the Act. Section 5 saved only interest in enjoyment of homesteads held by the intermediaries treating him as a tenant under the State from the date of vesting.

"Homestead" defined under Section 2(j) of the Act means a dwelling house either used by the proprietor or tenure- holder for the purpose of his own residence or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-buildings and includes any outbuildings used for purposes connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house were treated as a homestead. Explanation to Section 2(j) implies dwelling house or out-house should include any land on which there stood such dwelling house or out-building at any time before the date of vesting was explained to be a dwelling house. It would be clear that dwelling house encompassed under Section 5, is one compact block enjoyed partly for non-residential and partly for non-residential and other allied purposes mentioned therein. Its occupation, use and enjoyment alone was saved from vesting so that the intermediary should retain the interest of the homestead and remain in possession or enjoyment as a tenant. The statute conferred it as a new right. The determination of the rent has been envisaged under the rules. It also envisages that the rights under Section 5 are subject to the rights of the State under Sections 7A and 7B. Therefore, it would be clear that subject to the operation of Sections 7A and 7B, the homestead shall be deemed to be settled on the intermediary/tenure-holder and the intermediary would retain possession of the land and buildings and other interests comprised in such homestead and he would hold it as a tenant under the State. If a part of it is let out to the tenant, the right of the intermediary/tenure-holder to negotiate the rent payable in respect of the portion let out is divested and the rent payable by the tenant would be determined by the District Collector under the rules in the manner prescribed therein. It is not necessary to elaborate the procedure prescribed in the rules and forms for determination of rent in that behalf.

Similarly Section 6 envisages that on and from the date of vesting of lands used for agriculture or horticulture purposes which were in khas possession of the intermediaries as on the date of vesting as enumerated thereunder, subject to Sections 7A & 7B, the rights of the raiyat or under raiyat, shall be deemed to be settled by the State with such intermediary who would hold them as a raiyat under the State having occupancy right in respect of such land subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed

manner. To the extent of the land in possession of the raiyat or under raiyat, they would be regulated directly under relationship with the State. Section 7 also excludes the interest held by the intermediary in buildings or structures together with the lands on which they stand, other than any buildings used primarily as offices or cutcheries referred to in Section 4(3), as were in the possession of an intermediary at the commencement of the Act. Other buildings used as golas, factories or mills, for the purpose of trade, manufacture or commerce or used for storing grains, keeping cattle or implements for the purpose of agriculture and constructed or established and used for the aforesaid purposes before the first day of January, 1946, shall, subject to the provisions of Sections 7A and 7B, be deemed to be settled by the State with such intermediary and he shall be entitled together with the lands on which they stand as a tenant under the State with a corresponding obligation on the intermediary to pay fair and equitable rent determined by the Collector in the prescribed manner. Section 7A takes out from the purview of Sections 5 to 7 the conferring of any right on the intermediary and states that nothing in those sections shall be deemed to confer any right in the intermediary in respect of any land on which at any time within one year prior to the date of vesting of the estate or tenure, the intermediary was holding any hat or bazar. In other words, though the hat or bazar is situated in any land or a building held by the intermediary prior to one year from the date of vesting, such hat or bazar together with the land standing thereon would stand vested in the State free from all encumbrances. Similarly, Section 7B excludes the operation of Sections 5, 6, and 7 in respect of melas which were being held by the intermediary at any time within 3 years of the date of vesting and states that the right to hold such melas on such land shall with effect from the date of vesting, vest in the State though the intermediary who was conducting such melas prior to the aforesaid time. In Rameshwar Patil Narain Singh's case the constitutionality of vesting and consequence of vesting of melas was upheld.

A conjoint operation of these provisions in unmistakable terms would establish that on and from the date of publication of the notification under Section 3, the totality of the right, title and interest held by an intermediary or tenure-holder in hats and bazars stands extinguished and vested in the State free from all encumbrances. The consequence of the abolition of the estate is transference of the entire estate from the intermediary to the State subject to the exceptions and new interests created under the relevant provisions of the Act. All the intermediary rights and other saraiti interests and also the interests of the intermediary/tenure-holder in sub-soil rights in mines, minerals, etc. including rights in hats and bazars, leasehold rights comprised in such an estate or tenure, shall stand vested in the State absolutely free from all encumbrances. Such proprietor or tenure-holders ceases to have all existing rights or any interest in such bazars or hats except those expressly saved by or under the provisions of the Act. The structures or buildings - permanent or katcha - hats or bazars held by the intermediary/proprietor/tenure-holder together with the land on which they stand also stand vested in the State free from all encumbrances except the homestead saved by Section 5 of the Act.

Section 7(1) lends assistance in the interpretation of bazar in contra-distinction to buildings or structures. Sub- Section (1) thereof indicates that such buildings or structures together with land on which they stand, other than any building used primarily as offices or cutcheries referred in Section 4(a), as were in the possession of an intermediary at the commencement of the Act and used as golas, factories or mills for the purpose of trade, manufacture or commerce, used for storing grains or keeping cattle or implements for the purpose of agriculture and constructed or established and used for the aforesaid purpose before January 1, 1946, shall be deemed to be settled by the State with the intermediary and he shall be entitled to retain Possession of such buildings or structures as tenants. In other words, the buildings or structures together with the land over which hat, bazar or mela is held, by operation of Sections 7A to 7C, stand excluded from homestead under Section 5. Equally the building and the land used primarily as office or cutcherry are vested in the State. Land used as gola, factory for the purpose of trade, manufacture or commerce and constructed or established and used for the aforesaid purposes prior to January 1, 1946 shall vest in the State. Other buildings or structures together with the land are regulated under Section 5 read with Sections 6 & 7 subject to Sections 7A to 7C. In *Kanpur Sugar Works Ltd. v. State of Bihar & Ors.* [(1970) 3 SCR 703] strongly relied on by the appellants provides the clue for interpretation in this behalf. Therein, under the Act, the intermediary used part of the area in his possession for manufacture of sugar with an inner enclosure used for residential quarters, garages, kitchens, clubs, dispensaries, rest houses, out houses, office buildings, tubewell and water tank, godown, cattle shed, weightage house etc. The question therein was: whether 71 bighas and odd land on which residential bungalow etc. stood was homestead? The High Court and the Tribunals held that the aforesaid land was used for factory. They stood vested in the State and, therefore, they are not liable to fixation of reasonable rent under Section 7(1) of the Act. This Court pointed out the distinction between "used as" and "used for" and had held that since the land over which the building stood was used as quarters etc. they stood excluded from Section 4(a) and required determination of fair rent under Section 7. In that behalf, it was held that sub- section (1) of Section 7 applies only to such buildings or structures together with the land on which they stand which are used for golas, factories or mills for the purpose of trade, manufacture or commerce or used for storing grains, keeping cattle or implements for the purpose of agriculture. The expression employed by the legislature is "used for golas, factories or mills". The expression "lands on which they stand" may include the land which is necessary for the efficient user of the building for the purpose for which it is intended to be used. Far from helping the appellants, the above ratio clearly demarcates the rights of the State vis- a-vis the intermediary and the land over which the buildings are situated and used for bazar, stands vested in the State.

The word 'vested' is defined in Black's Law Dictionary [6th Edn.] at page 1563 as "Vested. Fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a

condition precedent" Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing law, does not constitute vested rights. In Webster's Comprehensive Dictionary, [International Edn.] at Page 1397 'vested' is defined as "[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests". In *State of West Bengal & Ors. v. Suburban bar Agriculture & Fisheries Pvt. Ltd. & Anr.* [(1994) Supp. 3 SCC 674] the question was whether after the abolition of the estate under the West Bengal Estates Acquisition Act 1953 the fishery right of the intermediary was saved by that Act? A Bench of three Judges had held in paragraphs 9 and 11 that the pre-existing rights of the intermediary in the estate to which the declaration applied shall stand vested in the State free from all encumbrances. Section 6 does not have the effect of divesting the State of the vested right, title and interest of the intermediary. One of the rights is the right to take possession of the land held by the intermediary, The Section excluded the operation of Section 4 to 5, the interest of viz., the respondent to retain khas possession was saved subject to his making the application in the prescribed form. It was held that the fishery rights stood vested in the State.

In *Brighu Nath Sahay Singh & Ors v. Md. Khallur Rehman & Ors.* [91995) 5 SCC 687], the appellants were proprietors of certain lands in Tauzi [new] No.8655 in Saraunja village in District Begusarai in Bihar which were sought to be declared as private lands in a civil suit. The courts granted the decree but the High Court reversed the decree. On appeal, this Court had held that on publication of the notification under Section 3, the lands stood vested in the State. The pre-existing right, title and interest held by the appellants stood ceased. They cannot, therefore, claim khas position of the lands in occupation of the tenants.

In *Smt. Labanya Bala Devi v. State of Bihar Patna Secretariat, Patna & Anr.* [(1994) Supp. 3 SCC 725] the tank and tankail settled by the intermediary were held to have been vested in the State after the Act had come into force. Therefore, the pre-existing rights of the tenure- holder in the tank, stood ceased since they were not saved under Section 6 [1] [b] of the Act.

It would thus be clear that on and with effect from the date of the publication of the notification under Section 3, the totality of the right, title and interest held by an intermediary stands abolished. The consequences thereof, as enumerated in Section 4 (a), is extinguishment of the pre- existing right, title and interest over the entire estate including the enumerated items in Section 4(a) which include hats and bazars in the State and the pre-existing right, title and interest held by the intermediary/tenure-holder stood divested.

The question then is what is the meaning of the word "holding" under Section 7A? The word "hold" has been defined in Black's Law Dictionary at page 730 as: (1) "To

possess in virtue of a lawful title, as in the expression, common in grants, 'to have and to hold', or in that applied to notes, the owner and the holder'; (2) To be the grantee or tenant of another; to take or have an estate from another. Properly, to have an estate on condition of paying rent, or performing service... (8) To possess; to occupy; to be in possession and administration of; as to hold office; (9) To keep; to retain; to maintain possession of or authority over. In "The Law Lexicon" by P. Ramanatha Aiyar [Reprint Edition 1987] it is stated thus:

"Holder of the village," The expression "holder of the village"

in the concluding para of S.216 of Act V of 1876, Bombay Land Revenue Code must be read as meaning the holder of the assessment or any of thereof of an alienated village,"

18 B. 525.

"Hold" are 'holding' shall be applicable to any vested estate, whether for life or of a greater or less description, in possession futurity or expectancy in any immovable property. Act XXVII of 1866 (Trustees, S.2."

"Holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners. Punj. Act XVII of 1887 (Land Revenue) S.3 c1.3.

"Holding" means land held under one title or agreement and surrounded by one set of boundaries. Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding. Ben.Act III of 1884 (Municipal) S.6, c1.3.

The term 'holding' in the Bengal Municipal Act S.6,c1.(3) means land held by an occupier under one title or agreement and surrounded by one set of boundaries. 15 I.C.548 (549)."

It would, therefore, be clear that the word "hold" used in Section 7A would mean that the intermediary must hold, as owner under a title and in occupation of the land or the building in which the hats are conducted or bazars are situated in his own right as owner or by virtue of the authority or settlement. It is not conducting hats, bazars or melas as contended for the appellants. In the light of the conjoint operation of Sections 3 and 4(a) and in contra-

distinction of the remainder rights of the intermediary/tenure-holder preserved under Sections 5 to 7, the conclusion becomes inevitable that the hats or bazars held by the intermediary vested under Section 3 in the State and the intermediary/tenure-holder stood divested of them and the pre-existing right, title and interest therein ceased. Even if we were to find that the word "hold" used in

Section 7A means "conduct", it would make no difference. If the intermediary has conducted a hat or bazar upon land which vests in the State within the stated period, the right to conduct the hat or bazar also vests in the State.

The real question then is: whether hats or bazars, are synonymous of market commonly understood in common language or is a hat or bazar as understood in oriental language of conducting daily or bi-weekly or weekly bazar etc? The thrust and emphasis by the learned counsel for the appellants is founded on: (1) the distinction between hats and bazars held in rural India and urban areas; (2) the bazars, as understood in the common parlance, in the rural areas. Having given our very deep and anxious considerations to the very forceful contentions raised by all the learned senior counsel we find that it is difficult to give acceptance to their contention. It is an admitted position that all the estates bear touzi numbers and that they were collecting rent. Touzi has been defined in Glossary of Judicial Revenue Terms of British India by H.H. Wilson as adjustment of accounts; "assessment; a revenue account, showing under the name of each payer of revenue etc...". It is usually a village account, and is kept by the village accountant; also a register of the estates of a Collectorate kept in the Collector's office, Act 1 of 1845. Rent-roll of the Collector with a separate revenue of an estate assessed upon each of them. Tazih-mahal - an estate that pays an assessed revenue. In *Ramesh Bejoy Sharma & Ors. v. Pasupati Rai & Ors.* [(1980) 1 SCR 6 AT 11], this Court had held that Section 4 provides four consequences of vesting of the tenure or an estate; one such consequence being that on issue of a notification under Section 3 the estate or tenure including the interest of the proprietor or tenure-holder not only in land but in building or part of a building used for various purposes set out therein, shall vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure, other than the interests expressly saved by or under the provisions of the Act. At page 17, it is further held that a tenant at will is not holding possession on behalf of landlord but he has a vestige of title to it and holds on his own behalf and can set up his possession against the landlord till formality prescribed by law is undertaken by the landlord and he is evicted by due process of law. The word "khas possession" on which the intermediary placed reliance is interpreted at page 20 to mean a statute for ushering agrarian reforms. The purpose and object behind the legislation must inform the interpretative process and it was held that though the word 'khas possession' with reference to the intermediary was used, he was not holding possession as on the date of the notification and that, therefore, he ceased to have the right to have the tenant at will ejected from the lands vested in the State under Section 3.

The High Court has examined the meaning, scope and purport of the word "bazar" prevalent in the State of Bihar. We presume, on the premise that it is a local enactment, that the learned Judges are better informed of the connotation meaning and purport of the Hindi words "hat" or 'bazar' used in the Act in contra-distinction to the English words. The Full Bench unanimously is of the view that the word

"bazar" is no other than the "market" in English language. The entire thrust of the arrangement addressed in the High Court was that the bazars are homesteads under Section 5 and they remain to be in possession of the intermediary subject to the fixation of the reasonable rent under Section 7 of the Act. The High Court has pointed out that "all the bazars' all of them are famous as bazars or markets". In all of them "the whole complex is rows of shops". There may be tenement or two which may have an office but that does not alter the essential character of the complex. 'Buying and selling is the main rather only operation.' It is thus obvious that the complexes which the appellants are claiming as homesteads are nothing but bazars". It is not the case or the petitions that buying and selling activity does not take place at the places described as bazar. I have therefore, no hesitation in holding that the petitioners were owners of a market which must be held to be equivalent to a Bazar." Repelling the contention that no toll is realized by the persons holding the Bazar, the High Court pointed out that "that right may be granted on payment of toll, or in the form of rent". The "rent may be per day, per week or per month. I am, therefore, unable to hold that just because toll is not realized, the complexes are not bazars. In order to constitute bazar all that is necessary is a place where buyers and sellers congregate to sell and buy. It will be difficult to accept that the complexes are not Bazars within the meaning of Section 4(a) of the Bihar Land Reforms Act. They, being bazars of a proprietor or ex-intermediary, must be held to have vested consequent upon issuance of the notifications under Section 3 of the Act". Referring to Patna market, the learned Judges pointed out that "there are rows and rows of shops and nothing but shops. There can, therefore, be no difficulty in holding that Patna market is Bazar. In fact, it is the most important marketing center in this town of Patna."

Similarly, in respect of "complex of shops at Bhagalpur market", it was stated that it is famous as 'Tilak Babu Hatia'. A Hatia is nothing but a Bazar. It is another matter that there is a restaurant too in that row of shops, but that does not and cannot conceal the essential character of the complex. Regarding Hassan Bazar in Piro village, it was pointed out that the "entire complex consists of 180 shops, some of which are brick-built and some are kacha. It is not the petitioners' case that the buildings are Golas." Similarly, in respect of shops in Arrah, it is pointed out that it "is famous as Gudari Katra Bazar". The names in each case are rather suggestive of their essential character. Thus the learned Judges having had The personal knowledge of the existing local conditions in the aforesaid bazars reached the conclusion that "they are markets and known as bazars" and that therefore, "they are hot homesteads".

As regards Patna market, it is sought to be pointed out that at one time it was homestead but the High Court has pointed out that long prior to the vesting, the intermediary himself demolished the building homestead and constructed the bazar in 1947. The High Court has pointed out that it is the most important market in Patna city. It is also pointed out by the learned counsel for the State and was not disputed across the bar by the counsel for appellants, that the appellants are maintaining the markets at their own expenses; collecting the fee or rent, as the case may be, and they are responsible for maintenance of sanitary conditions therein. In other words, they are regular centers of buying and selling and regular commercial activities are going on and that, therefore, they do

constitute bazar as market as understood in English language. It is true that there is a distinction between urban area and rural area. The Act, as pointed out earlier, does not make any distinction between the urban area or the rural area but intends transference of the entire totality of the right, title and interest in the estate held by the intermediary or tenure-holder, be they situate in rural or urban areas or in both and stand vested in the State on publication of the notification under Section 3 or Sections 3A and 3B.

It is next contended that the Act did not intend to enrich the coffers of the State by acquiring the urban property but primarily intended to regulate land reform after the State took over the agricultural lands abolishing intermediary rights and conferment of raiyatwari rights on tillers of the soil and incidentally the bazars and hats held by the intermediary in the rural areas were intended to be taken over but not the hats and Bazars held by them in urban areas. Though, prima facie, the argument appears to be attractive, on deeper consideration, for reasons we have already given, we find it difficult to give acceptance to the contentions As stated the Act does not make any dichotomy between the rural property or urban property. It seeks to extinguish the pre-existing; right, title and interest in the entire estate of the intermediary or tenure- holders and stand vested in the State free from all encumbrances subject to Sections 5 to 7.

In Rameshwar Pratap Narain Singh case [supra] rights to hold melas were acquired by Section 7C of Bihar Land Reforms [Amendment] Act, 1959 constitutionality of which had come to be questioned. This Court by upholding its validity rejected the similar contentions holding at page 387 that when the right to hold melas is taken over by the State the only purpose is the augmentation of revenue. There is scope for thinking that the legislature believed that melas would be better run and be more in the interests of the general public when run by the State than when they are left without control in the hands of private individuals with whom the profit motive is likely to be the sole guiding principle. Law may provide for Acquisition even though the purpose behind acquisition is not a public purpose. It was also held that augmentation of revenue by the State may be incidental to the acquisition. On that account, it cannot be said that meals were no intended to be acquired under the Act. Proprio vigore, the ratio would apply to the facts of the case Moreover, right to hold bazar is and interest in the land Section 3 of Transfer of Property Act, 1882 defines "

immovable property" to exclude standing timber, growing crops and grass. In other words, all other interests in the land are integral to immovable property.

In Raja Bahadur Kamakshya Narain Singh & Ors. v. The Collector and Deputy Commissioner of Hazaribagh & Ors. [(1955] 2 SCR 988] when the building standing on the land comprised in the estate was notified and the validity of Section 4 [h] of the Act was questioned another Constitution Bench had held that though the definition of 'estate' does not mention the word 'building', the provisions of Section, 4 d and 7 would indicate that legislature intended to mean something more than merely the lend of notified estate as vested in the State. under Section 5 and 7, the building mentioned therein are deemed to be settled by the State with the intermediary and this could only be on the supposition that the buildings vested in the State. The Collector's power under Section 4 [h] was held to be a part of validly

enacted law of acquisition of estate and is an integral part of machinery by which the acquisition of an estate takes place. The Act makes no distinction between hats and bazars held by intermediary or tenure holder in rural or urban areas. Bazars may be held by intermediary or tenure holders on land including in Touzi in rural and urban areas.

It would, therefore, be clear that bazars held by intermediaries/tenure- holders are markets and the lands over which the buildings or structures-erected or standing - as bazars are part of the bazars. The bazars held by the intermediary/tenure holders in Touzi numbers, though situated in rural or urban areas, stand vated under Section 4 [a] read with Sections 3 and 7A of the act.

Further contention of Shri Ranjit Kumar that bazars are homestead under Section 5 and Sections 7A and 4(a) is not attracted, is without substance. The High Court has rightly for sound reasons, repelled the contention that bazars are not homesteads as defined in Section 2 [j] and the same was not seriously disputed before us. Only in respect of Patna market the contention is raised in the written arguments of Shri Ranjit Kumar. In view of the finding recorded by the High court and not challenged before us across the bar and in view of the admission in the written arguments that old residential buildings standing on the land were demolished in the year 1947 and the rows of shops [the present buildings] were constructed in 1947 by the intermediary before vesting, the mere fact that at one time dwelling house or out-building was existing on that land is of little assistance. The rows of shops constructed on the land known as "Patna market" are a bazar and not dwelling house or out- building. The finding by the Deputy Collector which was set aside on appeal is of little assistance to them.

We would safely hold that Patna Market is a bazar constructed in 1947 and as on January 1, 1956 market was held as bazar. similar are other bazar Section 5, therefore, is inapplicable and Patna Market or any other market, therefore, cannot be regarded as homestead Section 5 read with Section 2 (j) of the act.

It is true that Bihar Rent Control Act appears to have been applied to the markets held by the intermediaries but its application to buildings though situated in urban area, does not have any effect on the interpretation of the provisions of the Act. The question whether the Bihar Legislature lacks competence under the Act to acquire urban property was neither raised in the writ petition nor argued before us. The decisions of this Court in Balmadies Plantation Ltd. & Anr. vs. State of Tamil Nadu [(1973) 1 SCR 258], Gulabhai Vallabhnbhai Desai etc. vs. Union of India & Ors. [(1967) 1 SCR 620] and Malankara Rubber and produce Co., & Ors. etc.etc. vs. State of Kerla & Ors. etc. etc. [(1973) 1 SCR 399] are of little assistance to the appellants. Each Act contains its own scheme of abolition of the estate and its agrarian reforms. In those Acts the purpose was primarily agrarian reform. The Constitution Benches of this Court had held that the forests would get exempted from the purview of those

Acts. We are, therefore, of the view that it was not necessary to critically examine the scope of Article 31B and 31A of the Constitution.

Shri Shanti Bhushan, learned Senior counsel contended that if interpretation put up by the High Court receives acceptance by this Court, all the buildings situated in the urban areas of the State would stand vested in the State which is not purport and intendment of the Act, The contention is too broad and is not well justified. It is seen that the land and other interests held by an intermediary within the operation of Section 4 alone would stand vested in the State after January 1, 1956 subject to the operation of Section 5 to 7C . Though other buildings situated in the estate, other than those vested under Section 4 (a) read with Sections 7A, 7B, and 7C with in the estate held by an intermediary/tenure-holder, stand vested in the State, are deemed to be settled on the intermediary either under Section 5 read with Section 7 or Section 6 subject to reasonable rent determine by the Collector under Section 7, the rules made under the Act and under all other relevant provisions operating in that behalf. But this interpretation will not have any effect on the right, title and interest held by any other individual owner whose property was not take over under the Act. We hold that the Full Bench division is not vitiated by any error of law warranting interference.

Appeals are accordingly dismissed with costs in the appeals, except last one quantified at Rs.10,000/- in each appeals, but without costs in the remaining appeal in which no arguments were addressed. The costs are directed to be paid over to the Supreme Court Legal Aid Committee. In case the appellants fail to pay the costs within three months from the date of receipt of this order, it would be open to the Supreme Court Legal Aid Committee to have the order executed as decree as per the law.