Raja Suryapalsingh And Ors. vs The U.P. Govt. on 10 May, 1951

Equivalent citations: AIR1951ALL674

JUDGMENT

Malik, C.J.

1. These are applns. under Article 226 of the Constitution challenging the constitutionality of an Act known as the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (U. P. Act No. I of 1951).

2. On 8-8-1946, the United Provinces Legislative Assembly passed the following resolution :

> "This Assembly accepts the principle of the abolition of the zamindari system in this Province which involves intermediaries between the cultivator & the State & resolves that the rights of such intermediaries should be acquired on payment of equitable compensation & that Govt. should appoint a Committee to prepare a scheme for this purpose."

3. A Committee was appointed to give effect to the resolution & to prepare the necessary scheme. It made its report in July 1948. A Bill was introduced in the United Provinces Legislative Assembly on 7-7-1949. After some amendment it was passed by the State Legislature on 16-1-1951, & it received the assent of the President on 24-1-1951. 4. Although the Preamble to the Act declares that--

> "Whereas it is expedient to provide for the abolition of the zamindari system which involves intermediaries between the tiller of the soil & the State in the Uttar Pradesh & for the acquisition of their rights, title and interest & to reform the law relating to land tenure consequent on such abolition & acquisition & to made provision for other matters connected therewith,"

Section 4 makes it clear that the scope of the Act extends beyond the abolition of the zamindari system consd. merely as a social organisation based on the existence of a class of persons in receipt of rents, for Sub-section (1) of that section provides that, as from such date as the State Govt. may by notfn. declare all estates situated in the Uttar Pradesh shall vest in the State free from all encumbrances. "Estate" is defined in Section 3 (8) as meaning "the area included under one entry in any of the registers prepared & maintained under Clause (a), (b), (c) or (d) of Section 32; United Provinces Land Revenue Act, 1901, or in the registers maintained under Clause (e) of the said section in so far as it relates to a permanent tenure-holder & includes share in or of an estate."

5. Section 6 then enacts that, subject to certain very minor exceptions, upon the publication of a notfn. Under Section 4 the rights, title & interest of all intermediaries in every estate in the area refd. to in the notfn., & in all sub-soil in such estates including rights, if any, in mines & minerals, shall

cease & shall be vested in the State of Uttar Pradesh free from all encumbrances. The expression "intermediary" is defined in Section 3 (12) as meaning with reference to any estate," "a proprietor, under-proprietor, sab-proprietor, thekadar, permanent lessee in Avadh, & permanent tenure-holder of such estate or part thereof."

6. The intermediaries whose rights, title and interest are thus acquired become entitled to receive compensation at eight times the net assets mentioned in the Compensation Assessment Roll prepared in accordance with the provisions of the Act. The Act further provides that the State Govt. shall pay to every intermediary other than a thekadar, whoso estate or estates have been acquired under the Act, a Rehabilitation Grant on a graduated scale provided that the land revenue payable by such an intermediary does not exceed Rs. 10,000. The scale at which Rehabilitation Grant is paid is given in Schedule I. Save in the case of wakfs, trusts & endowments which are wholly for religious or charitable purposes, the highest multiple is for the class paying land revenue up to Rs. 25, the multiple being twenty, while the lowest is for the class paying land revenue exceeding Rs. 5000 but not exceeding Rs. 10,000 when the multiple is 1.

7. Part I of the Act includes provisions for the vesting of all estates in the State, for the assessment of compensation, the payment of compensation to all intermediaries, the payment of Rehabilitation Grant to those intermediaries who pay Rs. 10,000 or less as land revenue, & similar matters. Part II deals with consequential changes that become necessary by reason of the vesting of all estates in the State & provides for the incorporation in each village of a Gaon Samaj & the vesting of certain land & other property in the Gaon Samaj, divides the cultivators into four classes, bhumidars, sirdars, asamis & adhivasis, & determines their rights & privileges; provides for the payment of land revenue; contains provisions designed to prevent the fragmentation of holdings or their division into holdings of uneconomic size & to facilitate the establishment of co-operative forms, & other similar matters.

8. The first ground on which the Act is challenged is that its enactment was beyond the competence of the Uttar Pradesh Legislature. Sri P.R. Das, the learned counsel for the appct. in the first of these applns. argued that the legislative power conferred by Articles 245 & 246 of the Constitution has to be exercised by the appropriate Legislature within the limits prescribed in the lists to be found in Schedule 7, that the only entry which would apply to legislation for the acquisition of property by a State Legislature is entry 36 of List II, but that that entry does not give an absolute power of legislation in respect of matters connected with acquisition & requisitioning of property. That the power, he contends, is subject to entry 42 of List III, and that consequently the payment of compensation & the existence of a public purpose are the essential requisites of an acquisition or requisitioning of property & if the impugned Act does not provide for the payment of compensation & declare the existence of a public purpose it is unconstitutional & invalid.

9. This argument is advanced so that the State may not be able to rely on Clause 4 of Article 31, as in that case even ignoring the provisions of Article 31(2) the State Legislature will not be competent to enact a law for acquisition of property without complying with the two requirements, i. e., that the acquisition must be for a public purpose & on payment of compensation. The argument overlooks the fact that the entries in the three lists define the fields for legislative action, or in other words, the

subjects in respect to which the appropriate Legislature can legislate. They do not prescribe the conditions subject to which the power is to be exercised. There is, in our opinion, no substance in this argument. Entry 36 of List II is as follows : "Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III." Entry 42 of List III is as follows :

> "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, & the form & the manner in which such compensation is to be given."

10. Under entry 33 of List I Parliament may legislate for the "acquisition or requisitioning of property for the purposes of the Union."

11. Parliament has been given the power to legislate for the acquisition of property for the purposes of the Union, while the State Legislature has been given the power to legislate for the acquisition of property except for the purposes of the Union, but both Parliament & the State Legislature have the power to lay down the principles on which compensation is to be determined & the manner in which it is to be given.

12. Reading the entries 33 in List I, 36 in List II & 42 in List III together, it is abundantly clear that the words "subject to the provisions of entry 42 in List III" mean only that when a State acquires property then the principles on which compensation is to be determined may be fixed either by the State Legislature or by the Union. The absence of similar words in entry 33 of List I is significant for it cannot be urged that the powers of acquisition were intended to be different in so far as the payment of compensation is concerned & that while the State Legislature has to provide for payment of compensation the Parliament is not required to do so. It was conceded by Sri Shiam Krishna Dar, on behalf of Maharajas of Balrampur & Kapurthala that the words "subject to the provisions of entry 42 in List III" had nothing to do with legislative competence. According to Sri Dar entry 36 in List II gives the State Legislature power to legislate with respect to the acquisition of property but that that power is controlled by Article 19(1)(f). The ban imposed by Article 19(1)(f) is partially removed by Clause (5) of that Article & is further lifted by Clause (2) of Article 31. We shall have occasion to deal with this argument later when we discuss the provisions of Articles 19(1)(f) & 31, & all that we need say at this stage is that the words "subject to the provisions of entry 42 of List III" do not by themselves mean that the State Legislature cannot legislate with respect to the acquisition of property unless there is a public purpose & only on payment of compensation. The safeguard against the confiscatory acquisition of property is to be found in Article 31(2) the effect of which is to ensure that no person can be deprived of his property unless the acquisition is for a public purpose & compensation is given. The provisions of Article 31(2) are not fetters on legislative competence but are conditions of legislative effectiveness. In the Govt. of India Act, 1935 (25 & 26 Geo. V Ch. 42) the power to make laws for the compulsory acquisition of land was given in entry 9 of List II, & this power was restricted by Section 299(2) which provided that:

> "299 (2). Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or

> any commercial or industrial undertaking or any interest in, or in any Co. owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired & either fixes the amount of the compensation, or specifies the principles on which, & the manner in which, it is to be determined."

13. In the Const. Ind. the power to legislate with respect to acquisition is given under Articles 245 & 246, but any legislation which is inconsistent with the provisions of Part III of the Constitution relating to Fundamental Rights will, to the extent of such inconsistency, be void. We shall have to consider later whether the impugned Act is inconsistent with any provision of Part III.

14. The Attorney-General has urged that the subject-matter of the impugned Act comes under entry 18 of List II which is as follows:

> "Land, that is to say, rights in or over land, land tenures including the relation of landlord & tenant, & the collection of rents; transfer & alienation of agricultural land; land improvement & agricultural loans; colonisation."

15. The Attorney-General has pointed out that entries in the several lists are not mutually exclusive & may some time overlap, & he has refd. us to the cases of United Provinces v. Mst. Atiqa Begam, 1940 F. C. R. 110; Meghraj v. Allah Rakhia, 74 I. A. 12 & The State of Bombay v. Narottam Jethabhai, A. I. R. (38) 1951 S. C. 69.

16. Although the subjects dealt with in the three legislative lists are not always set out with scientific precision, & instances will be found of overlapping, it is clear that a legislature empowered to legislate on a subject included within a particular list will sustain its power whether it is derived from one entry or from more than one entry. In some cases, however, it becomes important to determine under which entry the Legislature derives its power to pass a particular Act, for example when legislation under one entry is subject to certain restrictions from which it would be free if it came under another entry. In Meghraj's case, 74 I. A. 12 the Judicial Committee of the P. C. said, with reference to item 20 of List II in Schedule 7 of the Govt. of India Act, 1935--(which is similar to entry 18 in List II of the Const. Ind.)--

> "Item 21 is part of a Constitution & would, on ordinary principles, receive the widest construction, unless for some reason it is cut down either by the terms of item 21 itself or by other parts of the Constitution, which has to be read as a whole."

17. The acquisition or requisitioning of property is a subject for which special provision is made in entry 36 of List II, the principles on which compensation for property acquired or requisitioned for a public purpose is the subject of entry 42 in List III, & the taking possession of or acquiring property is a subject dealt with under Article 31 in the Chapter of Fundamental Rights. We are clearly of opinion that in such circumstances the provisions of entry 36 in List II limit the extent of entry 18 in the same List, & that the meaning to be attached to the latter entry must be such as to exclude from its scope what is mentioned in the former.

18. Mr. Baleshwari Prasad on behalf of one of the petnrs. urged that the subject-matter of the abolition of zamindari does not fall under entry 36 of List II, as the latter deals with acquisition or requisitioning of property & not the abolition or extinction of property rights. There is no force in this contention because any acquisition of property involves the extinction of the owners' rights in that property, & although it abolishes the zamindari system the impugned Act does not merely extinguish the rights of the intermediaries but transfers them to the State.

19. Before we refer to the other Articles of the Constitution the provisions of which the impugned Act is said to contravene, it is convenient to consider Article 31(1) which enacts that no person shall be deprived of his property save by authority of law, Sri P.R. Das's contention was that the word "law" in this clause does not mean positive or State-made law, but the immutable & universal principles of natural justice. He conceded however that the decision of the S. C. in A.K. Gopalan v. State of Madras, A. I. R. (37) 1950 S. C. 27 at p. 88 was against him, & the point was raised only in order that he might not be debarred from seeking to reopen the question at a later stage in the Section 0. It is, therefore, not necessary for us to deal with this matter further. All we need say is, in view of the concession by learned counsel, that the point has been decided in Gopalan's case & that we are bound by that decision.

20. It is convenient also at this stage to consider an argument advanced by Sri P, M. Verma in Appln. No. 6434 of 1951. That argument was that Clause (4) of Article 31 has no application to the impugned Act. It is common ground, so far as the other applns. now before us are concerned, that Clause (4) does not apply to the impugned Act.

21. Article 31, Clause (4) provides that:

> "If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President & has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any Ct. on the ground that it contravenes the provisions of Clause (2)."

Sri P.M. Verma has explained to us the various stages through which the Bill, which subsequently became Uttar Pradesh Act I of 1951, has passed. They may be summarised as follows: The Bill was introduced in the United Provinces Legislative Assembly on 7-7-1949, & was refd. to a Select Committee. That Committee made its report on 9-1-1950, & the Bill was read before the Assembly for the first time on 17-1-1950, for the second time on 28-7-1950, & for the third time on 4-8-1950. On 6-9-1950, the Bill came before the Legislative Council where it was read for the first time on September 14, for the second time on September 27, & for the third time on 30-11-1950. The Legislative Council had passed the Bill subject to certain amendments. It is not necessary to refer in detail to these amendments as learned counsel has not suggested, although he was specifically asked the question, that the Bill had been so amended as to be in effect a new Bill. On 13-10-1950, the Lower House, the Uttar Pradesh Legislative Assembly was prorogued & in view of the amendments made by the Legislative Council the Bill (sic) duced in the Legislative Assembly on 26-12-1950. It was passed in its amended form by the Assembly on 10-1-1951. Three days later, it was

re-introduced in the Legislative Council & passed by that body on 16-1-1950.

22. As we have stated, the Legislative Assembly was prorogued on 13-10-1950, the Legislative Council on 30-11-1950, & the learned counsel has argued that the effect of the prorogation of the two Houses was to cause the original Bill to lapse, with the consequence that the Bill which was re-introduced in the Legislative Assembly on 26-12-1950, must be deemed to be a new Bill. In support of this argument, he has drawn our attention to certain passages in May's Parliamentary Practice & Halsburi's laws Of England Vol. 24, but we think it is enough for our purposes to refer to Article 196(3) of the Constitution which provides that a Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof. Sri P.M. Verma has contended that Article 196(3) has no application in the present case because at the time the Legislature was prorogued the Bill was in a process of transmission from one House to the other & was consequently not pending in either. We think this argument is ill-founded. After the Bill had been amended & passed by the Legislative Council it had necessarily to go again before the Legislative Assembly & must therefore, in our opinion, be a Bill "Pending in a Legislature of a State." We are, therefore, of the opinion that the impugned Act comes within the ambit of Article 31,Clause (4).

23. Sri Prem Moham Verma further urged that there must, before any property can be acquired, be a certificate by the Govt. under the Land Acquisition Act, 1894, of the existence of public purpose. This argument has no force. A declaration that it is for a public purpose is ordinarily required when land is acquired under the Land Acquisition Act; but that is not the case here. Property is not being acquired under that Act, & the fact that Act is still on the statute book does not mean that land may not be acquired under another Act without such declaration being first made. Finally, the learned counsel urged that the State could not rely upon Clause (4) of Article 31 for the purpose of validating the Act because the effect of that clause is merely to bar the remedy. We see no substance in this contention either. The petnrs. challenge the Act on the ground, inter alia, that it contravenes the provisions of Article 31(2). In answer to this challenge, the State contends the Act is not open to attack on that ground by virtue of Article 31(4). A law is valid and enforceable unless & until it can be shown to be contrary to some provision of the Constitution. If the Constitution says that a certain law shall not be challenged on a particular ground, the result is that the Act cannot be challenged on that ground has to be treated as valid & enforceable.

24. We may here conveniently refer to one argument advanced by Sri P.R. Das. According to him Article 31(4) can have no application unless the President assented to a "law," & that as the Act contravenes the provisions of both Article 31(2) & Article 14 it is not a "law" & the President's assent was immaterial. This argument is, we think, fallacious. No doubt "law" ordinarily means a valid law, as an invalid law is a contradiction in terms. But this is not the sense in which the word is used in Clause (4). The phrase "the law so assented to" in Clause (4) of Article 31 has reference to Bills pending at the commencement of the Constitution in the Legislature of a State & which, after having been passed by the Legislature, have been reserved for the consent of the President.

25. Sri A.P. Dube, who appears for certain of the appcts. has urged that as Article 395 repealed the Govt. of India Act, 1985, the legislatures established under that Act thereupon ceased to have power

to exercise any legislative functions. The answer to this argument is however to be found in Article 382(1) of the Constitution which expressly provides that until now legislatures have been duly constituted & summoned the legislature functioning immediately before the commencement of the Constitution shall exercise the powers & perform the duties conferred by the Constitution on the legislature of a State. His further argument was that the impugned Act being one of far-reaching consequence it should not have been passed by the present legislature, which was elected several years ago and which does not now reflect public opinion. This however is clearly not a matter for the Courts, & cannot restrict the powers of the legislature.

26. We must now refer to Article 31(2) the terms of which are as follows :

> "No property, movable or immovable, including any interest in, or in any Co. owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired & either fixes the amount of the compensation, or specifies the principles on which, & the manner in which, the compensation is to be determined & given."

It has been argued that there is no public purpose for the acquisition sought to be effected by the impugned Act, & that that Act does not make provision for compensation within the meaning of the clause.

27. On the first of this question, it was argued on behalf of the State that, when property is acquired, the existence of a public purpose is itself a provision of Clause (2) of Article 31, & that consequently it is not a matter which can, in view of Clause (4) of that Article, be called in question in this Ct.; & it was further contended that, on the merits, the acquisition of property effected by the impugned Act is for a public purpose. On the other hand, it was argued for the appcts. that the existence of a public purpose is not a provision of Article 31(2) because that Article does not lay down that property shall not be acquired except for a public purpose : it merely declares that if the acquisition is for a public purpose it must be on payment of compensation. It is common ground that the State has no power to take possession of or to acquire property save for public purpose, & the real question at issue is whether that limitation on the State's power is to be found in Article 31(2) or elsewhere. If the latter be the case then the subject of Article 31(2) is the compulsory acquisition of property for a public purpose & the only provisions contained in that clause are those which relate to compensation.

28. The difficulty inherent in the latter argument is that of ascertaining where else the limitation is to be discovered. It is not to be found in Article 19(1)(f), for as was pointed out by Das J., in A.K. Gopalan v. State of Madras, 1950 S. C. R. 88 at p. 305, the right to property guaranteed by that clause ceases when the owner is deprived of his property by its compulsory acquisition under Article 31. Reference was also made to the right known in American law as eminent domain, or the right inherent in every sovereign State to take & appropriate private property for public use, & it was suggested that that right negatived the taking of private property for any other use. It is difficult to see how that can be so, for the prohibition must derive from something outside the right. In

Missouri Pacific Rly. Co. v. State of Nebraska, ex rel. Board of Transportation, (164 U. S. 403 : 41 L. Ed. 489), the S. C. of the United States held that a State Legislature could not acquire private property for a private purpose even on payment of compensation, but the ground of its decision was that such an acquisition would be an abuse of the due process clause & the 14th Amendment. It would appear, therefore, that the limitation on the State's power of compulsory acquisition was found in the provisions of the Constitution itself. The doctrine of eminent domain can, we think, find no place in States the Legislatures of which are either absolute in their powers, as is the British Parliament, or in which the legislatures, though limited in their powers, have been given express power to make laws on the subject of the acquisition of property. The plenitude of legislative power in the one ease & the express power in the other, makes recourse to an inherent right of acquisition unnecessary. In the Constitution of the United Stages, no express power of acquisition is conferred on Congress or the State legislatures, & it was, therefore, necessary to fall back on the inherent right of eminent domain. In the Indian Constitution, however, the legislatures both Union & State have been expressly given the power to acquire property & there can, therefore, be no need & hence no room, for assuming the existence of the same power by implication.

29. In the course of his judgment in Chiranjilal v. Union of India, 1950 S. C. R. 869 at p. 902, Mukherjea J. said with reference to the State's power compulsorily to acquire private property :

> "Article 31(2) of the Constitution prescribes a two-fold limit within which such superior right of the State should be exercised. One limitation imposed upon acquisition or taking possession of private property which is implied in the clause is that such taking must be for public purpose. The other condition is that no property can be taken, unless the law which authorises such appropriation contains a provision for payment of compensation in the manner laid down in the clause."

With the greatest respect we agree with the view expressed by the learned Judge; & whether the restrictions placed by that clause on the State's power of acquisition are described as limitations or conditions, & whether they be express or implied, they are none the less provisions of Clause (2) & are, therefore, in eases to which Clause (4) of Article 31 applies, not to foe called in question in any Ct.

30. There has been much discussion before us as to the meaning of the words "public purpose" as used in the Constitution. The case mainly relied on by Sri P.B. Das is that of Homabai Framjee Petit v. Secy. of State, 42 I. A. 44, In that case the Govt. of Bombay had, under a lease & a sanad (granted, respectively in 1854 & 1839) a right, subject to giving notice & paying compensation, to resume possession of the land granted if they desired to use it for a public purpose. The Govt. gave notice of their intention to resume possession with the object of using the land for the provision of residences to be let at moderate rates to Govt. officials, but the applts. declined to give up possession. Suitable accommodation for such officers was difficult to obtain in Bombay, but it was not contended that it was impossible. The Judicial Committee in dismissing the appeal refd. with approval to the view of Batchelor J. who had said :

> "General definitions are, I think, rather to be avoided where the avoidance is possible, & I make no attempt to define precisely the extent of the phrase 'public purposes,' in the lease; it is enough to say that, in my opinion, the phrase whatever else it may mean, must include a purpose, that is an object or aim, in which the general interest of the community as opposed to the particular interest of the individuals, is directly & vitally concerned,"

& learned counsel placed great reliance on the words "general interest of the community," his contention being that the acquisition effected by the impugned Act cannot be said to be for the general interest of the community when (according to him) a substantial part of the community will inevitably be made to suffer as a consequence thereof. He also drew our attention to an observation of Fazl Ali J. in the case of Province of Bombay v. K.S. Advani, 1950 S. C. R. 621, where that learned Judge said :

> "Indeed it appears to me that in a large majority of cases no inquiry should be necessary as the existence of a public purpose would be self-evident or obvious, & a mere reference to the purpose will make anyone say : This is of course a public purpose."

The suggestion of learned counsel was that the existence of a public purpose must be so obvious that there can be no possibility of a difference of opinion on the point & that, as this was not the case in the present instance, the conclusion must be drawn that the existence of a public purpose had not been established. It is sufficient, we think, to point out that the learned Judge in the observation which we have quoted expressly recognises the possibility of there being cases in which the existence of a public purpose would not be self-evident or obvious.

31. Emphasis was also laid on the distinction which has been drawn in the United States between public purpose or public use on the one hand & public benefit & public policy on the other, & it has been strongly urged before us that the acquisition of property effected by the impugned Act is not for a public purpose but is merely in implementation of the declared policy of a political party. We have been refd. to a large number of decisions of the S. C. of the United States & to the works of distd. American authors such as Cooley, Willis & Weaver, with reference both to the meaning of the expression public purpose (or public use) in the United States, & to the distinction which has in some instances been drawn between such purpose or use & public policy. We do not, however, think that it is necessary to refer to these authorities in detail, for it is to be observed that in all the cases to which our attention has been directed the acquisition was of a restricted area for a specific limited purpose, such as the acquisition of land for the purpose of the construction of a road, a rly. harbour, reservoir, town site & the like, & the question which had to be consd. in every case was whether that limited purpose was a public purpose or use. That is not the question with which this Ct. is confronted. There is no question here of the acquisition of a restricted area for a limited purpose. The impugned Act provides for the acquisition & vesting (in the first instance) in the State of approximately 4,13,00,000 acres of land at present belonging to some 20,00,000 persons as part of a comprehensive scheme of land reform. It is, we think, abundantly clear that the circumstances in which property is proposed to be acquired under the present Act differ so widely from those which

existed in the cases cited to us, that the latter can furnish no conclusive answer to the problem with which we are concerned. We must, we think, arrive at a conclusion as to the proper interpretation of the expression "public purpose" as used in the Constitution on a consideration not only of such principles as are to be derived from the decided cases but of the principles set forth in the Constitution itself.

32. Homabai Framjee Petit's case, 42 I.A. 44, is the only English or Indian authority to which we have been refd. & from the decision in that case three conclusions can, we think, be reached : first, the phrase "public purpose" must include an object or aim in which the general interest of the community, as opposed to the particular interest of individuals, is directly & vitally concerned; secondly, it is not necessary that the property acquired, when in the form of land, should be made available to the public at large : it is enough if the purpose is one in which the general interest of the community is concerned, & thirdly, the fact that the object or aim of the particular scheme may be achieved in some other way does not necessarily negative the existence of a public purpose.

33. The decision in the United States' Cts., if we may say so with respect, are not easy to reconcile. So eminent a jurist as Dr. Cooley has expressed himself as being "somewhat at sea" when endeavouring to define, in the light of the judicial decisions, what constitutes a public purpose, & his conclusions he states in these words (Constitutional Limitations, Edn. 8, Vol. 2, p. 1131) :

> "The reason of the case & the settled practice of free Govts. must be our guides in determining what is or is not to be regarded a public use; & that only can be considered such where the Govt. ia supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare, which, on account of their peculiar character & the difficulty--perhaps impossibility -- of making provision for them otherwise, it is alike proper, useful, & needful for the Govt. to provide,"

& elsewhere (at p. 1138) the learned author points out that "accepting as correct the decisions which have been made, it must be conceded that the term 'public use,' as employed in the law of eminent domain, has a meaning much controlled by the necessity, & somewhat different from that which it bears generally."

34. We may also quote a passage from Willis in which, in our opinion, the author well summarises the present position under United States Law. At pp. 817 & 818 of his work "Constitutional Law of the United States" the learned author says :

> "What is a public use? On this question there have been two viewpoints. One may be called the older viewpoint & the other the newer viewpoint. According to the older viewpoint, in order to have a public use, there must be the use by the public. This is perhaps still the majority viewpoint, & it is supported by a great number of cases ....."

According to the newer viewpoint there is a public use if the thing taken is useful to the public. This makes public use for eminent domain practically synonymous with public purpose for taxations &

somewhat like social interest for police power .....

Under this rule it is not necessary for the benefit to be for the whole community, but it must be for a considerable number."

35. Now is there to be found in the Constitution of India anything to guide the Cts. as to the meaning to be attributed to the expression "public purpose" when used therein ? We think there is Chap. 4 contains what are described as directive principles of State policy, & although those principles are not enforceable by any Ct. Article 37 specifically lays down that they are nevertheless fundamental in the governance of the country & that "it shall be the duty of the State to apply these principles in making laws."

36. If then we examine the directive principles we find that Article 39, Clauses (b) & (c) provide :

> "(b) that the ownership & control of the material resources of the community are so distributed as best to sub-serve the common good;
>
> (c) that the operation of the economic system does not result in the concentration of wealth & means of production to the common detriment."

Article 40 says that--

> "The State shall take steps to organise village panchayats & endow them with such powers & authority as may be necessary to enable them to function as units of self-govt."

Article 43 says that--

> "The State shall endeavour to secure by suitable legislation ..... to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life & full enjoyment of leisure & social & cultural opportunities &, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

And Article 48 that--

> "The State shall endeavour to organise agricultural & animal husbandry on modern & scientific lines . . . ."

37. The distinction to which we have already refd. which has been drawn in some American cases between public purpose & public policy may, we think, be well founded if by public policy is meant no more than the policy of the political party which then holds office. But the distinction ceases, in our opinion, if by public policy is meant State policy or the policy solemnly laid down in the Constitution, the principles of which are declared to be fundamental to the governance of the

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

38. If, therefore, the acquisition of property sought to be affected (effected ?) by the impugned Act is for the purpose of implementing one or more of the directive principles of State policy it will, in our judgment, be for a public purpose within the meaning of the Constitution, & it will be unnecessary for us to consider whether for other purposes it comes within the meaning which the law has given to that expression. In seeking to answer this question this Ct. is not concerned with the wisdom of the means embodied in the impugned Act to carry into effect the purpose of the Legislature; that it will neither approve nor condemn.

39. Reverting again to the impugned Act, Part I provides for the vesting in the State of the estates of all intermediaries as therein defined, & for the payment to them of compensation & (save in certain cases of rehabilitation grant. Part II provides for the establishment in every village of a Gaon Samaj, for the vesting in the Gaon Samaj of certain of the properties acquired by the State under Part I, for the management of those properties by the Gaon Sabha on behalf of the Gaon Samaj & for the conferment of additional powers on the Gaon Panchayat. Chaps. VIII, IX & X make provisions for extensive changes in the land tenure system & consequential changes in the assessment & collection of land revenue, while chap. XI makes provision for the formation of cooperative farms.

40. Reading the Act as a whole there can, we think, be no doubt that the primary object of the Legislature is to effect a radical change in the system of land tenure now prevailing in this State, & that to achieve this object the legislature conceived it necessary first to vest, in the State the land now held by those persons who are grouped together under the not altogether appropriate name of intermediaries. Subsidiary objects of the Act are the encouragement of village self-govt. & the development of co-operative farming.

41. The poverty of the bulk of the agricultural population in the State is not disputed, nor is it in dispute that the principal causes of that poverty include the increasing pressure of population on the land, the existence of holdings of uneconomic size, the sab-division & fragmentation of holdings, rural indebtedness & the lack of cottage industries. The problem of alleviating the poverty of agricultural classes & of raising their standard of living is no new one : it has exercised the minds of officials & legislators for many years, & more than one commission has been appointed to examine & report on the problem. It is not, we think, in dispute that the recommendations of the experts who enquired into the matter have all been based on some degree of reform of the system of land tenure, & that there is a considerable body of expert opinion which consd. that no satisfactory reform in the land system was possible which did not involve the extinction, as a class, of these persons who came between the cultivator of the land & the State. Thus for example in the Report of the Land Revenue Commission, Bengal, commonly known as the Floud Report, the view of the majority is expressed in these words (Vol I p. 41)--"The majority of the members are definitely of opinion that no other solution than State acquisition will be adequate to remedy the defects of the present land system which we have enumerated in paras. 80 to 88. No solution that can be proposed is free from difficulties & dangers, but we are agreed that the present system ought not to remain unaltered & that there should be some modification of the permanent settlement. The division of opinion on the

Commission relates to the degree of the changes in the present system which should be recommended & there is a clear majority on the Commission who are convinced that in order to improve the economic condition of the cultivators, the Permanent Settlement & the zamindari system should be replaced by a raiyatwari system, under which the Govt. will be brought into direct relations with the actual cultivators by the acquisition of all the superior interests in agricultural land."

42. The effect of the impugned Act is to vest the ownership & control of a considerable part of the material resources of the community in the State Govt.; & in the absence of clear & convincing evidence to the contrary the Ct. is bound to assume that the Legislature has acted with the intention of subserving the common good. There can be no doubt that in the opinion of the legislature the vesting in the State of the estates of the intermediaries is an indispensable preliminary to the pursuit of measures for the eradication or mitigation of the principal causes of agricultural poverty. Two of such measures are embodied in the Act, which makes provision for three new classes of tenure-holders, bhumidhar, sirdar & asami & for the formation of co-operative farms. The provisions of chap. 7 of the Act, which depend in some measure for their efficacy on the transfer of property to the State effected by Part I of the Act, are clearly directed to the development of village self-govt. It can, we think, be inferred from the Act that the intention of the Legislature is to secure a more just social order in which scope is given for more effective development of the State's agricultural resources than is at present possible. In the circumstances we are clearly of opinion that the acquisition of property effected by the impugned Act has for its object the implementation of one or more of the directive principles of State policy.

43. That would appear to be sufficient to answer the main question whether the acquisition of property effected by the impugned Act is for a public purpose, but certain farther questions are raised which it is convenient to refer to here. It was contended that the absence from the Act itself of any declaration that it was for a public purpose threw upon the State the burden of proving the existence of such a purpose. We think it sufficient to say that in our opinion that burden has been discharged. It was further contended that the reforms which the Legislature sought to effect could all have been achieved without abolishing the zamindari system. It is not, however, for this Ct. to weigh in the balance relative merits of schemes designed to achieve a particular end. The Legislature in its wisdom has chosen one method & unless it can be shown that the judgment of the Legislature is absurd or manifestly unreasonable that judgment must be respected. We think that it was well said by the S. C. of the United States in United States of America Ex. Rel. Tennessee Valley Authority v. Welch, 327 U. S., 546 at p. 552 ; 90 L. Ed. 843 at p. 848 :

> "When Congress has spoken on the subject (namely, public use) its decision is entitled to deference until it is shown to involve an impossibility .....& any departure from the judicial restraint would result in Cts. deciding on what is & is not a governmental function & in their invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields."

44. A further argument pressed on us was that even if there be a public purpose for the acquisition of the property in respect of which the zamindar could properly be described as an intermediary between the tiller of the soil & the State, no public purpose has been shown to exist for the acquisition of lands owned by a zamindar from which he received no rent, such as forests, wasteland & groves. As we have already pointed out the immediate object of the Act is to effect a re- form of the land tenure system, & to achieve that end the Legislature has consd. it necessary to disregard the fact that in respect of a large part of the land acquired the zamindars were not in fact intermediaries between the agriculturists & the State. Some confusion has, we think, been caused by the choice of words used in the Preamble to the Act & the implication therein that it is only that part of the zamindari system which involves the existence of intermediaries between those who work the soil & the State which it is the purpose of the Act to affect. That of course is not so, & we have already pointed out that the Act is of far wider scope. Under Section 4 it is all "estates" --as defined in the Act -- which are to vest in the State, & in considering whether the acquisition thereby affected is for a public purpose it is not. the use to which those estates are being put by their owners but that for which they will be acquired which is important. The acquisition must be consd. as a whole : it is either for a public purpose or it is not. In the circumstances of this case we cannot hold that there exists a public purpose for the acquisition of one part of an intermediary's property but not for the other part.

45. A very similar argument was adduced by Sri Misri Lal Chaturvedi, on behalf of certain appcts. who are assignees of land revenue. One of the consequences of the vesting in the State of all estates as provided in Section 4 of the Act is that all rights in respect of land revenue payable thereon necessarily determine, & it is so declared in Section 6, Clause (b). Apart from the fact that we cannot, for reasons which we have given, treat this form of property as the subject of a separate acquisition, an assignment of land revenue was always subject to the right of Govt. to vary or suspend the revenue, & if the revenue was wholly remitted the assignee derives no benefit from the assignment in his favour : see Beni Madho v. Bhagwan Prasad, 8 A. L. J. 534. In Section 45 of the present Act provision is specifically made for the payment to him of compensation.

46. Finally, Sri P.R. Das argued that the Act was essentially in the nature of a legislative experiment--an experiment which, he contended, was bound to result in failure with the consequent ruin of a not inconsiderable part of the population of the State. We think the answer to this argument is to be found in the judgment of Frankfurter, J. of the United States Supreme Court in the case of American Federation of Labour v. Amercian Sash & Door Coy., 335 U. S., 538: 93 L. Ed., 222. At p. 230 that learned Judge said :

> "Even where the social undesirability of a law may be conveniently urged, invalidation of the law by a Ct. debilitates popular democratic Govt. Most laws dealing with economic & social problems are matters of trial & error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. It may not prove good, but it may prove innocuous. But even if a law is found wanting on trial, it is better that its defects should be demonstrated & removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests--the

people."

47. We have expressed the opinion that the existence or a public purpose for the acquisition of property effected by this Act is not, in view of the provisions of Article 31,Clause (4), open, to question in any Ct.; but if that view be wrong we are, on a consideration of all circumstances & after giving close attention to the argument addressed to us by learned counsel, further of the opinion that the acquisition of property effected by the Act is for a public purpose within the meaning of Article 31, Clause (2) of the Constitution.

48. Article 31(2) of the Constitution provides that no property shall be taken in possession of or acquired for a public purpose under any law "unless the law provides for compensation for the property taken possession of or acquired & either fixes the amount of the compensation or specifies the principles on which, & the manner in which, the compensation is to be determined & given."

On behalf of the State it is urged that compensation means only such amount as the Legislature itself considers reasonable, while for the appcts. it is contended that it means the monetary equivalent to the owner of the property of which he has been deprived. The principles upon which compensation is assessed in England are summarised by Lord Dunedin in Cedars Rapids Manufacturing and Power Co. v. Lacoste, (1914) A. C. 569 in two brief propositions:

> "(1) The value to be paid for is the value to the owner as it existed on the date of the taking, not the value to the taker. (2) The value to the owner consists in all the advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined."

See also In re Lucas and the Cluster field Gas and Water Board, (1909) l K.B. 16, Fraser v. City of Fraserville, (1917) A. C. 187.

49. In the United States the law is the same. In Morongahela Navigation Co. v. The United States, ((1893): 148 U. S. 312 : 37 Law Ed. 463) Brewer J. delivering the opinion of the Ct. said, with reference to the 14th Amendment:

> "The noun 'compensation,' standing by itself, carries the idea of an equivalent .... So that if the adjective 'just' had been omitted, & the provision was simply that property should not be taken without compensation, the natural import of the language would be that the compensation would be the equivalent of the property."

In India the principles upon which compensation is to be fixed for the compulsory acquisition of land are stated in Sections 23 & 24, Land Acquisition Act, 1894. The P. C. has held that those principles differ in no material respect from the principles upon which compensation was awarded under the Land Clauses Act, 1845; &, therefore, "the compensation must be determined therefore by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser" : Raja Vyricherla Narayana Gaja-patiraju v. Revenu Divisional Officer, Vizaga-patam, (1939) A. C. 302.

50. The Govt. of India Act, 1935, was an Imperial Act drafted by parliamentary draftsmen, & there can, in our opinion, be no doubt that 'compensation' in Section 299 was intended by Parliament to have the same meaning as English law.

51. If the Legislature uses a term which ha* a well settled meaning, that meaning must, in the absence of any indication to the contrary, be given to it. The relevant provisions of Article 31(2) of the Constitution so closely follow those of Section 299, Govt. of India Act, 1935, the words being almost identical that it is impossible (our attention not having been drawn to anything appearing elsewhere in the Constitution to indicate the contrary) to escape the conclusion that the word 'compensation' was intended to have the same meaning in the Article as in the section. Section 299(2) of 1935 Act provides that neither the Federal nor the Provincial Legislature shall have the power compulsorily to acquire land "unless the law provides for the payment of compensation for the property acquired & either fixes the amount of the compensation, or specifies the principles on which, & the manner in which, it is to be determined."

The corresponding words in Article 31(2) are "unless the law provides for compensation for the property taken possession of or acquired & either fixes the amount of the compensation, or specifies the principles on which, & the manner, in which, the compensation is to be deter mined & given."

The absence of the qualifying adjective "just", "fair", "adequate" is, to our minds, not of consequence ; nor can we see any ground on principle or authority for attributing to the word "compensation" the meaning suggested by the State, namely such amount as the Legislature itself considers reasonable. If it had been the intention to make so radical a change in the meaning of the word compensation--a change which wholly destroys the basis upon which it was previously understood that compensation would be deter mined--It is reasonable to expect that fact to have been clearly stated in the Constitution. If the amount of compensation was left entirely to the discretion of the Legislature, & was not to be justifiable, Article 31(2), which is a restraint on legislative power, would cease to be of use to protect the fundamental right to property. Nor does the conferment of power to determine the principles on which compensation shall be given enable the Legislature to depart from the basic rule; That provision is intended to enable the Legislature to lay down rules for the assessment of compensation in cases where its determination may be difficult or where different persons may take divergent views as to what is the equivalent in value of the property acquired. A good illustration of this is to be found in In re Lucas and the Chesterfield Gas & Water Board, (1909) 1 K. B. 16, in which the question was as to the value of a piece of land which was peculiarly suited for the purposes for which the resps. wanted it, namely the construction of a reservoir.

52. The conclusion must therefore be that compensation in Article 31(2) means the equivalent in value of the property taken or acquired, subject only to this qualification that such equivalent need not be paid in money.

53. Now Article 31(4) provides that if a law passed by a State Legislature for the compulsory acquisition of property has been reserved for the consideration of the President & has received his assent--& the present as we have already said is such a law then "notwithstanding anything in the Constitution, the law so assented to shall not be called in question in any Ct. on the ground that it

contravenes the provisions of Clause (2)."

One of the provisions of Clause (2) is that the law mast provide for compensation, & as compensation means the equivalent in value of the property acquired (as we have already held) it follows that any provision for giving by way of compensation less than the equivalent will not amount to compensation in law & will constitute a contravention of that clause. Whether the law provides for an inadequate payment, or for discriminatory payments to different owners, the result is the same --a failure to provide for compensation in law. In either instance there is therefore a contravention of the provisions of Clause (2) & by virtue of Clause (4) that contravention cannot be challenged in any Ct.

54. Learned counsel for the appets., though conceding that Clause (4) prevents them from raising the question of the adequacy of the compensation have urged that Clause (4) does not operate to protect the Act from challenge on the ground that the provisions with regard to the payment of compensation are discriminatory & therefore contravene the provisions of Article 14. It is contended that the words "on the ground that it contravenes the provisions of Clause (2)" appearing in Clause (4) are words of limitation, the effect of which is to restrict the protection afforded by Clause (4) to a challenge based on a contravention of the provisions of Clause (a) alone; & that Clause (4) affords no protection if the challenge is founded on the contravention of some other Article. We do not think this distinction can be drawn. If a provision with regard to the payment of compensation contravenes the provisions of Article 14 because it is discriminatory them it also contravenes Article 31(2). That is so because discrimination means a variation in payments based on something other than the value of the property acquired ; such payments cannot therefore be the equivalent in value of the property & they cannot therefore be compensation within the meaning of Clause (2). That clause is, therefore, contravened & Clause (4) comes into play. Stated shortly, a provision with regard to the amount of compensation which contravenes Article 14 must necessarily contravene Article 31(2).

55. The State placed much reliance on the words "notwithstanding anything in this Constitution" which, it was argued, were the controlling words in Clause (4), the submission being that it was those words which constituted the bar to the operation of Article 14. In the view which we take of the true construction & effect of Article 31, Clause (2) & (4) it is, we think, unnecessary to give to the words "notwithstanding anything in this Constitution" more than their plain & natural meaning. It is clear from the terms of Clause (4) that the Constituent Assembly had knowledge that the Bill, which later became the impugned Act, was pending at the commencement of the Constitution ; & we may, we think, legitimately infer that it was the intention of that Assembly to save from challenge in any Ct. the provisions of the Bill in respect of compensation. The words "notwithstanding anything in this Constitution" dispel any doubt which might arise in the event of any conflict arising between the provisions of Clause (4) & those of any other Article in the Constitution. Clause (4) in our opinion protects from challenge on any ground the amount of compensation fixed by the Act, or the principles on which and the manner in which such compensation is to be determined.

56. The question which then arises is whether the real compensation payable under the Act is limited to the payment for which provision is made in chap. 3, namely eight times the net assets

calculated in the manner laid down in that chapter, or whether it in fact includes the amount payable by way of Rehabilitation Grant under chap. 5. If the latter be the case then, notwithstanding the fact that the compensation under the Act is payable on a graduated scale which is divorced from the value of the properties acquired, the payment is one which as a consequence of Clause (4) of Article 81 cannot be called in question in any Ct. If, however, the "compensation" & Rehabilitation Grant are separate & distinct then Clause (4) will protect the former only from attack.

57. "Compensation" is payable under the Act to every intermediary whose rights, title or interest in any estate are acquired (Section 27). It is a fixed multiple of the net assets of the intermediary (Section 54) & is payable upon determination of the amount thereof [Section 28(1)]. The payment may be made in cash or in bonds, or partly in cash & partly in bonds (Section 68) & until such time as payment is made in cash, or the bonds are redeemed, the compensation carries interest at the rate of 2 1/3 per cent. per annum.

58. The Rehabilitation Grant is (subject to certain possible exceptions refd. to below) payable to every intermediary whose estate is acquired other than a thekedar or an intermediary in respect of whose estates land revenue is payable in excess of rupees 10,000 (Section 73). The amount of the grant is a variable multiple of the net assets payable to the intermediary (Section 98), & is payable on or from the date on which compensation on all the intermediary's estates has been determined (Section 74). It is not stated in the Act to be payable in cash, & the effect of Section 104 would appear to make it payable, as in the case of compensation, in cash or in bonds or partly in one & partly in the other.

59. The amount of any rent, cess, local rate or sayar which has been paid to or compounded or released by an intermediary after the date of vesting any arrear of revenue & certain debts may be recovered by the State from the compensation money but not from the Rehabilitation Grant [Section 6(c)(ii) & (e)]. There are also differences in procedure with regard to the determination & assessment of the two payments. An appln. by the intermediary is necessary for payment of the Rehabilitation Grant but not for compensation (Section 79), & different officers called Compensation Officers & Rehabilitation Grants Officers are appointed to assess & make payment of the two sums (Sections 31, 84). The provisions of Civil P. C. are made applicable to proceedings before the Compensation Officer but not to those before the Rehabilitation Grants Officer (Section 48). Any order by the former may be challenged in the H. C. on second appeal (Section 51) but an order by the latter only by way of revn. (Section 102).

60. In addition to the differences we have mentioned, & to the exclusion of thekedars & of intermediaries liable for the payment of land revenue in excess of Rs. 10,000 from the benefit of the latter, it has been contended that assignees of land revenue & guzaredars are entitled to compensation but not Rehabilitation Grant, & that in certain circumstances waqfs will receive the latter but not the former. These contentions do not appear to be well-founded. An assignee of land revenue who is entitled to compensation is a proprietor (Section 45), & a proprietor is defined for the purposes of this Act as a person owning an estate whether in trust or for his own benefit [Section 3(21)]; he is, therefore, entitled to Rehabilitation Grant Under Section 73. A guzaredar is not an intermediary within the meaning of the Act (see Section 71), but a person having a claim on an

intermediary. He is not, therefore, directly entitled to either compensation or Rehabilitation Grant. As regards waqfs, Section 77 of the Act merely excludes from any right to Rehabilitation Grant a waqf created after 8-8-1946, the endowed property in such case being deemed for the purpose of the Rehabilitation Grant to belong to the intermediary who created the waqf. The Rehabilitation Grant in respect of such property will be determined as if no waqf had been created, but the amount thereof will be paid to the mutawalli.

61. The contention on behalf of the State is that the Rehabilitation Grant is not part of the compensation paid to the intermediaries for the taking of their property. It is, it is said, something quite different -- an ex gratia, payment made to such as are entitled to it to set them on their feet again; & in support of this argument reliance was placed on the differences between the two payments to which we have already refd.

62. The fact, however, that these differences exist does not, in our opinion, conclude the matter. The question is one of fact : is the Rehabilitation Grant, in fact, a compensatory payment?

63. Under the Act all intermediaries except those who are liable to pay land revenue in excess of Rs. 10,000 & thekedars, will receive both compensation & Rehabilitation Grant; those who are liable to pay land revenue in excess of Rs. 10,000, & thekedars, will receive compensation only. It cannot we think be doubted that the basic reason for the payment of compensation & Rehabilitation Grant is the same, namely the compulsory acquisition of the intermediaries' property. It is not in dispute that 85 per cent, of the intermediaries wilt receive by way of rehabilitation grant a payment which is approximately two & one-half times the sum to which they will be entitled on account of compensation, & that 98'5l per cent, will receive as Rehabilitation Grant a larger sum than they will obtain as compensation. "To rehabilitate" means to set up again in proper condition, & the term is applied ordinarily to persons in immediate want of assistance. The provisions of Section 104, however, permit the State in its discretion to give the Rehabilitation Grant in the form of bonds, & in. the case of waqfs, trusts & endowments which are wholly for a religious or charitable purpose the grant takes the form of an annuity which is directly related to the value of the net assets of the waqf, trust or endowment--that is to say in the case of all such bodies (provided they do not pay land revenue exceeding Rs. 10,000) the curious position is reached that the greater the net assets the larger will be the Rehabilitation Grant. In the case of waqfs and similar bodies which are partly for religious & charitable purposes & partly for other purposes the grant is given partly in the form of an annuity & partly as a multiple of the net assets.

64. "To compensate" is defined in Murray's Dictionary as meaning "to counter-balance, make up for, make amends for; to be an equivalent; to make equal return to, to recompense or remunerate for anything."

65. Upon a careful consideration of the relevant provisions of the Act we are of the opinion that the compensation which the intermediary will receive for the acquisition of his property includes the amount (if any) to which he is entitled as Rehabilitation Grant. It is not necessary to come to the conclusion that the provisions for Rehabilitation Grant are a cloak or subterfuge, for it appears to us that considering the scheme as a whole it is impossible to resist the conclusion that both

"compensation" & (for those entitled to it) "Rehabilitation Grant" are intended as a recompense or counter-balance for the acquisition of their property, & that they together constitute the true compensation payable under the Act.

66. A suggestion that the Act can be treated as though it were two Acts--one for the acquisition of property on payment of compensation & the other for the appropriation of public moneys for rehabilitation--cannot be sustained. It is of some significance that the rehabilitation scheme is not mentioned in the preamble to the Act, & we entertain no doubt that the scheme envisaged in the Act is one scheme & must be treated as such.

67. It is clear that if the real compensation payable to an intermediary under the Act includes the amount of the Rehabilitation Grant then, notwithstanding the graduated scale of such compensation, Clause (4) of Article 31 will operate to protect it from challenge in the Cts. If, however, the Rehabilitation Grant does not form part of the real compensation the provisions of the Act relating to that grant are open to attack as contravening the terms of Article 14.

68. It has been suggested by the State that the Rehabilitation Grant is in the nature of an ex gratia payment which confers no legal right, & no question of unfair discrimination can arise. In our opinion, Chap. V of the Act (which makes provision for the Rehabilitation Grant) is a law which confers a right on certain intermediaries to receive payment of money. In America it has been held by the S. C. that the fourteenth amendment applies to privileges conferred as well as to liabilities imposed (Hayes v. State of Missouri, (1887) 120 U. Section 68 : 30 Law. Ed. 578), & we see no reason why Article 14, which provides that the State shall not deny to any person equality before the law, should not apply to this chapter. The provisions for payment of the Rehabilitation Grant are clearly discriminatory, & it would, therefore, be necessary for the Ct. to be satisfied that the classification adopted has some reasonable basis. As, however, the question is one which it is not necessary for us to answer we do not in the circumstances propose to express an opinion on it.

69. A further argument advanced on behalf of the appcts. was that the provisions in the impugned Act with regard to compensation constituted a fraud on the Constitution & were consequently invalid. In support of this submission, learned counsel contended first, that as no time is fixed in the Act for payment of compensation the latter may be indefinitely postponed, secondly, that payment of compensation is being made out of income arising from the property acquired, thirdly, that the compensatory provisions in fact, involve a payment to the smaller zamindars out of the property of the bigger, fourthly, that the amount of compensation is so small as to be illusory, & finally that certain property is confiscated without payment of compensation.

70. It is correct that the impugned Act fixes no specific time within which payment of compensation is to be made; but neither is there any such provision in the Land Acquisition Act, 1894. Section 28 does, however, provide that compensation becomes due (& therefore, it is conceded, payable) immediately the amount thereof has been determined in accordance with the relevant provisions of the Act. We have no hesitation that it is the intention of the Legislature that the amount of compensation payable should be determined in the case of each intermediary as expeditiously as is reasonably possible, & if there be any unreasonable or deliberate delay in doing this, relief can be

obtained from the Ct. It is no doubt true that compensation may be given in cash or in bonds, or partly in one and partly in the other, & that there is no provision in the Act fixing the time within which the bonds are to be redeemed. These matters are left to be determined by rules made under the Act. Whether they can be so left to a, rule-making body is a question with which we deal elsewhere in this judgment, but it is of the essence of all rules and regulations made under a statute that such rules & regulations must be reasonable. If, therefore, it should transpire that compensation is to be given wholly or in part in the form of bonds & the period for the redemption of such bonds is unreasonably long the aggrieved intermediaries have their remedy. The requirement of just compensation was satisfied, it was said, in an American case "when the public faith & credit are pledged to a reasonably prompt ascertainment & payment, & there is adequate provision for enforcement:" Joslin Manufacturing Co. v. City of Providence, 262 U. S. 688 : 67 Law. Ed. 1167. We are not satisfied that these conditions will not be fulfilled in the present case.

71. The second and third contentions may be considered together. It appears to us clear that as from the date of vesting the estates of the intermediaries vest in & become the property of the State, & that all income arising from such property forms part of the State revenues. Reference was made to an observation by Dixon J.(in the Australian case of Nelungalloo Proprietary Ltd. v. Commonwealth, 75 Canadian L. R. 495, at p. 553 in support of an argument that a separate fund was necessary from which compensation could be paid. The observation does not, in our opinion, support this argument, nor can we see any reason why any particular part of the State's revenues should be earmarked for the purpose of paying compensation. Compensation is paid out of the revenues of the State, & accordingly there is no foundation for saying either that it is paid out of the income of the properties acquired or that it involves a payment to the smaller zamindars out of the property of the bigger.

72. We do not think there is any substance in the argument that the compensation fixed by the Act is illusory. Under Section 27 of the Act every intermediary whose rights, title or interest in any estate are acquired will be entitled to receive & to be paid compensation as provided in the Act, & Section 68 provides that the compensation shall be given either in cash or in bonds or partly in cash & partly in bonds as may be prescribed. Under Section 54 this compensation has been fixed at eight times the net assets mentioned in the compensation roll. The manner of determining the not assets is laid down in Section 44, that is by deducting certain items from the cross assets which in turn are determined in the manner laid down in Section 39. The basis of the calculation is the actual income derived by the intermediary from his property. It follows from this that property not earning any income is not valued at all, & the appcts. contend with considerable force that such property is being acquired without compensation being paid for it. Such items of property include scattered timber, trees, tanks, wells, irrigation works & barren land.

73. It is pointed out to us that in the new items of expenditure included in the Uttar Pradesh Budget for 1951-52 it is mentioned that there are valuable irrigation works belonging to Zamindars in the State, near the Nepal border, for which the State will be paying no compensation. Another instance is that of the Balrampur State which has 600 miles of canals and five pumping engines. It is further pointed out that according to the Report of the United Provinces Abolition of Zamindari Committee there are 88'91 lakhs acres of waste land. This produces no recorded income & consequently the

State acquires this property without payment, not because it is valueless but because it has been yielding no income. There is thus no doubt that at least some of the interests of the intermediaries are not being valued at all for purposes of compensation.

74. Our attention was also drawn to the fact that in the determination of their net assets agricultural income-tax, if any, payable by the intermediaries is deducted from the gross assets thereby reducing the amount of the compensation which will be paid. Reliance was placed on the decision in Jhalak Prasad Singh v. Province of Bihar, 20 Pat. 573 at pp. 624 & 659 that agricultural income-tax is a tax on the person, & the deduction of the amount paid under this head in the calculation of the net assets is, therefore, it is said, not justified.

75. It is conceded by the State that the compensation payable under the Act is not the equivalent in value of the property acquired; & it would appear, indeed we think it is not seriously in dispute, that the intermediaries paying more than Rs. 10,000 as land revenue will receive only a small fraction of what the State Govt. considers to be the value of the property. The amount is undoubtedly low, but it is clearly not so low to justify us in saying that the compensation is illusory. Our attention was drawn to the case of Maharaja Lachmeswar Singh v. Chairman of the Darbhanga Municipality, 17 I. A. 90. In that case it was held that a Ct. of Wards which was unable to give away land of its ward could not, by colourably accepting a merely nominal consideration of one rupee, confer valid title. In our opinion the case is clearly distinguishable. The amount payable by way of compensation under the Act is admittedly not compensation as that term is understood in law, but it is clearly not so small as to be illusory.

76. The final contention was that as compensation has not been paid for some portions of the property which has been acquired that property has been confiscated by the State. The argument rests on the assumption that compensation is being paid on the basis of the income of the property, & that, therefore, no compensation is payable for non-income yielding property. We think this argument to be fallacious. In the first place compensation is based on the net assets of the intermediary, those assets being measured by the value of the net income. Secondly, what is being acquired under the Act are the estates of the intermediaries, & each of such estates must be regarded as a whole. It would not in our opinion be correct to regard the acquisition of an estate as an aggregate of the acquisition of separate parts of or interests in the estate considered independently of each other. In the Uttar Pradesh one of the most common ways of fixing the price of Zamindari property when it is purchased or sold is to ascertain from the khatauni the income of the property, & then to settle by agreement between the parties the multiple of that income which is to be the price of the property. A person investing money in the purchase of property wants to know what return its purchase is going to bring him, & the income of the property is therefore a very common, but not of course the only, way of determining the value of the property.

77. We have not deemed it necessary to consider the submissions made on this point at length as we think it clear that the real basis of the argument is the inadequacy of the compensation payable under the Act. In view, however, of the provisions of Clause (4) of Article 31, it is obvious that inadequacy of the compensation is not a matter which is open to challenge, & we are satisfied that there is no other ground from which we can infer that the provisions of the Act with regard to

compensation constitute a fraud on the Constitution.

78. A further ground on which the Act is challenged is that it contravenes the provisions of Article 19(1)(f) which declares that all citizens shall have the right "to acquire, hold & dispose of property". It is urged that this right is subject only to the limitation found in Clause (5) of that Article, which permits the legislature to make any law imposing reasonable restrictions on the exercise of the right in the interests of the general public or for the protection of the interests of any Scheduled Tribe. It is argued that even if the effect of Clause (4) of Article 31 is to relieve the State from the necessity of proving that the acquisition of the appcts.' land is for a public purpose the State has nevertheless to establish that the acquisition is being made in the interests of the general public.

79. Article 19 deals with the right to freedom guaranteed to all citizens. This right to freedom consists of a number of personal rights which are particularized in the Article. One of such rights is the right to acquire, hold and dispose of property, & no legislation is possible which will take or abridge away any of these rights unless it comes within the ambit of Clause (s). It will be observed that Clause (5) contains no provision for the payment of any compensation, & that while Article 19 applies only to citizens, Article 31 protects all persons from being deprived of their property save by authority of law. To bring the difference clearly into contrast we cannot do better than to borrow language familiar in the United States & say that while Clauses (2) to (6) of Article 19 make provision for the exercise of police powers, the acquisition of property by the State is an exercise of the right of eminent domain.

80. Under Article 31, the State may compulsorily acquire a person's property and that property is thereby transferred to the State, but under Article 19, Clause (5), the State may only impose restrictions reasonable in the general interest on the right to acquire, hold or dispose of property. In our view the acquisition of property is not the subject of Article 19(1)(f) but of Article 31. This view is reinforced by the consideration that as the Constitution contains specific provisions in Article 31 relating to the acquisition of property it is unlikely that it was intended that that matter should also be within the ambit of Article 19(1)(f), & it is consistent with the view expressed by Das J., in Gopalan's case, (1950) S. C. R. 88 at p. 304 & reaffirmed by that learned Judge in Chiranjilal's case, (1950) S. C. R. 869 at p. 919 that if a person loses his property by reason of it having been compulsorily acquired under Article 31 he loses his right to hold that property & cannot complain that his fundamental right under Article 19(1)(f) has been infringed. We are, therefore, of the opinion that the provisions of Article 19(1)(f) are not contravened by the impugned Act.

81. Arguments have been advanced by learned counsel on behalf of certain waqfs & Hindu religious institutions, based on Articles 25(1) & 26, Clause (c), of the Constitution. Article 25(1) provides that :

> "Subject to public order, morality & health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice & propagate religion." It is said that a mutawalli's right to profess his religion is infringed if the waqf property is compulsorily acquired, but the acquisition of that property under Article 31 (to which the right conferred by Article 25 is expressly subject) has nothing to do with such rights & in no way interferes with this exercise.

82. Article 26, Clause (c) provides that "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to own & acquire movable & immovable property," & the argument is that as such institutions have been thereby guaranteed the right to own property, any acquisition of their property is a contravention of the provisions of the Article 19(1)(f) is.. distinguished from Article 26, Clause (c) on the ground that ownership of property is guaranteed under the latter but not under the former. This argument we think to be wholly fallacious. Article 26, Clause (c), confers on every religious denomination the right to own & acquire property but it does no more than this, & we can see no ground for holding that it prevents, or was intended to prevent, property belonging to a religious body being acquired by authority of law.

83. Article 14 of the Constitution declares that the "State shall not deny to any equality before the law or the equal protection of the laws within the territory of India." We do not think, as was suggested in argument, that "equality before the law" has the same meaning as "the equal protection of the laws" but the distinction is not of importance in this case. The former may be defined as the equal subjection of all persons to the ordinary law of the land & the latter as the protection of equal laws. The protection of equal laws does not mean that all laws must be uniform, but it does require equality of treatment under like circumstances & conditions. Willis in a passage (Constitutional Law, p. 579) quoted with approval by Fazl Ali, J., in Chiranjilal's case, (1950) S. C. R. 869, at. p. 877) says, with reference to the corresponding words in the 14th Amendment.

> "The inhibition of the amendment . . . was designed to prevent any person or class of persons from being singled out as a special subject for discriminating & hostile legislation. It does not take from the states the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, & nullifies what they do only when it is without any reasonable basis. Mathematical nicety & perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis." Any classification must however always rest upon some real & substantial distinction "bearing a reasonable & just relation to the things in respect of which the classification is made" (see Southern Railway Co. v. Greene, (1910) 216 U. S. 400:54 Law. Ed. 536).

84. The provisions of Article 14 are, it is contended, infringed by Section 4(2) of the impugned Act.

85. Sub-s. (1) of that section authorises the State Govt. to declare by notfn. that as from a specified date all estates in the Uttar Pradesh shall vest in the State, & enacts that from such specified date all such estates shall stand transferred to & vest in the State free from all encumbrances. Under Sub-section (2) the State Government is empowered, if it so considers necessary, to issue from time to time the notifn. refd. to in Sub-s. (1) of Section 4 in respect only of such area or areas as may be specified. It is said that under Sub-s. (2) so wide a distinction has been given to the State Govt. that it has the power to pick & choose the persons whose estates shall be taken over and that this may result in an unjustifiable inequality of treatment which is contrary to Article 14.

86. We do not think that this contention can be supported. It has to be borne in mind that the Uttar Pradesh is the largest of the Part A States in India. The number of intermediaries whose estates will be taken over exceeds 20 lakhs. Careful and elaborate administrative arrangements will necessarily have to be made for the taking over of these estates, and it is clearly not unreasonable for the State to be given authority to take over the estates gradually and not all at one time. "The equal protection of the laws" does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate.

87. The State is also presumably the best judge of the time at which all estates in a particular area may be taken over. There is no presumption that when a discretion has been given to a responsible authority it will be abused. On the contrary it has been held by the Supreme Court in Dr. N.B. Khare v. The State of Delhi, (1950) S. C. R. 519, that there is a presumption that the authority will act according to law and an apprehension of misuse 'Should not weigh with the Court.

88. In our opinion, the applicants have failed to show that such classification as may result from Section 4(2) does not rest on a reasonable basis and the argument that that sub-section offends against Article 14 consequently fails.

89. On behalf of the taluqdars of Avadh great reliance has been placed by Chaudhri Niamatullah on Clause (b) of Article 294 the effect of which, it is said, is wholly to prevent the State from acquiring the property granted to them by the British Government. We have been taken in great detail through the history of the taluqdari system. All that we need however mention is that in the year 1856, when Avadh was first annexed, a summary settlement, known as the First Summary Settlement, was made by the British Government with the actual cultivators. The big landlords, who wielded considerable power and influence not only on the tenantry but at the Court in Lucknow, wore ignored. When the uprising came in 1857 many of the cultivators took up arms against the Government, with the result that after the disturbances were quelled the policy was changed and it was decided to show more favour to the big landlords of Avadh who would be better able to help and support the Government and assist in maintaining law and order in the countryside. In furtherance of this policy, the Queen issued a Proclamation in 1858, and in 1859 a Durbar was held in Lucknow at which Lord Canning granted to a large number of taluqdars sanads guaranteeing to them absolute rights, subject to their good behaviour, in property which was at the same time made over to them. It is mot necessary for us to consider the attempt made to restrict, in the interest of their descendants, the right of the taluqdars to transfer their property, or how the rule of primogeniture came to be introduced. The argument of learned counsel is that these sanads constituted a settlement or contract between the talukdars and the Government, and that as they contained no provision whereunder the property could ever be resumed by the Government for a public or any other purpose their acquisition under the impugned Act would be invalid. Our attention was drawn to Section 65, Government of India Act, 1858, which gave the taluqdars the right, under certain circumstances, to file suits against the Secretary of State. The rights conferred upon the taluqdars by Act of Parliament, according to learned counsel, could not be taken away by the Indian Legislature and, therefore, up to 15-8-1947, no acquisition of taluqdari property for a public purpose, even on payment of full compensation, was possible.

90. It may be the case that before that date the Indian Legislature had not the power to restrict a right conferred by an Act of Parliament, but it is not true to say that taluqdari property could not be made the subject of legislation by the Indian Legislature. The history of the taluqdari law itself makes this clear. The Oudh Estates Act, 1869, was passed by the Governor-General in Council and that Act was amended and modified by a number of subsequent Acts of the Indian Legislature. Chaudhri Niamatullah has argued that the rights of the taluqdars under their sanads nevertheless remained unimpaired, and that it is upon their sanads and not on the provisions of the Oudh Estates Act that their title is founded. The question is however no longer one of importance for since the case of Jagannath Baksh Singh v. United Provinces, 73 I. A. 123 it cannot be contended that the rights of taluqdars, whether founded on the sanads or the Act, is not a matter which was within the legislative competence of an Indian Legislature. In Jagannath Baksh Singh's case one of the arguments advanced was that because the United Provinces Tenancy Act of 1939 interfered with the rights of the taluqdars it was ultra vires the Legislature. On this point their Lordships said :

> "That Act was within the express powers of the Legislature which passed it. 'It must always be remembered', said Gwyer C. J.. in United Provinces v. Atiqa Begum, (1940) F. C. R. 110 at p. 133 'that within their own sphere the powers of Indian Legislatures are as large and ample as those of Parliament itself'. It is many centuries since the Courts were invited to hold that an Act of Parliament was ultra vires or invalid in law on the ground that it infringed the prerogative of the Grown. So startling a claim as that made in the present case cannot be upheld. That broad and general principle is sufficient to dispose' of the claim. No Court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence."

91. This case was sought to be distinguished on the ground that the regulation of the relations of landlord and tenant is different from compulsory acquisition of the land. The principle laid down by the Privy Council is, however, of general application, for as their Lordships said, at p. 132 :

> "Support may be found (if support be needed) for the general proposition that the Crown cannot deprive itself of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists,"

and they quoted with approval the remarks of Luxmoore J. in North Charterland Exploration Co. v. The King, (1931) 1 Ch. 169 at p. 187) that :

> "The doctrine of derogation from grant cannot be applied in the case of a grant by the Crown so as to deprive it of its paramount right (that is, as the legislative authority) to legislate for the Protectorate in which the subject of the grant is situate. To do so would be to place the Grown with reference to any land granted by it in an inferior position to that occupied by other owners of land within the same Protectorate."

92. The position is, therefore, that prior to 26th January 1950, the rights of taluqdars in land granted to them under a sanad were subject to such laws as might from time to time be passed by an

Indian Legislature acting within its appropriate field. The argument that Article 294, Clause (b) alters the position is, in our opinion, ill-founded. The effect of that Article is merely to declare that the rights, liabilities and obligations of the Government of the Dominion of India and of each Governor's Province, shall devolve respectively on the present Government of India and the Government of each corresponding State. We can see no ground for holding that the effect of Article 294, Clause (b) is to confirm for ever the rights of taluqdars in land granted to them by the British Government. The argument, to our minds, has no substance and is not necessary for us to pursue it further.

93. On behalf of two of the applicants, the Raja of Jagammanpur and the Raja of Kashipur, an argument was advanced on the footing that the Rajas possessed sovereign rights in their respective estates and that as a consequence the Government of the Uttar Pradesh had no power compulsorily to acquire any part of their property.

94. The Raja of Jagammanpur obtained from the British authorities in 1852 a sanad which, after reciting that the taluqa of Jagammanpur consisting of 46 villages was granted to his ancestor by Raja Jai Chand of Kannauj, confirmed him in the possession of those villages. The claim of the Raja of Kashipur is founded on a sanad granted to him on 7th November 1828, by Lord William Bentinck, the then Governor-General of India. Under that sanad the Governor-General assigned a taluqa known as Taluqa Ghachahat to the predecessor of the present applicant as a jagir in perpetuity, and in that sanad it was ordered "that the public officers do allow the taluqa in question to remain in the undisturbed possession of Raja Guman Singh and do allow it to descend undivided to the head of the family in perpetual succession."

95. Neither of these sanads shows that any rights of sovereignty were conferred upon either of the appcts. in respect of the property mentioned in their respective sanads. Their position, therefore, is not to be distinguishable from that of any other grantee from the Crown. The cases of the Maharaja of Kapurthala & the Raja of Bhadawar are similar, & persons to whom assignments of land revenue have been made by the State are also in the position of grantees from the Crown.

96. It was also submitted that legislations for the acquisition of property held on a grant from the Crown could be enacted only by the Indian Parliament, & reference was made to Entry 32 in List I which runs :

> "Property of the Union & the revenue therefrom, but as regards property situated in a State specified in Part A or Part B of Schedule 1 subject to legislation by the State, save in so far as Parliament by law otherwise provides."

We think it clear that that Entry is irrelevant in this connection. The impugned Act is legislation on the subject of acquisition of private property for a public purpose. All such property is in the Uttar Pradesh, & therefore by virtue of the provisions of Articles 245 & 246 the State Legislature has exclusive jurisdiction on the subject.

97. A further argument was addressed to us on behalf of certain of the appcts. based on Section 3, Crown Grants Act, 1895, which provides that :

> "All provisions, restrictions, conditions & limitations over contained in any such grant or transfer as aforesaid shall be valid & take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

97. That section, however, does not impose a restriction on the powers of a Provincial Legislature, for as their Lordships of the P. C. said in Jagannath Baksh Singh's case, (73 I. A. 123) :

> "These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of T. P. Act, 1882, & must be read with reference to the general context & could not be construed to extend to the relations between a sanad-holder & his tenants. Still less could they be construed to limit the statutory competence of the Provincial Legislature under the Constitution Act." This argument therefore cannot be sustained.

98. The impugned Act is then attacked on the ground that, in contravention of the Constitution, the Legislature has delegated important legislative powers to the executive authorities. The first argument in support of this contention which it is necessary for us to consider is that the P. C., in the case of Jatindra Nath v. Province of Bihar, 1949 F. C. R. 595 decided that a State Legislature cannot delegate its legislative functions to any other body or authority, & that that decision is binding upon us. Two questions are thus raised, & it is convenient first to consider with some care what was decided in Jatindra Nath Gupta's case, for a judgment is authority only for the actual decision arrived at & for the principle on which that decision is founded.

99. The principal question before the Ct. was whether the proviso to Section 1(3), Bihar Maintenance of Public Order Act, 1947, was within the legislative competence of the Provincial Govt. of Bihar. The proviso in question was in these terms :

> "Provided that the Provincial Govt. may by notfn. on a resolution passed by the Bihar Legislative Assembly & agreed to by the Bihar Legislative Council, direct that this Act shall remain in force for a further period of one year with such modifications, if any, as may be specified in the notfn."

The Ct. hold, by a majority, that the enactment was ultra vires the Legislature. The argument before the Ct. appears to have been directed to the question whether the impugned section was an act of conditional legislation as understood in the line of English authorities starting with Queen v. Burah, (5 I. A. 178), and it seems to have been conceded by the applts. that if it was not conditional legislation then it was an example of delegated legislation & ipso facto invalid : see the observations of Kania C. J., at p. 605 & of Mukherjea J. at p. 641. The learned Chief Justice, Mukherjea & Das JJ. (Patanjali Sastri, J., did not express an opinion on this point) had no hesitation in holding that the impugned section was not conditional but delegated legislation & was therefore invalid. Mahajan J., at p. 621, said that the proviso amounted to an abdication of legislative authority by the Provincial

Legislature & an attempt to set up a parallel Legislature for enacting a modified Act. What then was decided was that a Provincial Govt. could not delegate to some other authority the power to extend & modify a provincial enactment. It is, we think, important to observe that the general question whether (to quote the words of Mukherjea J., in a later case):

> "a Provincial Legislature exercising its legislative powers within the limits prescribed by the Imperial Parliament in the Govt. of India Act, 1935, could delegate its legislative functions in any manner to an outside authority as it thought proper,"

was neither raised nor decided in Jatindra Nath Gupta's case.

100. That later case was State of Bombay v. Narottamdas, A. I. R. (38) 1951 S. C. 69 in which the S. C. had before it the question of the validity of State Act which was challenged on the ground that it involved an unconstitutional delegation of legislative power. In this case the Ct. held that the impugned legislation came within the ambit of the principle laid down in Burah's case and that therefore Jatindra Nath Gupta's case was distinguishable. In view of its conclusion that the enactment before it was one of conditional legislation the S. C. declined to go into the broad question whether a State legislature could delegate its powers, although invited to do so by the Attorney General, but Das J., (with whom Patanjali Sastri J., agreed) expressly reserved the right to consider that question, & also the correctness of the decision in Jatindra Nath Gupta's case on that point, as & when the occasion may arise. Jatindra Nath Gupta's vase decided (so far as is relevant for the present purpose) that a provincial legislature in 1947 could not delegate to some other authority power to extend & modify an existing Act. The broad question whether a provincial legislature under the Act of 1935 could delegate its legislative functions to another person or body was neither raised nor decided. That broad question, but in relation to State legislation under the Constitution of India, is now before this Ct. & in our opinion the decision in Jatindra Nath Gupta's case has not decided the issue which we have to consider.

101. It is unnecessary, therefore, for us to consider whether the decision in that case is binding upon us ; nor is the question one of importance for whether technically binding or not a decision of the F. C. & the judgments therein, will invariably be treated with the greatest respect.

102. The P. C. has always held that, like the British Parliament, Colonial Legislatures set up by it are not delegates of the power vested in them. It is well known that the British Parliament is supreme ; it has the power to make any law it chooses & no Ct. can question the validity of a Statute which it has enacted. The legal fiction is that the people are themselves present in Parliament & members of Parliament are not delegates of the people. The leading case on the point is The Queen v. Burah, 5 I. A. 178. In this case the question was whether a section of an Indian Act conferring upon the Lieutenant Governor of Bengal power to determine whether the Act itself or any part of it should be applied to a certain district was ultra vires. Under the Act power was given by the Legislature to the Lieutenant Governor to extend the Act to certain districts, with such modifications & limitations as he may think proper. Power was also given to him to specify the date from which the Act was to come into force. It was urged that these were legislative powers which could not be delegated. Rejecting this argument their Lordships held that Indian Legislatures are in no sense agents or

delegates of the British Parliament which created them, but have & were intended to have, plenary powers of legislation, as large, & of the same nature as those of Parliament itself. The area is no doubt restricted, but within the area their powers are unrestricted. Then referring to the power of the Lieutenant Governor to extend the appln. of the Act to certain districts, their Lordships observed :

> "Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence is no uncommon thing ; & in many circumstances, it may be highly convenient .... It cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative power which it from time to time conferred."

103. The same view has been expressed by the P. C. in subsequent decisions. In Hodge v. The Queen, (1883) 9 A. C. 117 the question was whether the Legislature of Ontario had power to entrust to a Board of Comrs. authority not only to make regulations under a local Liquor Licensing Act, but also to impose penalties for the breach of such regulations. Their Lordships, after observing that the powers exercised by the legislature for Ontario were not in any sense exercised by delegation from or as agents of the Imperial Parliament, said :

> "Within these limits of subjects & area the local legislature is supreme, & has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a Municipal institution or body of its own creation authority to make bye-laws or resolutions as to subjects specified in the enactment, & with the object of carrying the enactment into operation & effect.
>
> It is obvious that such an authority is ancillary to legislation, and without it an attempt to provide for varying details & machinery to carry them out might become oppressive, or absolutely fail."

Then referring to the argument that a Legislature committing important regulations to agents or delegates or abdicates its functions, their Lordships observed:

> "That is not so. It retains its powers intact, & can, whenever it pleases, destroy the agency it has created & set up another, or take the matter directly into his own hands. How far it shall seek the aid of subordinate agencies, & how long it shall continue them, are matters for each Legislature, & not for Cts. of law, to decide."

[See also Powell v. Apollo Gandle Co. Ltd., (1885) 10 A. C. 282]; Liquidators of the Maritime Bank of Canada v. The Receiver General of New Brunswick (1892) A. C. 437 ; In re the Initiative and Referendum Act, (1919) A. C. 935 ; Croft v. Dunphy (1933). A. C. 156, and George Walken Shannon

v. Lower Mainland Dairy Products Board, A.I.R. (26) 1939 P. C. 36.

104. Our attention was drawn to an observation of the P. C. in the case of Emperor v. Benoari Lal, 72 I. A. 57 which appears at first sight not to be consistent with the view expressed in the earlier cases. "It is undoubtedly true," their Lordships said, "that the Governor General acting Under Section 72 of Schedule 9 must himself discharge the duty of legislation there cast on him & cannot transfer it to other authorities."

In that case the Governor General of India had, in the exercise of the emergency powers found in the ninth Schedule of the Govt. of India Act, 1935, promulgated an Ordinance (No. 2 of 1942) which provided for the creation of special Cts. of criminal jurisdiction & empowered the Provincial Govt. not only to decide when such Cts. should be established but to direct either by itself or through any of its officers what class of cases and persons shall be tried by those Cts. instead of by the ordinary criminal Cts. As regards the first of these powers the Judicial Committee said :

> "This is not delegated legislation at all. It is merely an example of the not uncommon legislative arrangement by which the local application of the provisions of a statute is determined by the judgment of a legal administrative body as to its necessity,"

& as regards the objection based on the power given to the Provincial Govt. to determine by which Ct. a person should be tried, their Lordships said :

> "There is not of course the slightest doubt that the Parliament of Westminster could validly enact that the choice of Cts. should rest with an Executive authority & their Lordships are unable to discover any valid reason why the same discretion should not be conferred in India by the law making authority, whether that authority ia the Legislature or the Governor-General, as an exercise of the discretion conferred on the authority to make laws for the peace, order and good Govt. of India."

105. This last observation makes it clear, we think, that when the Judicial Committee said that "the Governor-General must himself discharge the duty of legislation there cast on him and cannot transfer it to other authorities" the Board meant no more than that he could not abdicate his functions; their Lordships did not mean that the Governor-General could not delegate to other authorities the power of making regulations to carry into effect his own legislative Act. Benoari Lal's case is but one, in our opinion, in a line of authorities extending from Burah's case in 1878 to Thakur Jagannath Baksh Singh's case, 73 I. A. 123 in 1946 which lay down the principle that the powers of an Indian or Dominion Legislature are as large, & of the same nature as those of the British Parliament itself.

106. It is, however, contended that whatever may have been the powers of an Indian Legislature which owned its existence to an Act of the British Parliament, different considerations apply in the case of a State Legislature today, & the principles which regulate its powers must be determined by the provisions of the Const. Ind. It was on the other hand suggested by the Attorney-General that even the present Constitution is a creation of the British Parliament because the Constituent

Assembly by which it was framed had been empowered by an Imperial Act--the Indian Independence Act --to do so. This suggestion has no force for it is, we think, abundantly clear that by this Act the British Parliament & the British Grown abdicated all their powers & authority in respect of the governance of India. Once they abdicated their powers the authority of the Constituent Assembly was no longer derived from the British Parliament but was based on the will of the people of India.

107. The main argument on behalf of the appcts. was this, that since the powers of a State Legislature must be found within the four corners of a written constitution which declares the will of the people, & that as there is in the Const. Ind. the same vesting of different powers of the State in the Legislature, executive & the judiciary as is to be found in the Constitution of the United States of America, the rules that have been laid down by the S. C. in America forbidding the delegation of power by either of the separate organs of the State must also be the rule in India.

108. In the American Constitution the separation of the powers of the throe great departments of the State, Legislative, Executive and Judicial, is founded on the belief that the co-mingling of the various powers in the same hands would lead to tyranny & despotism. Article 1, Section 1, United States Constitution provides that: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate & House of Representatives." Article 2, Section 1, laid down that "The executive power shall be vested in a President of the United States of America. . . ." & Article 3, Section 1, provided that :

> "The judicial power of the United States shall be vested in one S. G. & in such inferior Cts. as the Congress may, from time to time, ordain & establish. . . ."

From the fact of the distribution of powers of the State in three different organs, three principles have been evolved by the American Cts. first that each organ can exercise only those powers with which it has been vested; it may not encroach upon the sphere of any other organs, secondly, that none of the organs can perform any other function but its own and thirdly, that each organ must perform its own function & not delegate the same to some other body or person.

109. The reasons for the non-delegation of powers by the different organs have been stated by Cooley (Constitutional Limitations, Vol. I, p. 224) in these words:

> "Where the sovereign power of the State has located the authority, there it must remain; & by the constitutional agency alone the laws must be made until the Constitution itself is changed.
>
> The power to whose judgment, wisdom & patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom & patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."

Landes (The Administrative Process, p. 95) puts the matter thus:

> "The legislative process, the judicial process, & the executive process all imply the idea of delegation from some ultimate source of power. In American democratic theory, as in American Constitutional Law, that source of power is professedly the people of the United States." The practical difficulties arising out of a literal application of the rule against delegation were noticed at an early stage by John Marshall, G. J., who, perceiving that there are some powers difficult to classify, "powers which analytically or historically or from both standpoints might be assigned to either of two departments," held that it was within the legislative competence to assign their exercise to the executive branch :
>
> "'The line has not been exactly drawn' he observed 'which separates those important subjects, which must be entirely regulated by the Legislature itself, from those of less interest, in which a general provision may be made, & power given to those who are to act under such general provisions to fill up details.' (Wayman v. Southard, (1825) 10 Wheat 1 : 6 Law. Ed. 253).

110. In Panama Refining Company v. A.D. Ryan, 293 U. S. 388 : 79 Law. Ed. 446 the Ct. said:

> "Since legislation must often be adapted to complex conditions involving a host of details with which the Legislature cannot deal directly, the constitutional inhibition against delegating legislative authority does not deny to the Legislature the necessary resources of flexibility & practicability, enabling it to lay down policies & establish standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits & the determination of facts to which the policy as declared by the Legislature shall apply. Without this power, Legislatures would often be faced with the anomaly of possessing a power over a given subject, but being unable to exercise it."

111. The distinction between what can be delegated & what not, has been tersely summed up in Hampton & Co. v. United States, 276 U. S. 394 : 72 Law. Ed. 624:

> "the power to make a law which involves discretion as to what the law shall be, & conferring an authority or discretion as to its execution, to be exercised under & in pursuance of the law. The first cannot be done; to the latter there is no valid objection."

112. In spite of the rule against delegation, the American Legislature has in practice been able to confer very wide authority upon executive bodies & persons. The extent of delegation had, indeed, become so great that Elihu Root could conclude in 1916 that, because of the rise of the administrative process, "the old doctrine prohibiting the delegation of legislative power has virtually retired from the field & given up the fight." The authority transferred was in Holmes J.'s felicitous phrase, "softened by a quasi" & the Cts. were thus "able to grant the fact of delegated legislation &

still to deny the name."

113. While Congress cannot abdicate or transfer to others the essential legislative functions with which it is vested, it is clear that as long as a policy is laid down & a standard established by an Act, there is no unconstitutional delegation involved in leaving to elected bodies or persons the making of subordinate rules within the prescribed limits: (Schechter Poultry Corp v. United States, 295 U. S. 495 : 79 Law. Ed. 1570). There must be a measure to which the exercise of the delegated power shall conform. The enabling legislation must, in other words contain a frame-work within which the executive body must operate. The point is well brought out by Cardozo J. who, in the same case, observed:

> "The delegated power of legislation which has found expression in this Code is not canalized within banks that keep it from overflowing. It is unconfined & vagrant. . ."

114. The separation of powers which is a characteristic of the United States' American Constitution is to be found also in the Australian Constitution. Thus Section 1, Commonwealth of Australia Constitution Act (63 & 64 vict Ch. 12) provided for the legislative power of the Commonwealth to be vested in a Federal Parliament. Section 61 vested the executive power of the Commonwealth in the Queen to be exercised by the Governor-General as the Queen's representative. Judicial power was vested Under Section 71 in a Federal S. C. to be called the H. C. of Australia, & in such other Federal Cts. as the Parliament creates & in such other Cts. as it invests with federal jurisdiction.

115. The question whether an Australian legislature has power to delegate its functions to other bodies or persons had arisen in the H. C. of Australia on more than one occasion & has been answered in the clearest terms in the affirmative. Thus in Baxter v. Ah Way, 8 C. L. R. 626 Griffith C. J., observed :

> "It is of course obvious that every Legislature does in one sense delegate some of its functions. It is too late in the day to say that the legislature cannot create, for instance, a municipal authority & give it power to make bye-laws or create a public authority with power to make regulations having the force of law, or confer upon the Governor in Council power to make regulations having the force of law, or upon the Judges of the Ct. power to make Rules of Ct. having the force of law. Nor is it to the purpose to say that the legislature could have done the thing itself. Of course it could. In one sense this is a delegation of authority because it authorises another body which it specifies to do something which it might have done itself. It is too late in the day to contend that such a delegation if it is a delegation, is objectionable in any sense. The objection certainly cannot be supported by relying on the maxim delegatus non delegare patest, nor in my opinion, on any other ground,"

& Higgins J., said :

> "The Federal Parliament has, within its ambit, full power to frame its laws in any fashion, using any agent, any agency, any machinery that in its wisdom it thinks fit,

for the peace, order, & good government of the Commonwealth."

116. Again in Victorian Stevedoring and General Contracting Go. Proprietary Ltd. v. Dignan, 46 C. L. R. 73 the Ct. had to consider the effect of Section 3, Transport Workers Acts, 1928-29, which conferred a power upon the Governor-General to make regulations not inconsistent with that Act with respect to the employment of transport workers, but with a power to make provisions contrary to the existing law. No standards to guide the discretion of the Governor-General, were fixed, yet the Act was held to be intra vires. In the course of his judgment in this case Evatt J., observed at p. 119.

> "The true nature & quality of the legislative power of the Commonwealth Parliament involves, a part of its content, power to confer law-making powers upon authorities other than Parliament itself.
>
> The nature of the legislative power of the Commonwealth authority is plenary, but it must be possible to predicate of every law passed by the Parliament that it is a law with respect to one or other of the specific subject-matters mentioned in Sections 51 & 52 of the Constitution,"

& at p. 121 he said, "On final analysis, therefore, the Parliament of the Commonwealth is not competent to "abdicate" its powers of legislation. This is not because Parliament is bound to perform any or all of its legislative powers or functions, for, it may elect not to do so; & not because the doctrine of separation of powers prevents Parliament from granting authority to other bodies to make laws or bye-laws & thereby exercise legislative powers, for it does so in almost every statute; but because each & every one of the laws passed by Parliament must answer the description of a law upon one or more of the subject-matters stated in the Constitution. A law by which Parliament gave all its law making authority to another body would be had merely because it would fail to pass the test last mentioned."

117. The Australian Constitution is similar to the United States' Constitution in that both make provision for the vesting of the three principal governmental functions in separate depts. of State; it is similar to the Indian Constitution--but therein differs from the American--in that the executive is made responsible to the legislature, & it differs both from the American & the Indian Constitution in that it is an enactment of the Parliament at Westminster whereas the latter are the declarations of the will of sovereign & independent peoples.

118. In the Indian Constitution there is no express vesting of the legislative or judicial powers of the State; the executive power alone is expressly vested in the President. It is true that Parliament has been empowered to make laws & the S. C. & the H. Cs. & Cts. established thereunder are to exercise judicial powers, & to that extent there is an exercise of different functions by different organs, but there is no distinct & separate vesting of those powers. Where the executive is responsible to the Legislature, delegation of legislative functions is not open to the same objections as in the United States of America. A wider approach to the problem is open, for as Evatt J., said (at p. 114) of the Victorian Stevedoring and General Contracting Coy's case :

> "This close relationship between the legislative & executive agencies of the Commonwealth must be kept in mind in examining the contention that it is the Legislature of the Commonwealth, & it alone, which may lawfully exercise legislative power. "It is the duty of the Judiciary," said Isaacs, J. (as he then was) in the case of Commonwealth v. Colonial Combing, Spinning and Weaving Co., ((1922) 31 C. L. R. at pp. 438-439), "to recognise the development of the Nation & to apply established principles to the new positions which the Nation in its progress from time to time assumes. The judicial organ would otherwise separate itself from the progressive life of the community, & act as a clog upon the legislative & executive depts. rather than as an interpreter." There is no reason, therefore, why the doctrine of separation of powers as understood in the United States should be imported into India. We do not think that any stress can legitimately be laid on the words of Article 246 that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I. The word 'exclusive' in the context relates to the distribution of powers between the Union & the States & has no relevance to the question whether delegation is possible.

119. Legislative powers are conferred on the legislatures of India by the Constitution; & it is in the Constitution that there must be found the extent and the limits of the powers so conferred. "If," as was said in Burah's case, "what has been done is legislation, within the general scope of the affirmative words which give the power, & if it violates no express condition or restriction by which that power is limited .... it is not for any Ct. of Justice to inquire further, or to enlarge constructively those conditions & restrictions."

Those words were used with reference to the powers of a legislature created by Parliament at Westminster, but we think they apply with equal force to a legislature created by the Const. Ind. That Constitution has placed a limitation on the matters in respect of which a State Legislature may make laws; & it has further provided that no laws made by a legislature on a matter within its own field shall contravene any of the fundamental rights set forth in Chap. III. If the framers of the Constitution did not think fit to impose restrictions on the manner in which a legislature may exercise its powers it is not, we think, for the Cts. to be astute to invent or evolve them. As Kania C. J. said in Gopalan's case, (1950) S. C. R. 88 at p. 120 :

> "When the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument."

120. A legislature must of course legislate : it cannot abdicate its powers. But provided it preserves its own capacity intact we can see no reason why it should not delegate powers of subordinate legislation to such other authorities as it deems proper.

121. The constitution confers upon a State Legislature power to make laws in respect of a large number of subjects. It has not in terms placed any restriction or limitation upon the manner in

which the Legislature shall exercise that power, & we cannot doubt that it was the intention of the framers of the Constitution, that within its field, a State Legislature should not only have power to legislate but power to legislate effectively. With the growing complexity of modern civilization, it is no longer possible for a major enactment to be wholly self-contained; fifty years ago Dicey pointed out that the cumbersomeness & prolixity of English Statute Law is due in no small measure to futile endeavours of Parliament to work out details of large legislative changes. Important legislation, therefore, necessarily tends more & more to take the form of a formulation of the principles involved leaving it to some other person or body to work out the detailed application of the general principles. Some measure of delegation of legislative power is thus unavoidable; & that has been recognised, in fact, if not by name, even where the doctrine of the separation of the powers has its strongest hold. These considerations lead us to the further conclusion that if the power of delegation possessed by a Legislature is of a more limited character than we have stated earlier, there are nevertheless certain classes of legislation which a Legislature must have power to entrust to another authority. Such classes will include : (1) Conditional legislation, that is to say, legislation complete in itself but the taking effect of which or of some provision of which is made dependent upon the determination of certain conditions or circumstances by some other authority. (2) The power to modify or adapt, within restricted limits, the application of a law in order that it may be brought or kept in conformity with the intention of the Legislature. Within his class falls the power to vary a statutory classification such as a list of dangerous drugs or the minimum safety standards for aircraft. Such legislation may be called "adaptation legislation." (3) lower may be conferred on a local or other territorial authority to make rules & regulations for local self-govt. or for other local purposes. This power is well established & the necessity for it is obvious. (4) A power to enact supplementary legislation which does not fall under the other three headings but which is necessary to give effect to the broad principles laid down in the enabling Act.

122. Our attention has been drawn to a large number of sections in the impugned Act by which it is said the State Legislature has illegally delegated its powers.

123. It is convenient to refer first to those sections which form part of chap. 3 & relate to the assessment of compensation--they are Section 29, 40(e), 44(e) & 55(g) --& Section 68, for they stand on a somewhat different footing to the other sections which are now being attacked. All these sections relate to compensation or the principles on which or the manner in which it is to be ascertained or paid. The Act has laid down the broad principles according to which compensation is to be computed, & the manner in which it shall be given. It provides that compensation shall be eight times the net assets to be ascertained according to the principles laid down in Section 44 together with, in certain circumstances, the Rehabilitation Grant payable Under Section 73. It lays down the principle that some part of the compensation, called interim compensation, is to be paid to the intermediaries (Section 29). It also lays down the manner of payment -- that it may be wholly in cash or in bonds, or partly in one and partly in the other. It leaves to the rule-making authority the power to fix the details in connection with the ascertainment of the assets (Section 44), the preparation of the compensation assessment roll (Section 40), details as to how much the interim compensation shall be & in what manner it shall be paid (Section 29), details as to how much of the compensation shall be in bonds & how much in cash, & what shall be the duration of the bonds (Section 68), & the apportionment of the compensation payable to a thekedar [Section 55(g)]. Apart

from any consideration of the provisions of Article 31(2), there: is nothing unreasonable in leaving these details to be filled in by the rule-making authority & such delegation clearly falls under class (iv) of the permissible heads of delegation.

124. If it be urged that Article 31(2) requires even these details to be laid down by "law" before property is acquired, it is to be observed that Article 31(4) protects the legislation from challenge on that ground. The same comment applies to Section 104 relating to Rehabilitation Grant. Sections 4, 117 & 235 (4) are instances of conditional legislation, while Sections 2(1), 45, 48, 98, 100 & 342(1)(a) are illustrative of what we have described as "adaptation" legislation. Sections 26, 64, 72, 105, 112, 128, 230, 240, 204 & 318 empower the State to make rules for the purpose of carrying into effect the provisions of the several chapters of the Act. The power which is thereby delegated falls under the head of what we have described as supplementary legislation, intended to make effective the general principles contained in those chapters. Section 305 authorises acquisition of the interest of a person holding an uneconomic holding on payment of compensation, by which term we understand is meant its equivalent monetary value. The details of how this compensation is to be determined & paid is to be prescribed by rules. Similarly, Under Section 314(4) acquisition of land for the purposes of the consolidation of a holding is authorised on payment of compensation, but the method has to be determined by the rules. The powers conferred under these two sections are those of supplementary legislation. Of the other sections brought to our notice, namely Section 6, Clauses g (ii) & (i), 9, 18 (3); 59, 80 (h), 89, 91, 92 (e), 118 (2) (j), 119, 124, 127 (1) (c) and 127 (2), 144 (proviso), 178 (1) (b) & (2), 198 (2), 211, 212, 213, 218, 226 (2), 245 Clause (a) (iii), 246 (1) (b), 258, 263 exception (4), 264 (1), 274, 282 (5), 303 (2), 315, 317, 321, it is enough, we think, to say that we have examined them with care & although some of them are framed in wide terms we are not prepared to say that they relate to powers the delegation of which is manifestly unnecessary or unreasonable for the purpose of effectively carrying out the purpose of the Act. They come also within the category of supplementary legislation. We are of course expressing no opinion with regard to the rules themselves which have yet to be prescribed. Such rules will be open to challenge if they are (a) uncertain or unreasonable, (b) contrary to the provisions of the impugned Act or (c) contrary to the general principles of law.

125. We turn now to Sections 113 & 114 of the impugned Act which deal with the creation of a Gaon Samaj for each village. Section 113 is challenged on the ground that the Legislature has no power to establish a Gaon Samaj as a body corporate. It is urged that only an existing assocn. of individuals can be incorporated, & that such an assocn. can result only from an agreement or contract between the persons concerned; or, in other words, that juristic personality can only be conferred on an already existing person or assocn. In support of this argument reliance has been placed on a passage in Stephen's Commentaries on the Laws of England (Edn. 21), vol. 2 at p. 558, where the learned author says :

> "Independent juristic personality can only be conferred upon an assocn. according to English law, by some act on the part of the State, represented either by the Grown in the exercise of its prerogative rights, or by the sovereign power of Parliament. When this quality of personality is conferred upon an assocn. it is called a Corpn.; & a body of persons which has not received this gift of personality from the State is spoken of

an 'unincorporated assocn.' "

These remarks refer, however, to the manner in which corporate personality may be conferred by the Grown, the existence of the assocn, being presumed.

126. The argument, in our opinion, has no substance. It is not necessary that there must be a voluntary society of individuals united together by mutual agreement for common purposes before a corpn. can come into existence. It was held in Suttons Hospital case, (1612) 10 Co. Rep. 23a, that a corpn. is not invalid merely because at the moment of its creation it does not in fact exist, so long as it is capable of coming into existence--"one may by letters patent be governor of an army before there be an army" (ibid, page 32a)--and the Advocate-General has drawn our attention to a number of instances of public corpns. which were created by the Statute & which did not involve the conferment of juristic personality on an existing body; for example, the Civil Aviation Act, 1946 (9 & 10 Geo. VI, chap. 70), The New Towns Act, 1946 (9 & 10 Geo. VI Chap. 68), & the National Health Service Act, 1946 (9 & 10 Geo. VI, chap. 81). There are also in this country many similar instances of corpns. having been created by Statute, the Damodar Valley Corpn. Act (Act No. XIV of 1948) being a case in point. In our opinion the State Legislature was competent under Entry 32 of List II to establish in every village a Gaon Samaj as a body corporate.

127. The second argument is that Section 114 contravenes the provisions of Article 19(1)(c) of the Constitution, which declares that all citizens shall have the right to form assocns. or unions, because it makes membership o£ the Gaon Samaj compulsory. The argument is that from the right to form assocns. or unions must follow the right to refuse to belong to an associn. or union, & the compulsory incorporation of all adults effected by Section 114 consequently contravenes the provisions of Article 19(1)(c).

128. Under Clause (4) of Article 19 a law imposing a reasonable restriction on the right of assocn. can be made only in the interest of public order or morality. The Advocate-General has refd. us to the Declaration of Human Bights adopted by the United Nations Organisation where the right of assocn. is expressed both in its positive as well as in its negative form, & he places reliance on the fact that in Article 19 there is no such negative restriction. It appears, however, to us clear that the right to form an assocn. or union necessarily implies that a person is free to refuse to be a member of an assocn. or union if he so desires.

129. There is no doubt, we think, that under the Common Law a person cannot be made a member of a corpn. without his consent :

> "If the inhabitants of a town are incorporated yet everyone must be admitted before he becomes a corporator. The Grown can't oblige a man to be a corporator, without his consent; he shall not be subjected to the inconvenience of it, without accepting it & assenting to it" : per Lord Mansfield in R. v. Askew, (1768) 4 Bur 2186 at p. 2200.
>
> The question is, whether the effect of Section 114 is to make membership of a Gaon Samaj compulsory for the persons mentioned in the section. Section 114, so far as is

relevant, provides that :

"A Gaon Samaj shall consist o£ all adults who, for the time being

(a) ordinarily reside in the circle for which it is established, or

(b) hold land as bhumidhars, sirdars, asamis or adhiwasis in that circle."

130. The contention of the appcts. is that the use of the expression 'shall consist of' in this section means that the persons thereafter specified are made members of the Gaon Samaj. We do not think so. "To consist of" is an expression used to indicate merely the parts of which a thing is composed, & the expression 'shall consist of' which is of frequent occurrence in enactments merely delimits the class or classes of persons entitled to membership of a particular body; see, for example, the Indian Bar Councils Act, 1926, Section 4, the Cantonment Act, 1924, Sections 13(8), 18(4) & 13(5), the United Provinces District Boards Act, 1922, Section 4(2) & the United Provinces Municipalities Act, 1916, Section 9. The scheme of the impugned Act is that the functions or the Gaon Samaj are entrusted to the Gaon Sabha, another corpn. created under the Panchayat Raj Act, 1947, & this corpn. itself acts through an elected body, the Gaon Panchayat, constituted Under Section 12 of that Act. In the whole of the impugned Act "members" of the Gaon Samaj are refd. to only in two places, namely, in Sections 122 & 295. In Section 121, the Gaon Panchayat is enjoined to establish for each Gaon Samaj circle a committee for carrying out the duties relating to the settling & management of land & such other duties as may be prescribed. That committee is to be constituted in the manner laid down in Section 122 which provides that it shall consist of all the members of the Gaon Panchayat from the circle for which it is established. There are three provisos to this section but we need only refer to the first & second. The first proviso enacts that should the number of such members of the Gaon Panchayat be less than ten, the members of the Gaon Sabha from the circle concerned shall elect from amongst the members of the Gaon Samaj such number as will bring the total up to ten; & the second proviso that no person shall be entitled to be or remain a member of the aforesaid committee if he is of unsound mind or is otherwise disqualified on one or more of the grounds thereafter stated. It is clear, therefore, from the provisions of Section 122 that unless a member of a Gaon Samaj agrees to participate in the settling & management of land he need take no part in it.

131. Section 295 refers to the right of ten or more members of a Gaon Samaj who hold between them. bhumidhari or sirdari rights in thirty acres or more to form a co-operative farm. The exercise of the right is left to the will of the members & there is no compulsion of any kind.

132. Upon a careful consideration of the relevant sections of the Act we are satisfied that no person can be made a member of the Gaon Samaj against his will ,& the contention of the appcts. on this point must therefore fail. As the impugned Act does not make membership of a Gaon Samaj compulsory the question whether there has been a contravention of the provisions of Article 19(1)(c) does not arise, & for the same reason there is no ground for saying that the State Legislature has exceeded its powers under Entry 32 of List II in Schedule VII of the Constitution.

133. It had been argued for the State that even if Section 114 be void, Section 113 read with Section 128--which gives the State power to make rules for the purpose of carrying into effect the provisions of the Chapter in which Sections 113 & 114 are to be found--would be enough to establish each Gaon Samaj as a body corporate. This is a misconception because, as was laid down in Sutton's Hospital Case, ((1612) 10 Co. Rep. 23a at p. 296), the persons to be incorporated are "of the essence of the incorporation", & who those persons are is to be ascertained only from Section 114.

134. A further contention advanced by the appcts. was that the Gaon Sabha established by the Panchayat Raj Act, 1947, was unconstitutional because it also involved compulsory membership. We think this contention to be clearly untenable. Section 3 of that Act provides that the State Govt. shall establish a Gaon Sabha for every village or a group of villages, & Section 4 provides that every Gaon Sabha shall be a body corporate. Section 5 enacts that--

> "a Gaon Sabha shall consist of all adults permanently residing within the area for which the Sabha is established, but no such adult shall be entitled to be or to remain a member of a Gaon Sabha, if he --
>
> (a) is of unsound mind. . . . . "

Section 9 further provides that--

> "On the establishment of a Gaon Sabha the prescribed authority shall cause to be prepared a register ... & such register shall .... contain the names of every person entitled Under Section 5 to be a member of the Gaon Sabha on the date of its establishment . . . . "

135. It is we think abundantly clear from the use of the word "entitled" in these provisions that membership of a Gaon Sabha is voluntary & not compulsory, & that therefore this submission also fails.

136. The result, therefore, is that the Zamindari Abolition Act does not contravene any provision of the Constitution & is not invalid on that account. We dismiss these applns. In our view it is a fit case where parties must bear their own costs & we order accordingly.

137. We certify under Article 132(1) that these cases involve substantial questions of law as to the interpretation of the Constitution.

Malik C. J.

138. I agree that if Rehabilitation Grant can be treated as a part of compensation then the question of its validity on the ground that it is discriminatory cannot be raised in a Ct. of law by reason of Clause (4) of Article 31. On the question of fact, however, whether Rehabilitation Grant is a part of compensation I am not prepared to hold that it is. The Legislature treated the two differently & gave eight times the net assets as compensation & directed payment of Rehabilitation Grant to some of

the Intermediaries. It must be presumed that the Legislature intended to differentiate between the two when it deliberately divided the two payments & gave them different names. No case has been cited to us in which a Legislature, which is the representative of the people, was ever held to be guilty of fraud. In Abitibi Power and Paper Co., Ltd. v. Montreal Trust Co., (1943) A.C. 536 at p. 548, their Lordships of the Judicial Committee observed :

> "This Board must have cogent grounds before it arising from the nature of the impugned legislation before it can impute to a Provincial Legislature some object other than what is to be seen on the face of the enactment itself."

139. In State of Arizona v. State of California et al., 75 Law. Edn. 1154 at p. 1166, Brandeis J. delivering the opinion of the Ct. said : "Into the motives which induced members of Congress to enact the Boulder Canyon Project Act, this Ct. may not enquire." Unless, therefore, there were some conclusive evidence on which it could be held that Rehabilitation Grant is a part of compensation I would be most reluctant to hold that it is. It is admitted that there is no direct evidence but it is urged that there are grounds for holding that Rehabilitation Grant is a part of compensation.

140. The reasons given by learned counsel for the appcts. are that both in the case of compensation as well as Rehabilitation Grant the reason for the payment is the acquisition of the property. It is true that the occasion for the two payments is the same, that is, the loss of the property to the owner thereof. The acquisition of the property, however, may result not only in depriving the owner of the property, but it may also result in the loss of the means of subsistence or livelihood & those, who have limited moans, may find it more difficult to bear the loss than others who besides zamindari may have other property or business to fall back upon. The Legislature may well consider where it is paying inadequate compensation that it should try to reduce the suffering by giving some extra help to those who are in real need of it. Though the words have not been defined in the Act, nor any reason given why Rehabilitation Grant was being paid, the name itself signifies that the idea was to help those petty zamindars of small means who have been deprived of their livelihood by the loss of the property. Viewed in this light, though the occasion for payment of compensation as well as Rehabilitation Grant may be the acquisition of the property, the reason for the payment of one is entirely different from the reason for the payment of the other.

141. The next objection, that no enquiry is made into the means of the persons to whom Rehabilitation Grant is payable, & a person paying a small revenue may be a big industrialist while a person paying a large amount as revenue may, by reason of his indebtedness be in real need, is also, to my mind, not conclusive if we bear in mind that Intermediaries, to whom Rehabilitation Grant is to be paid, exceed nineteen lacs. It would have entailed enormous cost and would have caused so much delay in payment of Rehabilitation Grant that the Legislature might well have decided not to take into account exceptional cases & to go on the basis of payment of land revenue which for the vast majority of the people was the correct criterion to judge of their means.

142. It was further urged that in the lower grades the amount of Rehabilitation Grant is much larger than the amount of compensation. One of the directive principles of State policy being, however, that citizens should have adequate means of livelihood & every one should be ensured a decent

standard of life, if the Legislature decided to be generous to the lowest class, it does not necessarily follow that what was being paid to them was compensation & not Rehabilitation Grant.

143. Reliance is also placed on the fact that both Rehabilitation Grant as well as compensation are multiples of the net assets of the Intermediaries & the amount thereof is payable in cash or in bonds or partly in cash or partly in bonds. The suggestion is that Rehabilitation Grant to be of any use must be paid in cash & there is no point in giving Rehabilitation Grant in bonds. Further that there was no reason why Rehabilitation Grant should be a multiple of the net assets & not fixed amount. The Legislature had to find an equitable basis for determining the amount payable to the poor class of intermediaries & if it thought that their means were, for a large majority at any rate correctly reflected in the net assets of the property that was being acquired there was no reason why Rehabilitation Grant should not be made a multiple thereof. As regards payment by bonds, this only gives the State an option & though receipt of bonds may not be as convenient to the Intermediaries as the receipt in cash, in case of necessity there is no reason why the State should not be given the right to pay the amount in bonds rather than in cash.

144. The last point urged is that there could be no question of Rehabilitating trusts, religious, charitable or otherwise. Rehabilitation Grant was merely to set up those whose property was being acquired & there was no reason why the trusts should have been deprived of the grant when it was being paid to private individuals, though in case of trusts the words "Rehabilitation Grant" may, to some extent, be a misnomer.

145. None of the points urged, therefore, is to my mind so conclusive as would entitle us to hold that Rehabilitation Grant must be deemed to be a part of compensation when the Legislature has ruled to the contrary.

146. The next point for consideration is whether Rehabilitation Grant can be paid on a sliding scale or whether that would contravene the provisions of Article 14 of the Constitution. Sri Beg, on behalf of the State, has urged that for an ex gratia payment to which a person may have no right the provisions of Article 14 are not applicable. He has reld. on a passage in the judgment of the S. C. in Joslin Manufacturing Co. v. City of Providence, 67 Law. Edn. 1167 which is as follows :

> "This statute, therefore, does not deny a right, it grants one & limits it to a business already established. One cannot say that such a classification is unreasonable or arbitrary & certainly it is not clearly so."

Reliance is, on the other hand, placed on the case of John Hayes v. State of Missouri, ((1887) 30 Law. Edn. 578) where it was held that --

> "The Fourteenth Amendment does not prohibit Legislation which is limited in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislalation shall be treated alike under like circumstances & conditions both in the privileges conferred & in the liabilities imposed."

The words "privileges conferred" are important & they show that the Legislature cannot discriminate and give special privileges to a person or to a class of persons. There is nothing in Article 14 which would support the contention of learned counsel for the State that when a right is created by law the State is entitled to discriminate. There is, therefore, no valid reason why Article 14, which provides that "The State shall not deny to any person equality before the law," should not apply to the Chapter relating to Rehabilitation Grant. Classification on a reasonable basis is, however, permissible for Rehabilitation Grant if it is payable according to the needs of the people rehabilitated. Sri Beg, on behalf of the State, has taken us through various Acts to show that smaller landlords have always been shown special consideration by the Legislature & they have always been more generously treated than the bigger ones. He has refd. us to the provisions of the Land Revenue Act, the U. P. Agriculturists' Relief Act, the Debt Redemption Act, & similar other Acts, & has urged that it is a well-known basis that a man who is less able to bear the loss should be more generously treated than a person who may well be able to bear the same : see Carles U. Cotting & Francis Lee Higginson v. A.A. Godard, (1901-46 Law. Edn. 92). There is no difficulty in accepting this argument if Rehabilitation Grant is accepted to be a payment to the individual according to his circumstances, to set him up in life. The classification in that case would be deemed to be possible.

147. Sri Dar has, however, urged that there is no reason why the landlords should be grouped for the purposes of Rehabilitation Grant into nine classes -- those paying land revenue up to Rs. 25 getting Rehabilitation Grant at twenty times, & those paying land revenue exceeding Rs. 25 but not Rs. 50 only seventeen times & so on, on a sliding scale. He has urged that this is really being done to give the largest amount of benefit to the largest number.

148. The largest amount of benefit to the largest number itself will not necessarily be unreasonable, but why for purposes of Rehabilitation Grant the Intermediaries have been divided into nine classes was a matter for the Legislature. Classification on a reasonable basis is not bad because it is not done with mathematical accuracy -- (see Stuart Lindsley v. Natural Carbonic Gas Company, (1911) 55 Law, Edn. 369 at p. 377) & further there is a presumption that the Legislature knows correctly about the needs of the people and the discrimination by it must be deemed to be on adequate grounds (see Charlie Middleton v. Texas Power and Light Company, (1919) 63 Law, Edn. 527 at p. 581. It is further pointed out in Jessie Norton Torrence Magoun v. Hinds Trust and Savings Bank, (1898) 42 Law, Edn., 1037 at p. 1043 that there is no precise application of the rule of reasonableness. It has, therefore, to a large extent to be left to the Legislature. For the purposes of making payment to rehabilitate a person the needs of the person to be rehabilitated can be taken into consideration & it cannot be said that the same amount of Rehabilitation Grant must be paid to everybody without taking into consideration his circumstances in life. Payment can, therefore, be made on a sliding scale according to the means of the person. We have already held that the amount of land revenue paid is, in a vast majority of cases, a good test of a man's means. Rehabilitation Grant could, therefore, be paid on a sliding scale & for marginal cases marginal adjustments have been provided for in the Act itself. The validity of the Act, therefore, cannot be challenged on the ground that Rehabilitation Grant has not been paid on a uniform basis & is, therefore, discriminatory.

149.One point that has, however, troubled me to some extent is whether differentiation between religious & charitable trusts paying land revenue above Rs. 10,000 & those paying land revenue of Rs. 10,000 or loss can be made on any reasonable basis. No Rehabilitation Grant is payable to religious or charitable trusts paying land revenue of above Rs. 10,000; they are entitled to get only eight times the net income, while trusts paying land revenue of Rs. 10,000 or less are entitled to got by way of Rehabilitation Grant an annuity worked out on principles laid down in Section 99 of the Act. The point was not brought out in arguments by learned counsel & if the decision of this question had been necessary I would have liked to hoar further arguments. I am, however, clearly of the opinion that even if this be discriminatory treatment between smaller religious or charitable trusts & larger ones it does not really affect the other Intermediaries. Religious & charitable trusts can easily be separately classified from the other Intermediaries & oven if the Legislature had not acquired the interests of religious & charitable trusts, other intermediaries could not have objected on the ground that they should be put on the same basis as religious or charitable trusts. To make my point more clear, the Legislature may well have added religions & charitable trust in Section 2 (1) (b) of the Act or it may have had a separate clause for the same. Some of the applns. are on behalf of religious & charitable trusts. In case we were holding that the Act is invalid I would have liked to hear further arguments on the point whether classification between larger religious & charitable trusts & smaller religious & charitable trusts was possible, & in case such a classification was not possible how that matter would affect the rest of the Act.