Sh. Jilubhai Nanbhai Khachar Etc Etc vs State Of Gujarat And Anr. Etc. Etc on 20 July, 1994

Equivalent citations: AIR 1995 SUPREME COURT 142, 1994 AIR SCW 4181, (1995) 1 MAHLR 557, 1994 (4) JT 473, 1994 (1) UPTC 603

Bench: K. Ramaswamy, N. Venkatachala

CASE NO.:
Appeal (civil) 2211-15 of 1984

PETITIONER:
SH. JILUBHAI NANBHAI KHACHAR ETC ETC.

RESPONDENT:
STATE OF GUJARAT AND ANR. ETC. ETC.

DATE OF JUDGMENT: 20/07/1994

BENCH:
K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:

JUDGMENT 1994 Supp(1) SCR 807 and C.A. 3013 of 1990 The Judgment of the Court was delivered by K. RAMASWAMY. J These five appeals raise four-pronged attack on the Constitutionality of the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982 (for short "the Amendment Act"). Though unsuccessful in the High Court of Gujarat in Special Civil Application Nos. 1118 of 1982 and batch by judgment of the Division Bench dated 7/8 September, 1983 and followed in Special Civil Application No. 763/82 dated September 16, 1988 the appellants had leave of this Court. A short shift of the antecedent history of land tenures in Saurashtra region of the State of Gujarat is necessary to focus the focal points posed for decision, by common judgment. The appellants are suc-cessors of Barkhalidars and Girasdars. The erstwhile Saurashtra State consisted of 220 princely states rules by sovereign Rulers in their own rights.The lands in these appeals form present parts of Surendra Nagar and Bhavnagar districts. In the State of Saurashtra, the Rulers entered into agreements with Taluqadar and estate holders and also created a class of interested people known as "Barkhalidars or Girasdars, Various parcels of lands together with all rights in or interest over those lands were granted for cultivation on payment of revenue etc. with a right of succession in favour of their cadets or relations or favourites known as "Girasdars" or "Barkhalidars".

> "Gharkhed", known in South India estate tenures as "Homefarm lands", means land reserved by land holder for personal cultivatioa "Bid Land" means such lands as has been used by the land holders for grazing his cattle or for cutting grass for the cattle. "Land holder" means Zamindar, Jagirdar, Girasdar, Taluqadar etc. or any person

who is a holder of land or who is interested in land and whom the Government has declared, on account of the extent and value of the land or his interests therein, to be a landholder.

The system in vogue was that the lands that were under control of the rulers through the agriculturists, the latter had to bring their produce to a common place "khali" meaning thereby threshing floor. The ruler or his agent used to take stock of the total produce harvested and set apart towards the ruler's share according to the custom or the contract and the remainder belong to the agriculturists. In the other system the land was granted to the "Girasdars" or "barkhalidars", and the requirement of bring-ing the harvest by the agriculturists to the threshing floor was dispensed with. This anachronistic land tenure system was done away with by progres- sive different land tenures conferring permanent ryotwari settlements on the tiller of the soil through The Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 which later became the Act, the Saurashtra Land Reforms Act, 1951; the Saurashtra Barkhali Abolition Act, 1951 and the Saurashtra Estates Acquisition Act, 1952 (for short "the Act"). Under the respective statutes the rights and liabilities of Girasdars or Barkhalidars have been determined. The details whereof are not relevant for the purpose of these appeals. Suffice it to state that Section 2(c) of the Act defines "estate" to mean 'all land of whatever description or an undivided share thereof held by a Girasdar and includes uncultivable waste land etc. Section 2(a) defines land as "land of any description whatever and includes benefits whatsoever arise out of the land and things attached to the earth or permanently anything attached to the earth. These defini-tions are of wide amplitude to include mines and mineral wealth beneath surface land of whatever description. Section 3(1) abolishes Girasdari or Barkhalidari tenures by a notification published by the government in the Official Gazette, from time to time declaring with effect from a specified date that all rights, title and interest of the Girasdars or Barkhalidars shall, in respect of any estate or part of an estate comprised in the notification, ceased and to be vested in the State and all the incidents of the said tenures attaching to any land comprised in such estate or part thereof shall be deemed to have been extinguished. Sub- Section (2) thereof empowers the State Government to issue notification from time to time in respect of an estate or part of an estate or in respect of any area specified in the said notification. The consequences of the abolition of Girasdars' and Barkhalidars' rights in the estate have been provided in Section 4 of the Act. Under clasue (2) of s.4 relevant for the purpose of this case, it has been provided that consequent upon the notification issued by the govern-ment under Section 3, with effect from the specified date, all cultivable and non-cultivable waste land, excluding land used for building or other non-agricultural purposes.....which are comprised in the estates so notified shall, except in so far as any rights of any person other than the Girasdar or the Barkhalidar may be established in and over the same.....and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State and all rights held by a Girasdar or a Barkhalidar in such property shall be deemed to have been extinguished, (emphasis supplied) and it shall be lawful for the Collector,

subject to the general or special orders of the Revenue Commissioner, to dispose of them as he deems fit, subject always to the rights of way and or other rights of the public or of individuals legally subsisting. Under Section 7, a Girasdar or Barkhalidar is entitled to compensation for the extinguishment of their rights and the details thereof are not necessary for the purpose of this case. At this juncture, it is relevant to note that Saurashtra Land Reforms Act, 1951 defines 'agriculture' by Section 2(2) which includes horticulture and the raising of crops, fodder or garden produce and "agricultural land" means any land, including wells, which is used for the purpose of agricul-ture and includes sites of farm buildings appurtenant to land used for agricultural purposes and sites of dwelling houses and wades occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses. Under Section 2(15) "Girasdar" means any taluqadar, bhagdar, bhayat, cadet or mulgirasia and includes any person whom the Government may, by notification in the Official Gazette, declare to be a Girasdar for the purpose of this Act. In the same Act, under Section 2(13) "estate"

means all land of whatever description or an undivided share thereof held by a Girasdar and includes uncultivable waste, whether such land is used for the purposes of agriculture or not and Section 2 (18) defines "land" which means any agricultural land, bid land or cultivable waste. Section 2(7) defines "cadet" which means a brother or a son of a Ruler to whom a grant of land was made by such Ruler after 14th day of August, 1947, and who is allowed to retain such grant by the Government or any heir or successors of such person. Under Section 2(8) "Code" means the Bombay Land Revenue Code, 1879 for short "the Code" as adapted and applied to the State. Under Section 4, all Girasdari lands are liable to payment of land revenue. The Saurashtra Barkhali Abolition Act, 1951 defines under Section 2(i) "Bharkhalidar" which means a person who holds a tenure as Barkhalidar, Jiwaidar, Chakariyat, Kherati, or Dharmada and includes any holder of an estate whom the Government may, by notification in the Official Gazette, declare to be a Barkhalidar for the purpose of this Act. Section 2(iia) defines "estate" which includes a Jagir, inam or other grant or interest or aggregate of interests of similar nature in land but shall not include an occupancy, Section 5 of the Act abolishes Barkhali tenure existing as on the date and Barkhali estate shall cease and be vested in the State free from all encumbrances, subject to the provisions of this Act. The Act gives right to the Barkhalidar to make an application for personal cultivation and the details etc. are not necessary for the purposes of these appeals.

As seen, consequent upon the abolition of the estate under section 3(1) of the Act by issuance of the notification and ensuring consequences under Section 4, the Girasdar or Barkharidari tenures stood extinguished and vested in the State. When questioned in Civil Application No. 689/65 in T.K. Gohil and Ors. v. C.K. Dave by a decision dated 14.8.69 J.B. Mehta, J. held that the provisions of Sections 3 and 4 of the Act would be applicable only to uncultivable waste lands which alone stood vested in the State and the lands with mines and minerals could not be held to be uncultivable waste lands and did not vest in the State. The said decision was confirmed by the Division Bench in L.P.A, No. 73/70 dated March 15, 1971. Section 69 of the Code, which was admittedly adapted to the Saurashtra region of the Gujarat State, states that the right of the Govern-ment to mines and mineral products in all unalienated land is and hereby declared to be expressly reserved provided that nothing in this

Section shall be deemed to affect any subsisting rights of any occupant of such land in respect of such mines or mineral products. Section 3(20) defines "alienated" means "transfer in so far as the rights of the State Government on payment of rent or land revenue, wholly or partially to the ownership of any person. Consequent upon this definition; the operation of Section 69 and the interpretation made by the High Court, the mines and minerals in the alienated lands stood excluded from the abolition and extinguishment of the rights of Girasdars or Barkhalidars under Sections 3 and 4 of the Act. To obviate the interpretation and to be in conformity with the object and purposes of the Act, initially the ordinance and later the Amendment Act came to be made which was reserved for the consideration, received the assent of the President on February 23, 1982 came into force with retrospective effect from May 01, 1960 - the date on which the Gujarat State was formed.

By clause (a) of s.2 of the Amendment Act the word "unalienated" was deleted from section 69 of the Code and clause (b) provides that the proviso to Section 69 shall be and shall be deemed always to have been deleted w.e.f. 1.5.1960. Under Section 3 thereof, Section 69 A was brought on statute. Sub-section (1) and sub-section (4) are relevant for the purpose of this case which read thus : -

> 69.A(1) Notwithstanding anything contained in any custom, usage, grant, sanad or order or agreement, or any law for the time being in force, or in any judgment, decree, or order of a court or of other authority, with effect on and from the 1st May, 1960 all mines whether being worked or not and minerals whether discovered or not and all quarries which are situate within the limits of any land, granted or recognised under any contract, grant or law for the time being in force or decree of a court, shall vest "in and with all rights over the same or appurtenant thereto be the property of the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Develop-ment) Act, 1957 have all powers necessary for the proper enjoy-ment and disposal of such rights."

Sub-section 4 says that:

> 11 Any occupant, whose rights fr. mines, minerals or quarries in any land, existing misnc Jiate'y before 1st May, 1960 have vested in the State of Goverment on that date under Sub-Section (1), shall be enrite in comparition of ammount of the equivalent to the average to the net anual income recived by the occupint in respect of the manged and inieral products the three yenrs immediately prociecing the date of vesting.

'It is settled law that the concept 'estate' denotes that the person holding the estate should be in direct relationship with the State paying land revenue except what is remitted in whole or in part or exempted etc. There may be variation in the local equation. The other sub-sections are not relevant for disposal of these appeals. Hence omitted.

The first contention of the appellants is that, under Entry 54, of List I of the Seventh Schedule to the Constitution, since Regulation of Mines and Minerals Development Act, 1957 occupies the field of mines and minerals covered in Section 69A of the Amendment Act, it is void and is ultra vires of the

Constitution. We find no force in this contention. The State Legislature under Entry I8 (land) and Entry 23 (Regulation of Mines and mineral development) of part II of the State List of Seventh Schedule and Entry 42 of List III of the Seventh Schedule (Acquisition of Property) under which the State Legislature claims to have made the Amendment Act, we have to see whether it is well founded.

It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related Articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitu-tion. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its con stitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude. Burden is on the appellants to prove affirmatively of its invalidity. It must be remembered that we are interpreting the Constitution and when the court is called upon to interpret the Constitution, it must not be construed in any narrow or pedantic sense and adopt such'construction which must be beneficial to the amplitude of legislative powers. The broad and liberal spirit should inspire those whose duty is to interpret the Constitution to find whether the impugned Act is relatable to any entry in the relevant List.

In India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors., [1990] 1 SCC 12, relied on by the appellants, a bench of seven judges held that "entries in the three lists of the Seventh Schedule to the Constitution, are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of these entries but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the Lists, The Lists are designed to define and delimit the respective areas of respective competence of the Union and the States. They neither impose any implied restriction on the legislative power con-ferred by Article 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. Hence, the language of the Entries should be given widest scope to find out which of the meaning is fairly capable in the set up of the machinery of the government. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an Entry, it would not be reasonable to impart any limitation by comparing or contrasting that Entry with any other one's in the same list.

It is in this background that one has to examine the present con-troversy. It is seen that under Entry 18 of List II (State List) "land", that is to say, right in or over the land..... Entry 23 (Regulation of Mines and Mineral Development) subject to the provision of List I in respect of regulation and development under the control of the Union Govt. So it relates to regulation and development of

mines and minerals. Entry 42 of List III (Concurrent List) concerns Acquisition and Requisition of proper- ty as amended by Section 26 of the Constituion (7ih Amendment Act, 1956). These specify the field of legislation given to the Gujarat State Legislature Subject to Entry 54 of List I (Union List). It is seen that under Entry 18 of the State List, land, i.e. rights in or over land which includes acquisition of the property. Entry 23 of List II which is subject to Entry 42 of List III (Concurrent List), provides field of legislation by the State legislature. Article 246(3) of the Constitution gives exclusive power to make law for the State of Gujarat or any part thereof. It is seen that Amendmni Act had received the assent of the President.

Lapd in Entry 18 is not restricted to agricultural land alone but includes non-agricultural Sand etc. The words 'rights in' or 'over land' confer very wide power which are not limited by rights between the land holders inter se or the land holder or the State or the landholder or the tenant. It is seen that restriction or extinction of existing interest in the land includes provision for abolition and extinguishment of the rights in or over the land. Resumption of the estate is one of the objectives of the govern-ment and the Act seeks to serve that object. Resumption includes all ancillary provisions, cancellation or extinguishment of any existing grant by the ex-Rules or lease by grant with retrospective effect as was upheld in Thakur Raghubir Singh & Ors. etc. v. The State of Ajmer (now Rajasthan) and Ors., [1959] SCR Supp. 1, 478.

In Black's Law Dictionary (Sixth Edition) at page 877, land is defined to mean- "in the most general sense, comprehends any ground, soil or earth whatsoever, including.....rocks. "Land" may include any estate or interest in lands, either legal or equitable, as well as easements and incorporeal hereditaments. Technically, land signifies everything comprehending all things of a permanent nature, and even of an unsubstantial provided they be permanent. Ordinarily, the term is used as descriptive of the subject of ownership and not the ownership. Land is the material of the earth, whatever may be the ingredients of which it is composed, weather, soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of airspace granted by law.

The Law Lexicon (Reprint edn. 1987) by Ramanatha Iyer p. 701, the word 'land" in the ordinary legal sense comprehends everything of a fixed or permanent nature and, therefore, growing trees, land includes the benefit arise out of the land and things attached to the earth or permanently means everything attached to the earth and also the share in or charges on, the revenue or rent of villages or other defined portions of territory. Land includes the bed of the sea below high water mark.....Land shall extend to messuages, and all other hereditaments, whether corporal or incorporeal and whether freehold or of any other tenure and to money to be paid out in the purchase of land. Land in its widest signification would therefore include not only the surface of the ground, cultivable, uncultivable or waste lands but also everything on or under it. In Jagannath Singh v. State of U.P., AIR (1960) SC 1563 p. 1568, this Court held that the word "land" is wide enough to include all lands whether agricultural or non-agricultural land. In State of U.P. v. Sarju Devi, [1978] 1 SCF 18, this court held that the definition of the land in Section 3 (14) shows that it is not necessary for the land to fall within its purview that it must be actually under cultivation or occupied for purposes connected with agriculture. The requirement is amply satisfied even if the land is either

held or occupied for the purposes connected with agriculture. The word "held" only means possession of legal title and does not require actual connected occupation. In State of Gujarat v. Kamla Ben Jivan Bhai, [1979] Supp. 2 SCC 440, this Court held that actual cultivation is not necessary to constitute an estate and the right to collect grass is a right annexed to land which was held to be an estate and abolition of the right to pay annual amount was an agrarian reform. In Sri Ram Ram Narain Medhi v. State of Bombay, [1959] Supp. 1 SCR 489, this Court held that the Code is a law relating to land tenures. The right in relation to an estate .used in Article 31A has been noted in a very com-prehensive sense. In Digvijay Singh Hamirsinhji v. Manji Savda, [1969] 1 SCR 405, this Court interpreting Section 18 of Saurashtra Land Re-forms Act, 1951 held that the Girasdar to whom the ruler made the grant was bound by the provisions of that Act and that he was not entitled to have his tenant evicted except in accordance with the provisions of the Act.

The aforestated respective Acts clearly deal with the rights of Giras-dars or Barkhalidars of their occupation and enjoyment of the land as land- holder in terms of the grant made by the erstwhile Rulers. Section 3 and 4 of the Act abolish the estate under the Act and extinguish the right, title and interest in the lands held by them. But by interpretation of the Act and the Code, the alienated land with mines and minerals were held to be outside the purview of the Act. To get over the interpretation, the order or the decree or the judgment, of any court, applying non-obstante clause, a magic vand to bring the law in conformity with the legislative policy, Section 69A was enacted to extinguish the right to mine or mineral or quarry in the lands held by any person including Girasdars or Barkhalidars and reserved them for the government under Section 69 of the Code. Omitting the word 'alienated' from Section 69, it seeks to bring the mines, minerals or quarries situated in any land by Girasdar or Barkhalidar etc. within the ambit of reservation under Section 69 read with Section 69A(1) of the Act, Thereby it is clear that, in pith and substance, the predominent purpose of the Amendment Act is to extinguish the pre-existing rights, title and interests in the land which includes the mines, minerals and quarries held by Girasdars or B .rkhajidars extingushed their rights and reserved and vested them in the State of Gujarat for public use. It would thereby tall within Entry 18 and 23 of List II (State List) read with Entry 42 of List III (Concurrent List).

In India Cement case, the question was whether levy of cess under Section 115 of Madras Panchayat Act on royalty is additional land revenue or additional royalty and whether the levy is constitutionally valid. In considering that question, a bench of seven judges, per majority, held that Section 9(3) of the Mines and Mineral (Development and Regulation) Act, 1957 imposes a liability to pay royalty and prohibits the State not to enhance more than once during a period of four year; imposition of the cess was considered to be a tax on royalty and, therefore, it is a tax on mineral rights. Accordingly, the cess on royalty was held to be outside the legislative competence. It is seen that Section 69A itself envisages acquisi-tion of the right in mines or minerals or vesting thereof, subject to the Central Act. Therefore, the ratio in India Cement case is inapplicable. Equally were the cases in Orissa Cement Ltd. & Ors. v. State of Orissa &. Ors, etc., [1991] 2 3CC 103 and Federation of Minining Association of Rajasthan v. State of Rajasthan & Anr., [1992] Supp. 2 SCC

239. Accord-ingly, it must be held that the Amendment Act in pith and substance is predominently for abolition and extinguishment of the right in lands com-prising of mines, minerals and quarries held by Girasdar, Barkhudar or any person under a grant or agreement or by operation of a decree,

order or judgment of a court and vest them in the State by their acquisition. So the Amendment Act gets the protection of Art. 31A. Thus it is not ultra vires of the power of the State Legislature.

The next contention is that the Code confines its operation to revenue administration and recovery of land revenue and matters con-nrected therewith, as applicable to the entire State. Taluqadar Abolition Act, etc. were made applicable to the State of Saurashtra as special laws i.e. (a) The Saurashtra Gharkhed Tenancy Settlement and Agricultural Land Ordinance, 1949; (b) The Saurashtra Land Reforms Act, 1951; (c) The Saurashtra Barkhali Abolition Act, 1951; and (d) The Act, The Amendment Act though seeks to cover mines, minerals and quarries reserved under Section 69 of the Code from lands engrafted in Section 69(A) of the Code, without suitably amending the relevant provisions in the afore-stated four Acts, Section 69-A does not affect the rights of the appellants and the like. In other words, it is urged that these special laws prevail over the Code. The Amendment Act, thereby, is ultra vires and does not affect the rights of the appellants to hold mines, minerals and quarries situated in their holdings. The question, therefore, is whether Amendment Act, without suitable amendment to the Acts, attracts the mines, minerals and quarries situated in the lands held by Girasdar or Barkhalidar. It is true that the Code has been adapted to the entire State of Gujarat including Saurashtra region. Section 69 of the Code reserved the rights of the government in mines, minerals and quarries from un-alienated lands. The pre-existing proviso saved subsisting mines and minerals rights of any occupant of such land and therely saved the right to mines etc. in alienated lands held under the grant etc. By operation of the Amendment Act, by detection of the word 'unalienated' and the proviso with retrospective effect from May 1, 1960 applying non-obstante clause. Section 69A(1) of the Code, rendered any grant ot an agreement or a judgment, decree or order of a Court inoperative from May 1, 1960 and all mines whether being worked or not, all minerals whether discovered or not and all quarries situated in any land, subject to the saving, shall vest in the State. Their regulation and development is subject to Mines and Minerals (Regulation and Development) Act of 1957.

The aforementioned respective enactments undoubtedly dealt with the abolition and extinguishment of pre-existing right, title and interest in the lands had under a grant etc. by Girasdari or Barkhalidari. In particular, the Act abolished the estates, extinguished the pre-existing rights, title and interest of landholders and conferred ryatwari settlement on the starvation ryots, the tillers of the soil with permanent occupancy rights. In other words, they are part of agrarian reforms and saved certain rights of Girsdars and Barkhalidars. The amended Section 69 and 69A(1) of the Code determined the existing rights and reserved them in favour of the State of the rights in mines, minerals and quarries in the lands whether alienated to unalienated whether held by Girasdar or Barkhalidar or any other. Section 69A(1), as seen earlier, brought the lands covered under a grant or an agreement or a judgment, decree or order of any court interpreted in that behalf within Section 69 of the Act. Thereby all mines, minerals or quarries situated in any land, be it alienated or unalienated, held by any person including Girasdar or Barkhildar are now governed by Sections 69 and 69A of the Code. The contention, therefore, that without amendment to the afore mentioned four Acts the amendment becomes inoperative is devoid of substance. The, analogy of special law prevails over Amendment Act and the Code, a general law, renders little assistance to the appeallants.

The third contention that limited retrospective operation of Sections 69 and 69A with effect from May 1, 1960 is illegal and ultra vires, lacks force.-Formation of the State of Gujarat became effective from May 1, 1960. In Tata Iron and Steel Co. v. State of Bihar, [1958] SCR 335 and Rama Krishna v. State of Bihar, [1964] 1 SCR 897, this Court held that the power to make law on an Entry in the Seventh Schedule of the Constitution could be exercised both prospectively and retrospectively unless there is an express constitutional prohibition to make an enactment in that behalf. It is also equally settled law that the power to make law prospectively would include the power to make the law retrospectively. The interpretation in Chapter VI at pp.293-94 hi the Principles of Statutory Interpretation by Justice G.P. Singh is of no avail in the factual backdrop. It was stated therein that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. It is true that generally law intended that vested rights or imposition of new burden cannot be deemed to have been made with retrospective effect. Equally is the settled law that the provisions which touched the right in existence at the passing of the statute are not to be applied retrospectively in the absence of an express enactment or by necessary intendment. It is equally settled law that every statute which takes away or impairs vested rights acquired under existing taws or creates a new obligation or imposes a new duty or burden or touches a new right in respect of transaction already passed must normally be presumed, unless expressed otherwise, to be intended not to have retrospective effect. In the light of the language in s.2 of the Amendment Act, the express retrospective operation given to the Amendment Act, with effect from May 1, 1960 retrospectively effected vested rights of the Girasdar or Barkhalidars created by a grant or agree-men etc. or flown from a judgment, order or a decree of any court and stood extinguished with effect from May 1, 1960. It is true that a limited retrospective effect was given to the Amendment Act as the State was formed and became operative from May 1, 1960, the date on which the State was formed. So, any grant or agreement etc. though otherwise was valid with effect from any of the anterior date, would cease and lose then" validity from May 1, 1960. Any other earlier date would have rendered the Amendment Act ultra vires. Only to obviate such an interpretation, con-sistent with the date of existence of the State legislature, i.e. the date on which the State legislature became competent to enact the Code, the Amendment Act was given retrospective operations. Accordingly, it must be held that the retrospective operation cannot be faulted nor would it be declared ultra vires.

The prinnacle contention is that s. 69A of the Code though was included in the Nineth Schedule, is not a law relating to agrarian reforms and, therefore, it does not get the protection of Article 31A. it is a law relating to acquisition of mines and minerals belonging to the appellants and others which had come into force from December 8, 1982 and is not a law made under Article 39 (b) and (c) and does not get the protection under Article 31C. Even otherwise since it was a post Kesavananda Bharti's case. Section 69A should stand the test of basic structure of the Constitu-tion. Though the right to property lost its protective armour as fundamental right after Constitution's 44th Amendment Act, 1978, it was resurrected under Article 300A as constitutional right. The, law must meet the test of Articles 14 and 21 of the Constitution also. Since it was given retrospective operation from May 1,1960, the compensation provided under sub-section (4) of Section 69A of the Code is void as compensation was not just equivalent to the property acquired or full indemnification to the owner of the mines and minerals expropriated. It must not be arbitrary and unjust. The quantification or principles in Section 69A(1) & (4) therein are illusory offending Articles 14 and 21

of the Constitution. Section 7 of the Act and other related statutes provide compensation different from the one provided under sub-section (4) of Section 69A and that it is discriminatory and bears no reasonable relation to the object of acquisition and that, therefore, it is unjust, unfair violating Article 14 and unfair procedure offends Article 21 of the Constitution. The acquisition under Section 69A(1) is in violation of Article 300A as it is not for public purpose and no market value is being paid and so it is void. Sri Dave, learned counsel for the State refuted the contentious contentions in chorus of M/s. Zaveri, Ganguli, T.U. Mehta and D.U. Shah, the learned counsel represented the appellants.

The Amendment Act received its protective canopy of Ninth Schedule in Entry 219 thereof through the Constitution's 66th Amendment Act, 1990, with effect from June 7, 1990. While dealing with the first contention, we have held that the Amendment Act is part of the scheme of agrarian reform envisaged under the Act falling within Entry 18 and 23 of List II (State List) and Entry 42 of Concurrent List of the Seventh Schedule to the Constitution. So it is saved by Article 31A of the Constitu tion.

This Court in State of West Bengal v. Mrs. Bela Banerjee & Ors. [1954] SCR 558, State of West Bengal v. Subodh Gopal Bose & Ors., [1954] SCR 587, interpreted the word 'compensation' in clause (2) of Article 31 as just equivalent or indemnification for the property expropriated which led to the Constitution 4th Amendment Act, 1955 suitably amending Article 31(2) that no law providing for compulsory acquisition or requisition "shall be called in question in any court on the ground of compensation provided by that law is not adequate." Its effect was considered in P. Vajravelu Mudaliar v. Spl. Deputy Collector, Madras & Ors., [1965] 1 SCR 614 and the Court reiterated the interpretation put up in Bela Banerjee's case. This court also, on that score, struck down the Metal Corporation (Acquisition of Under-taking) Act, 1965 in Union of India v. The Metal Corporation of India Ltd. & Anr., [1967] 1 SCR 255, for violating Article 31(2) read with Article 19(1) (f). These two decisions were reconsidered by a Constitution bench in State of Gujarat v, Shanti Lai Mongal Das, [1969] 3 SCR 341 and overruled the metal corporation's case and upheld and accepted the principles laid down in the 4th Amendment Act. Thereafter, in R.C. Cooper v. Union of India, known as Bank Nationalisation case [1970] 3 SCR 530, per majority this Court overruled Mangaldas and held that even after the 4th Amendment, compensation meant "the equivalent in terms of money of the property compulsorily acquired" according to "relevant principles which principles must be appropriate to the determination of compensation under par-ticular class of property sought to be acquired." The Parliament again amended by Constitution's 25th Amendment Act, 1971, wherein the word "compensation" was substituted with the word "amount". This had become the subject of consideration in Kesavanand Bharti v. State of Kerala, [1973] SuppL SCR 1, known as Fundamental Rights case Full Court of 13 Judges per majority of 7 Judges, held, after considering the validity of 25th Amendment Act, that substituting the word 'amount' for 'compensation' in Article 31(2) of the Constitution, the quantum of amount, if directly fixed by law, or the principles for its quantification are matters for legislative judgment. The principles made or laid down are general guiding rules applicable to all persons or transactions covered thereby. In fixing the amount the court will not sit over the general nature of the legislative purpose, The principle may be specified in fixing the amount which may include consideration of social justice as against the equivalent in value of the property acquired. Consideration of social justice will include the relevant directive principles

particularly in Articles 39 (b) and {c). These principles are to subserve the common good and to prevent common detriment. The question of adequacy had been excluded by Constitution 4th Amendment Act obviating the necessity to provide a standard or rule to measure adequacy with reference to fixing the amount. The ground of adequacy of the amount as to how the amount has to be given otherwise in cash is not amenable to judicial review. The quantum cannot be a matter for judicial review but the principles to determine the compensation must be relevant to the consideration and must not be illusory. The fundamental rights are subject to reasonable restrictions and rational discrimination and that, therefore, are amendable under Article 368 and they are not basic features or basic structure of the Constitution. The agrarian reforms covered under Art. 3LA brought by Constitution First Amendment Act and saved by Art. 31B as well as Art. 31C brought by Constitution 25th Amendment Act were upheld. Khanna, J. who constituted the majority held that right to property did not pertain to the basic structure of Constitution and it was subordinate to the common good as explained in Indira Gandhi's case. According to Hidayatullah, J. in his concurrent judgment in Golak Nath v. State of Punjab, [1967] SCR 177 and reiterated in his "Right to Property and the Indian Constitution", the right to property is an acquired right and it is the weakest right fit to be placed along with commerce clauses. The Constitution 42nd Amendment Act, 1976 had given primacy to law made to implement any or all directive principles and provided protective umbrella under Article 31C and placed in Ninth Schedule enlarging its width that "a law made to give effect to directive principles does not become void violating fundamental rights and shall not be questioned in a court of law. In Minerva Mills Ltd. v. Union of India, [1981] 1 SCR 36 per majority it was held that any law made by the Parliament or the Legislature, the latter received the assent of the Presi- dent, other than the one to give effect to the principles of Article 39(b) and (c) violates Art. 14 of the Constitution. Accordingly clause 4 of Art. 368 was declared ultra vires.

In State of Maharashtra v. Madhavrao Damodar Patilchand & Ors., [1968] 3 SCR 712 a Bench of seven judges held that the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 does not violate Arts. 14, 19 and 31 of the Constitution as it had received protection under Art. 31A by being included in the Ninth Schedule. In Waman Rao v. Union of India, [1981] 2 SCR 36, this court upheld the validity of the Bombay Agricultural Lands {Ceiling on Holdings) Act, 1961 holding that it does not violate Art. 14 of the constitution though any post Kesavananda Bharti's Act is liable to attack on the ground of violating basic features or structure of the Constitution. Right to property was held to be not a basic feature. Sanjeev Coke Manufacturing Co. v. Bharat Cooking Coal Ltd., [1983] 1 SCR 1000, had upheld the dissenting view of Bhagwati, J in Minerva Mills's case and it was held that nationalisation of coal industries does not violate Article

14. In State of Karnataka v. Ranganatha Reddy,[l918] 1 SCR 641, a Bench of seven judges per majority upheld the constitutional validity of the nationalisation of the contract carriages and held that it did not violate Article 14. In State of Maharashtra v. Basantibai Mohanlal Khetan, [1986] 2 SCC 516, this court held that the Maharashtra Housing and Area Development Act, 1976, even if it was assumed to be post 25th Amendment Act, did not violate Articles 14, 19 and 31. In Minerva Mills v. Union of India, {second Minerva Milt's case) [1986] 4 SCC 222, a Bench of two judges held that the Sick Industries Nationalisation Act did not violate the basic structure nor did it violate Art. 14 of the Constitution. In Tinsukhia Electric Supply Co. Ltd. v. State of Assam, [1989] 3 SCC 709, another constitution bench upheld the acquisition of Electrical Undertakings holding that it did not

offend Art. 14 of the Constitution. In Assam Sillianite Ltd. v. Union of India, [1992] Suppl. 1 SCC 692 and in Union of India v. Han Krishan Khosla (dead) by Lrs., [1993] Suppl. 2 SCC 149, benches of two and three judges respectively held that s.8(3)(a) of the Requisitioning and Acquisition of Immovable Property Act, 1952 was not violative of Art. 14 nor damage nor destroy the basic structure of the Constitution.

In Smt. Indira Gandhi v. Shri Raj Narain, [1976] 2 SCR 347, Mathew J. held that to be a basic structure it must be a terrestrial concept having its habitate within the four corners of the Constitution and Art. 14 is not a basic structure. After the deletion of the right to property omitting of Arts. 19(1)(f) and 31 of the Constitution by the Constitution 44th Amend- ment Act, the right to property, which was hitherto a fundamental right was dethroned from Part III and became a constitutional right under Art, 300A resaucitating only Art. 31(1) of the Constitution as originally made.

The question, therefore, is whether right to property is a basic structure, after Constitution 44th Amendment Act, 1978. Indian society is predominantly agrarian and about 3/4th of its population is living in rural areas on agriculture and other ancillary occupations. In pre-independent period, the land tenures were in vogue on Zamindari, Jagirdari, Taluqadari, inamdari or settlement systems in diverse forms. The tenure and holding by the tiller of the soil was insecure and was exploited by intermediaries. On January 26, 1950, the Independence Day, the Congress Party affirmed in its pledge that the inalienable right of the people is "to have freedom and to enjoy the fruits of their toil and have the necessities of life so that they may have full opportunity of growth". In 1931 in Karachi Congress, Resolution on Fundamental Rights envisaged that "the organiza-tion of economic life must conform to the principles of justice" emphasising to reform "the system of land tenure and revenue and rent".....relief from agricultural indebtedness.....ownership or control of land.....

The debates in the Constituent Assembly on the lines of Section 299 of the Government of India Act, 1935 and the resultant right to acquire and, hold to the property in Article 19(l)(f) and deprivation and acquisi-tion of the property under Article 31, as fundamental rights in Part III of the Constitution, find their habitation like in every constitution of modern democracies. Equally the debates in the Constituent Assembly and the unanimous animation of the founding fathers was that the tiller of the soil should be conferred with right to hold the property directly under the State and to abolish the estates, elimination of the intermediaries and conferment of right, title and interest in the land in the estate on the cultivator. There was, however, division in opinion on payment of compensation to the deprived Zamindars etc. The Constitution assures to every citizen social and economic justice apart from political justice, equality of status and of opportunity and dignity of person as basic postulates for successful working of political democracy. Establishment of economic and social democracy and agrarian reform as its ingrained facet was the nation's chartered mission for economic restructure of the social order. Land Reform laws were made on its anvil to distribute surplus lands to the landless poor etc. Whether right to property is the basic structure was pointedly projected for the first time assailing the imposition of ceiling on agricultural holdings in Maharashtra Agricutural Lands (Ceiling on Holdings) Act, 1961 as amended up to 1976 in Woman Rao's case. Chandrachud. CJ. speaking for the unanimous Constitution Bench, that decided first

Minerva Mills case prior to Constitution 44th Amendment Act, 1978, considered the constitutionality of the First Constitution Amendment Act, 1951 Intro- ducting Article 31-A and Article 31-B traced the history of land tenures, the debates in the Constituent Assembly, need for the agrarian reforms and stated that in our predominantly agricultural society, there is a strong linkage between ownership of land and the person's status in the social system. Those without land suffer not only from an economic disadvantage, but also a concomitant social disadvantage. In the very nature of things, it is not possible to provide land to all landless persons but that cannot furnish an alibi for not undertaking at all a programme for the redistribu- tion of agricultural land. Agrarian reform therefore requires, inter alia, the reduction of the larger holdings and distribution of the excess land accord-ing to social and economic considerations.....We embarked upon a constitutional era holding forth the promise that we will secure to all citizens justice, social, economic and political, equality of status and of opportunity, and, last but not the least, dignity of the individual. Between these promises and the 1st Amendment there is a discernible nexus, direct and immediate. Indeed, if there is one place in an agriculture- dominated society like ours where citizens can hope to have equal justice, it is on the strip of land which they till and love, the land which assures to them dignity of their person by providing to them a near decent means of livelihood.....

The First Amendment has thus made the constitutional ideal of equal justice a living truth. It is like a mirror that reflects the ideals of the Constitution: it is not the destroyer of its basic structure. The provisions introjnceded by it "and the 4th" Amrndment for the extinguishment or modification of rights in lands held or let for purposes of agriculture or for purposes ancillary thereto, strengthen rather than weaken the basic struc-ture of the Constitution..... It seems to us ironical indeed that the laws providing for agricultural ceilings should be stigmatized as destroying the guarantee of equality when their true object and intendment was to remove inequalities in the matter of agricultural holdings. The Constitution (First Amendment) Act and the (4th Amendment) Act do not destroy or damage the basic structure of the Constitution. This Court in Kesavananda Bharti's case held that Article 31-C brought by Constitution 25th Amendment Act, 1971 has to be given full play as it fulfills the basic purpose of restructuring the economic order. Each word in Article 39 has a strategic role and the whole Article has a social mission. It embraces the entire material resour-ces of the community. Its task is to distribute such resources. Its goal is' so to undertake distribution as best to subserve the common good. It reor-ganizes, by such distribution, the ownership and control of material resour-ces of the Community. Resources is a sweeping expression and covers not only cash sources but even ability to borrow credit resources.....In State of Tamil Nadu v. L. Abu Kavi Bai, [1984] 1 SCC 515, another Constitution Bench interpreting Article 39(b) and (c) (material resources) held that the concept is wide enough to cover not only natural or physical resources but also movable or immovable properties such as the vehicles, tools, imple- ments and the workshops, etc. The mere fact that the resources are material will make no differences in the concept of the word 'resources'. The word 'distribution' used hi Article 39(b) must be broadly construed so that a court may give full and comprehensive effect to the statutory intent contained in Article 39(b). It should not be construed in a purely literal sense so as to mean only division of a particular kind or to particular persons. The word 'distribution' will include various facets, aspects, methods and terminology of a broad-based concept of distribution. It does not merely mean that property of one should be taken over and distributed to others like land reforms. It is only one of the modes of

distribution but not the only mode. Nationalisation of the transport as also the units, the vehicles would be able to go to the farthest....."as possible and provide better and quicker and more efficacious facilities". Nationalisation of con-tract carriages were thus upheld.

In Sanjeev Coke Manufacturing Co.'s case, it was held that material resources of the community in the context of reordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Everything of value or use in the material world is material resources and the individual being a member of the community his resources are part of those of the community to exclude ownership of private resources from the coils of Article 39(b) is to cipherise its very purpose of redistribution on the socialist way. 'Material resources of the community' means all things which are capable of producing wealth for the community. There is no warrant for interpreting the expression in so narrow a fashion and to confine it to public owned material resources, and exclude private-owned material resources. The expression involves nc dichotomy. The words must be understood in the context of the Constitu-tional goal of establishing a sovereign, socialist, secular, democratic republic. Nationalisation of coking units were upheld.

In State of Kerala v. The Gwalior Rayon Silk Manufacturing Co. Ltd. [1974] 1 SCR 671 and 690, 691-A, another Constitution Bench had held that the concept of agrarian reform is a complex and dynamic one promot-ing wider interests than conventional reorganisation of the land system or distribution of land. It is intended to realise the social function of the land. In Gujarat Pottery Works Pvt. Ltd, v. B.P, Sood, [1967] 1 SCR 695 another Constitution Bench held that in the interest of the national economy this court considering modification, held that the State shall have full control over the minerals and metal resources of the factory including the power to cancel or modify the terms and conditions of prospective licences or mining lease. It was further held that they were not violative of Arts. 14, 19 and 31. Since they are saved by the Ninth Schedule, they are immuned by operation of Art. 31,.....

It is, therefore, clear and we so hold that the material resources of community is a wide concept and must be broadly interpreted to bring within its sweep all resources, natural or physical moveable or immovable, corporeal or incorporeal, tangible or intangible properties etc. Private resources or property are part of material resources of the community. All things that produce wealth for the community are material resources. The word "distribution" equally must be construed broadly to include not only allotment of resources to public use but also dispensation of largess to the poor to provide access to equal opportunity. In other words it is a broad based concept and it should not be confined within narrow confines. Mines, minerals and quarries embedded in the land are material resources of the community amenable to public use or for distribution.

Thus it is clear that right to property under Art, 300A is not a basic feature or structure of the Constitution. It is only a constitutional right. The Amendment Act having had the protective umbrella of Ninth Schedule habitat under Art. 31B, its invalidity is immuned from attack by operation of Art. 31A. Even otherwise it would fall under Arts. 39(b) and

(c) as contended by the appellants. It is saved by Art. 31C. Though in the first Minerva Mill's case, per majority, Article 14 was held to be a basic struc-ture, the afore-referred and other preceding and subsequent to the first Minerva Mill's case consistently held that Art. 14 is not a basic structure. Article-14 of the Constitution in the context of right to property is not a basic feature or basic structure. The Constitution 66th Amendment Act, 1990 bringing the Amendment Act 8/1982 under 9th Schedule to the Constitution does not destroy the basic structure of the Constitution, Even agreeing with the contention that after the Constitution Forty-fourth Amendment Act, 1978, which had come into force from June 19, 1979, the right to property engrafted in Chapter IV, Part 17, namely Art. 300A that the appellants are entitled to its protection, whether Section 69A is unconstitutional? The heading "Right to Property" with marginal note reads thus :

> "Art. 300A : Persons not to be deprived of property, save by authority of law : - No person shall be deprived of his property save by authority of law" which is restoration of Article 31(1) of the Constitution.
>
> In Subodh Copal's case Patanjali Sastri, CJ, held that the word 'deprived' in clause (1) of Art. 31 cannot be narrowly construed. No cut and dry test can be formulated as to whether in a given case the owner is deprived of his property within the meaning of Art. 31; each case must be decided as it arises on its own facts. Broadly speaking it may be said that an abridgement would be so substantial as to amount to a deprivation within the meaning of Art. 31, if, in effect, if withheld the property from the posession and enjoyment by him or materially reduced its value. S.R. Das, J, as he then was, held that Clauses (1) and (2) of Art, 31 dealt with the topic of 'eminent domain', the expressions 'taken possession of or 'acquired' according to Clause (2) have the same meaning which the word 'deprived' used in clause (1). In other words, both the clauses are con- cerned with the deprivation of the property; taking possession of or ac- quired, used in Clause (2) is referable to deprivation of the property in Clause (1). Taking possession or acquisition should be in the connotation of the acquisition or requisition of the property for public purpose. Deprivation specifically referable to acquisition or requisition and not for any and every kind of deprivation. In Dwarka Das Srinivas of Bombay v. Sholapur Spinning and Weaving Co. Ltd., [1954] SCR 674, Mahajan, J., as he then was, similarly held that the word 'deprived' in clause (1) of Art. 31 and acquisition and taking possession in clause (2) have the same meaning delimting the field of eminent domain, namely, compulsory acquisition of the property and given protection to private owners against the State action. S.R. Das, J. reiterated his view laid in Subodh Gupal's case. Vivian Bose, J. held that the word 'taken possession of or 'acquired' in Art. 31(2) have to be read along with the word 'deprived' in clause (1). Taking possession or acquisition amounts to deprivation within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. The word "law" used in Art. 300A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order. Deprivation of property is by acquisition or requisition or taking possession of for a

public purpose.

It is true as contended by Sri Javery that clause (2) of Art. 31 was not suitably incorporated in Art. 300A but the obligation to pay compen-sation to the deprived owner of his property was enjoined as an inherent incident of acquisition under law is equally untenable for the following reasons. Ramanatha Aiyar's 'The Law Lexicon' Reprint Edition 1987, p. 385, defined 'eminent demain' thus: "The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the soverign to take it for a public purpose. This right is called "eminent domain". At p. 386 it was further stated that the sovereign power vested in the State to take private property for the public use, providing first a just compensation therefore. A superior right to apply private property to public use. A superior right inherent in society, and exercised by the sovereign power, or upon delegation from it, whereby the subject matter of rights of property may be taken from the owner and appropriated for the general welfare. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the state is called eminent domain. The right of every government to appropriate, otherwise than by taxation and its police authority, private property for public use. The ultimate right of sovereign power to appropriate not only the public property but the private property of all citizens within the territorial sovereignty, to public purpose. Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use."

In 'Black's Law Dictionary' 6th edition, at p. 523 'eminent domain' is defined as 'the power to take private property for public use by the state, municipalities and private persons or corporations authoritised to exercise functions of public character. in United States the power of eminent domain is founded in both the Federal (Fifth Amendment) and State Constitutions. The Constitution gives the power to take for public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as 'condemnation' or 'expropriation'.

The right of eminent domain is the right of the sovereign State, through its regular agencies, to reasert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term "eminent domain".

This Court in Chiranjit Lal Chowdhuri v. Union of India, [1950J SCR 869, held that eminent domain is a right inherent in every sovereign to take and appropriate private property belonging to

individual citizens for public use. The limitation imposed upon acquisition or taking possession of private property which is implied in the clause (2) of Art. 31 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 mam ar as laid down in the clause. In State of Bihar v. Kameshwar Singh, [1952| SCR 869, the 'eminent domain' was held to be a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use without owner's consent. The limitation imposed upon acquisition or taking possession of private property which is implied , the clause (2) of Art. 31 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. Mahajan, J., as he then was, quoting from Thayer's cases on Constitutional Law stated that "Shorn of all its incidents, the simple definition of the power to acquire cornpulsorily or of the term 'eminent domain' is the power of the sovereign to take property for public use without the owner's consent. The meaning of the power in its ir-reducible term is, (a) power to take, (b) without the owner's consent,

(c) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power."

In Bisambhar Dayal Chandra Mohan v. State of U.P., [19821 1 SCC 39 at p.66 paragraph 41, this Court had held that the State Govt. cannot while taking recourse to the executive power of the State under Art. 162, deprive a person of his property. Such power can be exercised, only by authority of law and not by a mere executive fiat or order. It is, therefore, necessarily subject to Art. 300A. Eminent domain, therefore, is a right inherent in every sovereign State to expropriate private property for public purpose without its owner's consent which inheres in Art. 300A and it would be exercised by the authority of law and not by executive fiat or order.

The question then is what is the meaning of the word 'property' used in Art. 300A and whether it is amenable to eminent domain. At the cost of repetition, we reiterate that the Constitution assures to secure to all its citizens economic and social justice and of equality of status and of opportunity and the dignity of the individual. Article 51A(h) & (j) enjoins on him, a fundamental duty, to develop scientific temper, humanism and the spirit of inquiry and reform. Every citizen shall strive towards excel- lence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

In Woman Rao's case this court held that "there is a strong linkage between ownership of land and person's status in social system". Private ownership entails political and legal power. Control over property amounts to control over people and their lives. Dominion over things is an imperium over fellow human beings. Property, therefore, accords status. Due to its lack man suffers from economic disadvantages and disabilities to gain social and economic inequality leading to his servitude. Providing facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality. In other words, it removes disabilities and

inequalities, accords status, social and economic and dignity of person.

Quoting Prof. Ginsberg. Mathew J, in Kesavananda Bharati's case held that :-

> "It is necessary to distinguish at least three forms of private proper-ty :
>
> (i) property in durable and non-durable consumer's good; (ii) property in the means of production worked by their owners; and (iii) property in the means of production not worked or directly managed by their owners, especially the accumulation of masses of property of this kind in the hands of a relatively narrow class. While the first two forms of property can be justified as necessary conditions of a free and purposeful life, the third cannot. For this type of property gives power not only over things, but through things over persons. It is open to the charge made by socialists again and again that any form of property which gives man power over man is not an instrument of freedom but of servitude".

Justice K.K. Mathew in his 'Right to Property', Dr. Rajendra Prasad Memorial Lectures (second series) delivered on December 9, 1975 [Jour-nal of Constitutional & Parliamentary Studies, Vol. 10, 1976. p.l] stated that democracy is not a mere mechanism of choosing and running the Govt. The egalitarian principle of democracy requires not only one man one vote but also the equal effective right of each man to live a full human life. Democracy must, therefore, be seen as a whole complex of relations between individuals. An individual to live his secular life, as he may wish, would owe duties towards society and fellow citizens. Each must have an opportunity to prove, exert, develop and enjoy his human faculties. There- fore, each must allow others to have equal effective access to opportunity to develop and lead a full human life. Lack of access to opportunity to exercise his capacities as means of producing utilities is an impediment, as it must be described as tack of access to man's liberty. If we take labour in its broader sense of human energy, it is property. This theory of property assumes importance in a democratic society.

When we consider right to life to be meanigfu! deprivation of proper-ty needs to be considered from broad constitutional spectrum. Property in a comprehensive term is an essential guarantee to lead full life with human dignity, for, in order that a man may be able to develop himself in a human fashion with full blossom, he needs a certain freedom and a certain security. The economic and social justice, equality of status and dignity of person are assured to him only through property. Roscoe Pound has argued that a system of individual property on the whole conduces to maintaining and furthering of civilisation. Sir Henry Maine wrote that nobody is at liberty to attach (amass) several property and to say at the same time he values civilization. The history of the two cannot be disen-tangled. (See Village Community, p.230). Granting facilities and oppor-tunites to hold the property furthers the basic structures of egalitarian social order guaranteeing equality and it would remove disabilities and inequalities and accords status and dignity of person. The term 'property' in Art. 300A receives its true colour and reflectrion from the context in which State's power of eminent domain or police power is invoked and effectuated.

Property in legal sense means an aggregate of rights which are guaranteed and protected by law. it extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property; connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's The Law Lexicon, Reprint Ed. 1987 at p. 1031 it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can htive. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land, in Dwarkadas Srinivas's case this court gave extended meaning to the word property. Mines, minerals and quarries are property attracting Article 300A. Hidayatullah, Chief Justice, in his "Right to Property and the Indian Constitution", Tagore Law Lectures reiterated as to what he had laid the law in Golaknath's case that right to property, quoting Grotius, who had treated the right as an acquired right (ius quaesitun) and ownership (dominium) as either serving individual interests (vulgare) or for the public good (eminens). According to him, the acquired right had to give way to eminent domain (ex vi super-eminentis dominiji), but there must be public interest (Public utilities) and it possible compensation. In the social con-tract theory also the contract included protection of property with recog-nition of the power of the ruler to act in the public interest and emergency. Our constitutional theory treated property rights as invoilable except through law for public good and on payment of compensation. Our Con-stitution saw the matter in the way of Grotius but over-looked the pos-sibility that just compensation may not be possible.

Karl Renner in his "The Institution of Private law their Functions", 1949- Edition by Kahn-Feund, pages 105-08 and 114-22, stated the "Proper-ty in modern conditions has become a means of control over other people's labour and life." Private property ownership requires reconciliation with public interest balancing public needs against private needs. M.R. Cohen in his essay on "Property am' Sovereignty" [13 Cornell Law Quarterly 8| stated that right is a relation, not between an owner and a thing, but between th-; owner and other individuals in reference to things. Therefore, property as a right over things resolves it into component right such as the jus utendi,for disponendi, etc. Justice Matnew opined in his right to property that in law, control of property means control of matter, and, it becomes control over human beings. The institution of private law imply the total power of doing with the thing what one likes, has, in fact become an institution of public law (power of command) and its main functions are exercised by complementary legal institutions developed from the law of obligations. According to Justice Mathew the law eventually takes account of this change of function by giving property an increasing public law- character.

According to Sir Henry Maine, in his "Ancient law, I'Bl-Edition, "ancient law knows next to nothing of individuals." Individual is an impor-tant anil distinct part of the 'social compact' quoting the village community in India as an instance of an organised patriarchal socity and an as-semblage of co-proprietors, he stated thus "the personal relations to each'/other of the men who compose it are indistinguishably confounded with their proprietary rights.....The village community is known to be of immense antiquity. In whatever direction research has been pushed into Indian history, general of local, it has always found the community in existence at the farthest point of progress. Friedman in his "Legal Theory" stated that in modern democracy, by the same process, which has lead to the increasing modification of individual rights by social duties towards neighbours and community., has everywhere has to temper freedom of property with social responsibilities attached to property. He quoted power of taxation, police power and the power of expropriation subject to fair compensation are examples of public restrictions on freedom of property. He also stated that another kind of interference touches the freedom to use property through the growing number of social obligations attached by law, i.e., use of industrial property or contact of employment. Justice Mathew, therefore, drew the distinction between the individual side and the social side of the property, The social side of the property finds illustration in the right of eminent domain and taxation. It is not regarded as something exceptional. It is an essential of the institution of property itself The Social side limits the institutional side and it is not an absolute private property itself. The two necessarily must go together so that, if one perishes, the other must perish. In the words of Prof. Van Ihering, it would result in "the destruction of the society". In the words of Prof. Towney the property becomes functionless. Justice Mathew at p.12 stated that all property might be described as government largesse given on conditions and subject to law. At P.14 he stated that "property is an essential guaran-tee of human dignity for, in order that a man may be able to develop himself in a human fashion, he needs a certain freedom and a certain security, the one and the other are assured to him only through property. In his concluding observations at p.19 Justice Mathew had stated that the "property is the greatest source of friction in a community, extreme ine-quality in the distribution of property has been and will be a cause of revolution in states. I am not sure the problem will be solved by transferring the ownership of property in the means production to the state. This will add economic power to political power and will render the individual more helpless than in the capitalistic system where power and responsibility are diffused. This does not mean that the final directing power over economic system should not be in the hands of the community. An individual has a right to conditions of well being and that consists in the case of many individuals of the right as well as the duty to work. The system should be so organized that no individual can, through possession of property, have power over the lives of others."

Hidayatullah, C.J., in his 'Right to Property - at p.88 stated that Socialism envisaged reform which would disturb this right and make provision for the resources to be employed in aid of the suffering classes, as it is contemplated as the common happiness. In this the will of the individual was made subordinate to that of the community. The ine-qualities of wealth were the main objects of the socialistic doctrines. It was considered that the legitimate function of the State was to reduce this inequality even by taking from those who had to little. This was to be a permanent arrangement and not merely an ameliorative measure in some calamity. This equality was to be achieve not only by public opinion and forces but by law and the force of the State.

It is accordingly clear that in a welfare State envisioned in the directive principles of State policy, the basic perquisites are that everyone is entitled to minimum material well being, such as food, clothing, and decent housing. Expanding living standard are possible with the existing or expanding physical resources and scientific knowledge etc., and the State has right and duty to act when private initiative fails. In a democratic society, every individual needs legal protection for the beneficial enjoyment of what he has discovered and appropriated; has created by his own labour (in wider sense); and what he has acquired under the existing social and economic order subject to law and order. Equally welfare consists in adjusting individual interests with social interest by the aid of law as social engineering, which would mean public restraints on property designed to mitigate the privileges which property offers in enjoyment of the things that life has to offer. Restraints on the power to use the property as a delegated power of command is means as of quasi- governmental private control over the major assets of a nation. Properly, thereby, is subject to regulation. The directive principles enjoin the State to reorganise the economic system by law or administrative means and the Fundamental rights are means to that end to make right to life meaningful, equality of opportunity and of status and dignity of person a reality. The fundamental rights and the directive principles are the two wheels of the chariot as an aid to make social and economic democracy a truism. The word "property used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and Property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The Phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by the Parliament or a State legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising it's power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the Court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300A nor every exercise of eminent domain an acquisition or taking possession under Article 300A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300A. It would be by exercise of the Police power of the State. In other words, Art. 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Depriva-tion by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Art 300A.

The question then is whether the owner of the property is entitled to compensation i.e., just equivalent or indemnification to the owner of the property expropriated. It is common knowledge that when the State exer- cises its executive power to acquire private property, it is under the land Acquisition Act, 1894 or similar State laws. Acquisition thereunder though is for public purpose, payment of compensation at the prevailing market value as on the date of the relevant notification published in the Official Gazette, is sine qua non. The State when exercises the power of eminent

domain under. Art 300A and acquires or requisitions or taken possession of the property of a citizen to give effect to any of the directive principles envisaged in Part IV of the Constitution, the question emerges whether the same yardstick of payment of just equivalent or indemnification to the owner of the property expropriated should be applicable or Art. 300A per force bring it in operation? Since Art. 30(2) itself provided payment of compensation, when property was acquired preceding 25th Constitution Amendment Act, 1971, this Court interpreted the word "compensation" as aforesaid, but when Article 30(2) itself was omitted from the Constitution, the question arises whether payment of compensation is a sine quo non for deprivation of property under Article 300A?. In any democracy governed by rule of law, Constitution is the supreme law of the land. Roscoe Pound, a sociological jurist whose writings have virtually opened new vistas in the sphere of justice, Stated that 'the justice meant not as an individual or idea relations among men but a regime in which the adjustment of human relations and ordering of the human conduct for peaceful existence'. According to him, 'the means of satisfying human claims to have things and to do things should go around, as far as possible, with least friction and waste. In his "A Survey of Social Interests", 57th, Harvard Law Review, 1 at 39(1943), he elaborated thus : 'Looked at functionally the law is an attempt to satisfy, to reconcile, to harmonize, to adjust these overlapping and often conflicting claims and demands, either through securing them directly and immediately, or through securing certain individual interests or through delimitations or compromises of individual interests, so as to give effect to the greatest total of interests or to the interests that weigh more in our civilization with the least sacrifice of the scheme of interests as a whole". In his 'theory of justice'. 1951 Edition, at page 31 he stated that "the law means to balance the competing interests of an individual along with the social interests of the society." In his work, "justice according to Law," he observed : "We come to an idea of maximum satisfaction of human wants or expectations. What we have to do in social control and so in law, is to reconcile and adjust these desires or wants or expectations, so far as we can, so as to secure as much of the totality of them as we can." According to him, therefore, that the claims or interests, namely, in-dividual, physical, social or public interest should harmoniously be recon-ciled "to the balancing the social interests through the instrument of social control; a task assigned to public law for that matter."

All modern constitutions of democratic character provide payment of compensation as the condition to exercise the right of expropriation. Commonwealth of Autralia Act, a French Civil Code (Article 545), the 5th Amendment of the Constitution of U.S.A. and the Italian Constitution provided principles of 'just terms' 'just indemnity', 'just compensation' as reimbursement for the property taken, have been provided for. As pointed in Halsburry's laws of England that "when parliament has authorized the compulsory acquisition of land it is almost invariably provided for payment of a money compensation to the person deprived of his interest in it." Exception for the interest of the owner was of as much nominal value as an owner's interest in the subsoil of the streets.

The Constitution of India, on the other hand in its historical back-ground provided Directive Principles vis-a-vis the fundamental rights to realise social and economic democracy for successful working of political democracy in which the state in bound to provide to every person in the society equality of opportunity in economic arrangements. Material resour ces and operation of the economic system shall be so organised as to established the egalitarian social order. Though Articles 31 and 19(l)(f) of the Constitution accorded to "property" the status as a fundamental right, there

emerged conflict between the animation of the founding fathers and the judicial interpretation on the word "compensation" when private property was expropriated to subserve common good or to prevent com-mon detriment.

The constitution history of the interpretation of the power of the Parliament to amend the constitution under Art. 368 form Kameshwar Singi v. Kesvananda Bharti to give effect to the directive principles in Part IV vis-a-vis the right to property in Arts. 19(l)(f) and 31 as well as the interpretation, "compensation" from Ms. Bela Banerji to Banks Nationalisation's case do establish that the Parliament has ultimately wrested the power to amend the Constitution, without violating its basic features or structure. Concomitantly legislature has power to acquire the property of private person exercising the power of eminent domain by a law for public purpose. The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must be not be illusory. The principles laid to determine the amount must be relevant to the determina-tion of the amount. The doctrine of illusory amount or fixation of the principles to be arbitrary were evolved drawing support from the language originally couched in the unamended Entry 42 of List III which stood amended by the Constitution 7th Amendment Act with the words merely "Acquisition and Requisition of Property'. Nevertheless even thereafter this court reiterated this same principles. Therefore, the amendment to Entry 42 of List III has little bearing on the validity of those principles. We are conscious that the parliament omitted Art. 31(2) altogether. However when the Stale exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination be must in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law. However judicial inter- pretation should not be a tool to reinduct to doctrine of compensation as concomitance to acquisition or deprivation of property under Article 300A. This would be manifest from two related relevant provisions of the Con- stitution itself. Articles 30(1 A) and 2nd proviso to Art. 31A as exceptions to the other type of acquisition or deprivation of the property under Article 300A.

For acquisition of the property of a minority educational institution, the measure is that the State shall ensure that "the amount fixed or determined under such law" would not "restrict or abrogate the right guarantced" by Art. 30(1). This was simultaneously brought on the Con-stitution by Section 4 of the Forty-fourth Constitution Amendment Act while omitting Arts. 19(l)

(f) and 31 from Part III. Equally when the land of a person "within the ceiling limit" and " in his personal cultivation" is acquired, law shall provide "for payment of compensation at a rate which shall not be less then the market value thereof", this was brought by Constitution Seventh Amendment Act. By necessary implication the obliga-tion of the state, to pay compensation for property acquired or indem-nification of property deprived under Article 300A or other public purpose is obviated.

The question then is whether the principles laid in Section 69A(4) of the Code are ultra vires. In Bhim Singhji v. Union of India, [1981] 1 SCC 166, per majority, the Constitution Bench considered

Section 11(6) of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) and fixation of amount of Rs. 2.00 lacs as maximum limited under sub-s. (6) of the property worth Rs. 2.00 Crores, it was held to be not illusory and the provisions is not confiscatory, and that therefore, it does not violate Art. 14 and Art. 31(2) of the Constitution (proceeding Constitution 44th Amendment).In Achutananda Purohit v. State of Orissa, [1976] 3 SCR 919, it was held that fixation of compensation on slab system does not violate Article 14 and 31(2) of the Constitution. In Basant Bat's case this court held that the provision in s.44(3) of the Maharashtra Housing and Develop-ment Act that in the absence of agreement, the amount shall be equal to 100 times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceding the date of the publication of the notification referred to in s. 41, as may be determined by the Land Acquisition Officer, was held to be not violative of Art. 14. Article 21 was held to have no application to the determination of such amount. In Tinsukhiya's case a Constitution Bench held that the limitation of the amount on the basis of the written down book value of the assets was held to be not violative of Art. 14 and such principle was held to be not illusory nor arbitrary. The determination of the amount was held to be an integral and inseparable part of the scheme of nationalisation which cannot be cancelled as a distinct provision independent of the scheme. It was also further held that the material resources of the com-munity mentioned in Art. 39(b) must be widely interpreted and nationalisa-tion and acquisition is one of the methods of distribution of material resources of the community. The economic cost of social and economic reforms is amongst the most vexed problems of social and economic change. The need for constitutional mandates for such legislative efforts at social and economic change recognises otherwise unaffordable economic burden of reforms. It is not possible to diverse the economic constitutions or components from the scheme of nationalisation. The main cause of the scheme of the nationalisation lies on its cost and it cannot be isolated. The quantification, therefore, forms part of the integrated scheme and cannot be considered in isolation.

It would thus be clear that acquisition of the property by law laid in"

> furtherance of the directive principles of State policy was to distribute the material resources of the community including acquisition and taking pos-session of private property for public purpose. It does not require payment of just compensation or indemnification to the owner of the property expropriated. It is very negation of effectuating the public purpose. Pay-ment of market value in lieu of acquired property is not sine qua non for acquisition. Acquisition and payment of amount are part of the scheme and they cannot be dissected. However, fixation of the amount or specification of the principles and the manner in which the amount is to be determined must be relevant to the fixation of amount. The amount determined need not bear reasonable relationship. In other words, it is nut illusory. The adequacy of the resultant amount cannot be questioned in a court of law. However, the validity of irrelevant principles are amenable to judicial scrutiny.
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> It is, therefore, clear that the appellants are not entitled to compen- sation or just equivalent of property they are deprived of or indemnification of the property expropriated i.e., mines, whether worked or not, minerals whether discovered or not or quarries deprived by law made under Article 300A of the Constitution. The

principles under Section 69A(4) of the Code are relevant. The resultant amount is not illusory. Thereby they are not void. We further hold that after the Constitution forty fourth Amendment Act has come into force, the right to property in Arts. 19 (l)(f) and 31 had its obliteration from Chapter III. Fundamental Rights. Its abridgement and curtailment docs not retrieve its lost position, nor gets restituted with renewed vigour claiming compensation under the grab 'deprivation of property' in Art. 300A, The Amendment Act neither receives wrath of Art. 13(2), nor does s.69A become ultra vires of Art. 300A.

The further contention that money value of the rupee from three years preceding May 1, 1960 till date, has considerable been eroded and that, therefore, the fixation on the principle of net annual income of three years preceding the date of vesting, namely 1st May, 1960 is arbitrary and amount so determined is illusory is also devoid of substance. In Achutanantida's case, it was contended that compensation money should be so calculated that the purchasing power of the amount of compensation to be paid on the date of the actual payment will not be less than its purchasing power on the date of vesting. Repelling the contention this court held that on the date of vesting which was well over two decades ago, the purchasing powers of rupee was much higher than its present value. It is more of less the world phenomenon that the erosion in value of unit of currency has been taking place. But this inevitable devaluation due to inflationary trends does not affect the quantum of compensation prescribed by the statute for the purpose of allowing compensation in rupee long ago is the same as the rupee of today, although for the purpose of market and cost of living, the housewives' answer may be different. Law is sometimes blind. Therefore, the loss of rupee value is not relevant consideration to adjudge the principle laid by the statute. Giving acceptance to the conten-tion renders every statute ultra vires by the nature of the litigation that the time lag inevitably intervenes an rupee value, during the interregnum gets eroded and every Act thereby because, on its account, unworkable. In normal acquisition, the principle of depletion of rupee value has repeatedly been held to be not relevant to determine market value. The contention, therefore, is rejected.

It is next contended that the act and the related provisions provided different modes of compensation than the one provided in sub-s.(4) of Section 69A of the Code and that, therefore, it is discriminatory, violating Art. 14 and unfair procedure offending Art. 21. We find no substance in this contention. It is true that different Acts, provide different principles to determine the amount payable to the deprived owner. The principle of average of three years net annual income received from production of the mines and minerals preceding the date of the vesting is a relevant and germane principle to fix the amount payable to the owner Comparative evaluation of different principles evolved by each statute may appear to be different and prime facie to be discriminatory from each other, but com-parative analogy would not furnish satisfactory test to declare a national principle determined by the statute to be discriminatory. It is seen that the principle bears just relation to the object of

determining the amount or compensation payable to the owner and the principle of average of three years net annual income is a reasonable classification having relation to the object of modification of the existing rights and extinguishment thereof. Section 69A(4) of the Code is, therefore, valid. So it is unassailable under Art. 14. The principle of unfairness of the procedure attracting Art. 21 does not apply to the acquisition or deprivation of property under Article 300A giving effect to the directive principles, are not concerned in these appeals of the effect of mining and mineral lease or leases granted by the appel-lants to third parties, since that question was neither canvassed in the High Court, nor any factual foundation laid before us. We declined to go into that question. For well over twelve years the appellants worked the mines etc. by obtaining stay of operation of law and had appropriated the mines or minerals or quarries from the respective lands.

The appeals are accordingly dismissed with quantified costs at Rs. 1,00,000 in each set. Compensation or amount payable under Section 69A(4) of the Code may be worked out and the costs be set off in working out the amount and the balance, if any, be recovered from the appellants. This ex&rcise should be done within three months from the date of the receipt of the judgment. Working the mines etc. should be stopped forthwith by either the appellant, their lessees, or any body in the feigned camouflaged or coloured shoes. The State should take immediate action is this behali.