Raja Suriya Pal Singh vs The State Of U.P. And Another(And Other ... on 27 May, 1952

Equivalent citations: 1975 AIR 1083

PETITIONER:
RAJA SURIYA PAL SINGH

Vs.

RESPONDENT:
THE STATE OF U.P. AND ANOTHER(AND OTHER CASES)

DATE OF JUDGMENT:
27/05/1952

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
BEG, M. HAMEEDULLAH
CHANDRACHUD, Y.V.

CITATION:
1975 AIR 1083

ACT:
Uttar Pradesh Zamindari Abolition and Land Reforms Act (I of 1951)--Law for abolition of zamindaries and intermediate tenures--Validity--Provision for compensation and public purpose --Necessity of--Right of eminent domain--Jurisdiction of Court to enquire into validity of Act--Constitution of India, 1950-Constitution (First Amendment) Act . 1951, Arts 31, 31-A, 31-B, 362; Sch. VII, List II, entries 18, 36, List III, entry 42'Delegation of legislative powers--Fraud on the Constitution--Spirit of the Constitution--Meanings of "public purpose", "law", "legislature"-Compulsory acquisition of Crown grants, charities and private property of Rulers under covenant of merger----Legality.

HEADNOTE:
Held by the Full Court (PATANJALI SASTRI C.J., MAHAJAN, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ.).--The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, is valid in its entirety. The jurisdiction of the court to question its validity on the ground that it does not provide for payment of compensation is barred by arts. 31(4), 31-A and 31-B of the Constitution. The said Act is not a fraud on

the Constitution; it does not delegate essential legislative power to the executive; and is not liable to be impugned on the ground of absence of a public purpose.

Per MAHAJAN J.--(i) The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. The definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and the state of society and its needs. The point to be determined in each case is whether it is in the interest of the community as distinguished from the private interest of an individual.
(ii) There is nothing in law to prevent the subject-matter of a Crown grant being compulsorily acquired for a public purpose and land held by the taluqdars of Oudh does not therefore stand on a higher footing than that of other owners of Oudh.

(iii) Property dedicated to charity by a private individual is not immune from the sovereign's power to compulsorily acquire property for a public purpose.
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(iv) Recourse cannot be had to the spirit of the Constitution when its provisions are explicit; and when the fundamental law has not limited either in terms or by necessary implication the general powers conferred on the legislature it is not proper to deduce a limitation from something supposed to be inherent in the spirit of the Constitution.

(v) The provisions of art. 31(2) do not stand revealed by art. 31-A. On the other hand the proviso to art. 31 -A keeps them alive. The only difference is that with regard to estates the President. has been constituted the sole judge for deciding whether a State law has complied with art. 3 1(2).

(vi) When a whole estate is being acquired and payment of compensation is based on the net income of the whole estate, it cannot be said that the legislation is of a confiscatory character merely because there are non-income fetching properties also in the estate.

DAS J.--(i)The existence of a public purpose and the necessity for payment of compensation cannot be said to be an inherent part of the spirit of any particular form of Government. The Indian Constitution has in art. 31 (2) recognised these two elements as a pre-requisite to the exercise of the power of eminent domain, and as the impugned Act has been expressly taken out of the operation of those provisions, the question of invoking any imaginary spirit of the Constitution cannot be entertained. The invocation of such an imaginary spirit will run counter to the express letter of arts. 31(4), 31-A and 31-B. (ii) The claim of the Rulers with regard to their private properties is not within art. 862; by offering compensation their ownership is recognised; in any event, art. 362 imposes no legal obligation on the Parliament or State Legislature, and art. 363 bars the

jurisdiction of the court with respect to disputes arising out of covenants of merger.

JUDGMENT:

CIVIL APPELLATE JURISDICTION. Cases Nos. 283 to 295 of 1951. Appeals under article 132 (1) of the Constitution of India from the judgment and decree dated 10th May, 1951, of the High Court of Judicature at Allahabad (Malik C.J., Mootham, Chandiramani, Agarwala and Bhargava J.J.) in Writ Applications Nos. 23, 25, 3330, 3329, 3331 and 3332 of 1951 and Miscellaneous Judicial Cases Nos. 1 and 2 of 1951 and Civil Miscellaneous Nos. 335, 340, 345 of 1951 (Lucknow Bench) and from the judgment and order dated 9th July, 1951, of Sapru and Agarwala J.J in Writ Application No. 3403 of 1951.

The facts that gave rise to these appeals and petitions are stated in the judgment.

P.R. Das and S.K. Dar (B. Sen and Nanakchand, with them) for the appellants in Cases Nos. 283 to 286, 289 and 290 of 1951.

B.R. Ambedkar and Bishan Singh for the appellants in Cases Nos. 285 and 288 of 1951.

N.P. Asthana and (K. B. Asthana, with him) for the appellants in Cases Nos. 291 to 294 of 1951.

Prem Mohan Varma for the appellants in Case No. 295 of 1951.

M.C. Setalvad, Attorney-General for India, and Kanhaiya Lal Misra (Gopalji Mehrotra and Lakshmi Saran, with them) for the respondents.

1951. May 2, 5. The judgment of the CHIEFJUSTICE printed at pp. 893-916 supra covers these cases also. MAHAJAN, MUKHERJEA, DAs and CHANDRASEKHARA AIYAR JJ. delivered sepa- rate judgments.

MAHAJAN J.--These appeals under article 132(1) of the Constitution concern the constitutionality of an Act known as the Uttar Pradesh Zamindari Abolition and Land Reforms Act (U. P. Act I of 1951), and can be conveniently disposed of by one judgment.

The appellants in most of them are owners and proprie- tors of extensive landed properties in the State of Uttar Pradesh. Some of them are holders of estates in Oudh under taluqdari squads granted to their ancestors by the British Government. H.H. Maharaja Paramjit Singh of Kapurthala, appellant in Appeal No. 285 of 1951, is the holder of an estate in Oudh, the full ownership, use and enjoyment of which was guaranteed to him by the Government of India under article XII of the Pepsu Covenant of Merger. Appeals Nos. 291 to 295 of 1951 have been preferred by religious institutions holding endowed properties.

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

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

A committee was appointed to give effect to the resolu- tion and to prepare the necessary scheme. It made its report in July, 1948. A Bill was introduced in the United Provinces Legislative Assembly on the 7th July, 1949, was referred to a Select Committee which made its report on 9th January, 1950, and was read before the Assembly for the first time on 17th January, 1950. On the 21st January, 1950, the Assembly was prorogued. It reassembled on the 2nd February, the Bill was reintroduced on the 7th February, 1950, and was read for the second time on 28th July, 1950, and for the third time on 4th August, 1950. On 6th Septem- ber, 1950, it came before the Legislative Council and the Council passed it with certain amendments on the 30th Novem- ber, 1950. The Legislative Assembly was prorogued on the 13th October, 1950, and in view of the amendments made in the Legislative Council, the Bill was reintroduced in the Legislative Assembly on 26th December, 1950, and was passed in its amended form on 10th January, 1951. It was subse- quently passed by the Legislative Council and after having received the assent of the President came into force on or about the 25th January, 1951.

The Preamble of the Act declares that"Whereas it is expedi- ent to provide for the abolition of the zamindari system which involves intermediaries between the tiller of the soil and the State in the Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent on such abolition and acquisition and to make provision for other matters con- nected therewith."

1060 Sub-section (1) of section 4 provides that as from such date as the State Government may by notification declare, all estates situated in the Uttar Pradesh shall vest in the State free from all encumbrances. "Estate" is defined in section 3 (8) as meaning "the area included under one entry in any of the registers prepared and maintained under clause (a), (b), (c) or (d) of section 82 of the United Provinces Laud Revenue Act, 1901, or in the registers maintained under clause (e) of the said section in so far as it relates to a permanent tenure holder and includes share in or of an estate." Section 6 enacts that subject to certain very minor exceptions, upon the publication of a notification under section 4, the rights, title and interest of all intermediaries in every estate in the area referred to in the notification, and in all sub-soil in such estates including rights if any, in mines and minerals, shall cease and shall be vested in the State of Uttar Pradesh free from all encumbrances. The expression "intermediary" is defined in section 8 (2) as meaning with reference to any estate, "a proprietor, under-proprietor, sub-proprietor, thekadar, permanent lessee in Avadh, and permanent tenure-holder of such estate or part thereof."

The intermediaries whose rights, title and interest are thus acquired become entitled to receive compensation at eight times the net assets mentioned in the Compensation Assessment Roll

prepared in accordance with the provi- sions of the Act. The Act further provides that the State Government shall pay to every intermediary other than a thekadar, whose estate or estates have been acquired under the Act, a rehabilitation grant on a graduated scale provid- ed that the land revenue payable by such an intermediary does not exceed Rs. 10,000. The scale of the grant is given in Schedule I. Save in the case of wakfs, trusts and endow- ments which are wholly for religious or charitable purposes, the highest multiple is for class paying land revenue up to Rs. 25. the multiple being twenty, while the lowest is for the class paying land revenue exceeding Rs. 5,000, but not exceeding Rs. 10,000 when the multiple is one.

Part I of the Act includes provisions for the vesting of all estates in the State, for assessment of compensation, for payment of compensation to all intermediaries and of rehabilitation grant to those of them who pay Rs. 10,000 or less as land revenue and similar matters. Part II deals with consequential changes that become necessary by reason of the vesting of all estates in the State and provides for the incorporation in each village of a gaon samaj and the vesting of certain lands in the gaon samaj; it divides the cultivators into four classes, viz, bhumidars, sirdars, asamis and adhivasis, determines their rights and provides for the payment of land revenue; it further contains provi- sions designed to prevent the fragmentation of holdings or their division into holdings of uneconomic size, and to facilitate the establishment of co-operative farms, and other similar matters.

The following provisions of the Act which came in for severe criticism during the course of the arguments ad- dressed to us may be set out in extenso.

Section 6 (a) provides for the vesting in the State of all rights, title and interest of all the intermediaries in every estate in such area including land (cultivable or barren), grove land, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, wells (other than private wells in village abadi, holding or grove), tanks, ponds, water channels, ferries, pathways, abadi sites, hats, bazars and melas. Clauses (e) and (g) of this section are in these terms :-

> "(e) All amounts ordered to be paid by an intermediary to the State Government under sections 27 and 28 of the U.P. Encumbered Estates Act, 1934, and all amounts due from him under the Land Improvement Loans Act, 1883, or the Agricul-

tural Loans Act, 1884, shall notwithstanding anything con- tained in the said enactments, become due forthwith and may, without prejudice to any other mode of recovery provided therefore, be realised by deducting the amount from the compensation money payable to such interme- diary under Chapter III.

(g) (i) Every mortgage with possession existing on any estate or part of an estate on the date immediately preced- ing the date of vesting shall, to the extent of the amount secured on such estate or part, be deemed, without preju- dice to the rights of the State Government under section 4, to have been substituted by a simple mortgage;

(ii) notwithstanding anything contained in the mortgage deed or any other argreement, the amount declared due on a simple mortgage substituted under sub-clause (i) shall carry such rate of interest and from such date as may be pre- scribed."

Section 7 saves certain rights at present held by the proprietors from the purview of the Act. The rights includ- ed are in respect of mines which are being worked by the zamindars. Section 9 provides that private wells, trees in abadi and buildings situate within the limits of an estate shall continue to belong to or be held by such intermediary. Section 10 makes every tenant of land belonging to an inter- mediary and paying land revenue upto Rs. 250, a hereditary tenant thereof at the rate of rent payable on the date of vesting. Section 12 gives the same privilege to thekadars. Similarly section 15 confers the status of hereditary ten- ants on occupants of lands in which such rights did not exist. Section 18 provides that all land in the possession of intermediaries as sir, khudkasht or an intermediary's grove shall be deemed to be settled by the State Government with such intermediary etc., subject to the provisions of the Act and he will be entitled to possession of it as bhumidar thereof. Land held by any person as a tenant is deemed to be settled by the State Government on such person as sirdar. Sections 27 and 28 are in these terms :--

> "27. Every intermediary, whose rights, title or inter- est in any estate are acquired under the provisions of this Act shall be entitled to receive and be paid compensation as hereinafter provided.
>
> 28. (1). Compensation for acquisition of estates under this Act shall be due as from the date of vesting subject to determination of the amount thereof.
>
> (2) There shall be paid by the State Government on the amount so determined interest at the rate of two and half per centum per annum from the date of vesting to the date of-
>
> (i) in the case of the amount to be paid in cash, deter- mination,
>
> (ii) in the case of the amount to be given in bonds, the redemption of the bonds."

Section 39 lays down the method of determination of the gross income of the land comprised in a mahal, while section 42 provides for the determination of the gross assets of an intermediary. Section 44 lays down the manner of assessing the net income of an intermediary. It provides as follows :-

> "The net assets of an intermediary in respect of a mahal shall be computed by deducting from his gross assets the following, namely:
>
> (a) any sum which was payable by him in the previous agricultural year to the State Government on account of land revenue .....

(b) an amount on account of agricultural income tax, if any, paid for the previous agricultural year .....

(c) cost of management equal to 15 per centum of the gross assets."

Provision has been made for the appointment of assess- ment officers and for the preparation of draft compensation assessment roll by them after hearing objections. Right of appeal has also been provided against their decision. Chapter IV concerns itself with the payment of compensa- tion. Section 65 of this chapter provides that there shall be paid to every intermediary as compensation in respect of the acquisition of his rights, title and interest in every estate the amount declared in that behalf under section 60. Section 68 is in these terms ;--

"The compensation payable under this Act shall be given in cash or in bonds or partly in cash and partly in bonds as may be prescribed."

Section 72 empowers the State Government to make rules on all matters which are to be and may be prescribed. Sec- tions 113 and 117 provide for the establishment and incorpo- ration of a gaon samaj and for the vesting of all lands not comprised in any holding or grove and forests within the village boundanes, trees, public wells, fisheries, hats, bazars etc., tanks and ponds in the gaon samaj, which is to supervise and manage and control the lands subject to super- vision by the Government. Other provisions of the Act relate to acquisition of bhumidari rights and of sirdari rights by tenants, thekadars etc., on payment of a certain amount mentioned in the Act. A bhumidar has the status of a peas- ant proprietor in direct relation to Government and these agrarian reforms contemplated by the Act aim at converting the zamindari tenure system into a ryotwari system. The main questions for consideration in these appeals are the following :--

1. Whether the impugned Act was validly enacted.

2. Whether the acquisition of properties con- templated by the Act is for a public purpose.

3. Whether the delegation of power in the various sec- tions of the Act is within the permissible limits.

4. Whether the taluqdari properties held under "sanads"

from the British Government can be the subject-matter of acquisition.

5. Whether the properties of the Maharajah of Kapurthala in Oudh could in view of article 12 of the Pepsu Union Covenant be acquired under the Act.

6. Whether the said Act constitutes a fraud on the Con- stitution.

The validity of the Act was attacked on a variety of grounds by the learned counsel appearing in the different cases and the grounds urged were by no means uniform or consistent and some of these were destruc- tive of one another.

Mr. P.R. Das, who opened the attack, reiterated the arguments he had addressed to us in the Bihar appeals and urged that the obligation to provide for compensation is implicit in the power conferred on the State Legislature by entry 36 of List II with respect to acquisitions, that the words "subject to the provisions of entry 42 of List III" in entry 36 compel the court to construe entry 36 of List II along with entry 42 of List III and, when so construed, it is clear that compensation has to be provided for whenever power is exercised under entry 36, that there is no provi- sion for payment of compensation in the impugned Act, the word "compensation" meaning the equivalent in money of the property compulsorily acquired, that the U.P. Legisla- ture had no power to enact this Act without making provision for payment of compensation and in legal contemplation the Act is not law, that article 31 (2) confers a fundamental right but has nothing to do with legislative powers which have been conferred by articles 245 and 246 read with the three lists, that article 31 (4) does not in any way affect the rights conferred by article 31(2), which exist notwith- standing article 31 (4), and it only bars the remedy to challenge the Act on the ground that it contravenes the provisions of clause (2), that the Act constitutes a fraud on the Constitution, and lastly that the Act is void by reason of delegation of essential legislative power. On the question of the invalidity of the Act for want of a provision for payment of compensation, Mr. P.R. Das rein- forced his arguments by reference to legislative practice in India and England and contended that even without any ex- press provision for compensation in the different enactments to which our attention was drawn, the mere use of the word "purchase" implied that compensation was a concomitant obligation of the exercise of the power to compulsorily acquire property. For the reasons given by me in the Bihar appeals I cannot accept this con- tention. If the Constitution was silent on the point and provided for compulsory acquisition, the position might have been different.

Mr. Dhar, who appeared in some of the appeals, supple- mented the arguments of Mr. Das on this point. He contended that regarding half of the properties acquired, the Act was a piece of confiscatory legislation as these properties were nonincome bearing, and that as regards the other half, though compensation at eight times the net income is provided, it is a mere sham inasmuch as the Act makes pay- ment of compensation discretionary at the will and pleasure of the Government; the provision being that Government will pay when it chooses to do so and it may never make the choice. He further contended that the provisions of the Act regarding compensation are colourable because they complete- ly ignore the potential incomes of the zamindars take notice only of the income recorded in the khatuni entries which do not include the sir income, and acquire rent-free holdings and undeveloped mines without any compensation, that the deduction of agricultural income-tax from the gross income was unjust and the object of deduction was to artificially reduce the net income, and the same procedure had been adopted in the case of forests.

Dr. Ambedkar, who appeared in some of the appeals, suggested a new approach for declaring the Act to be bad. He contended that qua "estates" defined in article 31-A, Part I of the Constitution should be deemed as repealed and struck off from the Constitution. In deciding these appeal% therefore, we are to look at the Constitution without the chapter on Fundamental Rights; but as the

Constitution aims at securing liberty and equality for the people and gives only a restricted power to the State, the obligation to pay compensation when private property is taken is implicit in the very spirit of the Constitution. Mr. Das found the obligation to pay compensation implicit in entry 36, but Dr, Ambedkar could not see eye to eye with him though he supported his contention by urging that the prohibition to acquire property by legisla- tion without payment of compensation was implicit in the spirit of the Constitution.

Mr, Varma, who appeared in some other appeals, supported Mr. Das's argument that entry 36 should be read subject to the provisions of entry 42 and further contended that the impugned Act was the culminating point of a series of enactments passed as a device to confiscate the properties of the zamindars after the passing of the resolution in 1946 by the U.P. Legislature.

Having negatived the contentions of Mr. Das, I cannot for the same reasons accept the contentions of Mr. Dhar as sound. It is convenient now to examine the point made by Dr. Ambedkar that the obligation to pay compensation is implicit in the spirit of the Constitution. It is well- settled that recourse cannot be had to the spirit of the Constitution when its provisions are explicit in respect of a certain right or matter. When the fundamental law has not limited either in terms or by necessary implication the general powers conferred on the legislature, it is not possible to deduce a limitation from something supposed to be inherent in the spirit of the Constitution. This elusive spirit is no guide in this matter. The spirit of the Consti- tution cannot prevail as against its letter. Dr. Ambedkar relied on the observations of Nelson J. in People v. Morris(1), quoted in the footnote, at p. 357 of Cooley's Constitutional Limitations. The footnote states :--

> "It is now considered an universal and fundamental proposition in every well regulated and properly adminis- tered government, whether embodied in a constitutional form or not, that private property cannot be taken for strictly private purposes at all, nor for public uses without a just compensation; and that the obligation of contracts cannot be abrogated or essentially impaired. These and other vested rights of the citizen are held sacred and inviolable, even (1) 13 Wend.325 against the plenitude of power of the legislative depart-

ment."

Those observations of the learned Judge, however, do not lend support to the contention urged; on the other hand, it seems to me that the proposition stated by Dr. Cooley at page 351 (Vol. 1) that the courts are not at liberty to declare an Act void, because in their opinion it is opposed to the spirit supposed to pervade the Constitution but not expressed in words, has an apposite application here. It is difficult upon any general principle to limit the omnipo- tence of the sovereign legislative power by judicial inter- position except so far as the express words of a written constitution give that authority.

The argument of Dr. Ambedkar cannot be accepted for the further reason that it is based on an unwarranted assumption that qua the estates of the zaraindars, Part III of the Constitution stands repealed and is non est. The truth is that Part III of the Constitution is an important and inte- gral

part of it and has not been repealed or abrogated by anything contained in article 31-A of the Constitution; on the other band, article 31-A, while providing that no law providing for the acquisition by the State of any estate, shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any of the provisions of Part III, clearly provides that where such law is made by the legislature a of State, the provisions of this article shall not apply there- to unless such law having been reserved for the considera- tion of the President has received his assent. This proviso in express terms keeps alive the alternative provisions of Part III of the Constitution in article 31 (3) for judging whether the State law has or has not complied with the provisions of article 31 (2). The provisions of article 31(2). therefore, do not stand repealed by article 31-A. On the other hand, they are kept alive. The difference is that persons whose properties fall within the definition of the expression "estate" in article 31-A are deprived of their remedy under article 32 of the Constitution and the President has been constituted the sole judge of decid- ing whether a State law acquiring estates under compulsory power has or has not complied with the provisions of article 31 (2). The validity of the law in those eases depends on the subjective opinion of the President and is not justicia- ble. Once the assent is given, the law is taken to have complied with the provisions of article 31 (2). It is true that the principles of payment of compensa- tion stated in the Act do not give anything like an equiva- lent or quid pro quo for the property acquired and provide only for payment of what is euphemistically described in the resolution of the U.P. Legislature as "equitable compen- sation ". Properties fetching no income pass to the State without payment of any separate compensation and as comprising part of an estate which yields some net income to the proprietor According to the affidavit filed in the Balrampur Raj case, actual income of Rs. 1,42,000 that the owner receives at present, works out to a sum of Rs. 10,000 under the provisions of the Act and property worth several crores is being acquired for a mere fraction of its true value. Culturable waste which forms twenty per cent. of the entire area of the estate, trees, several lakhs in number, water channels and irrigation works etc., are being acquired along with the cultivated lands and income-fetching proper- ties without any separate provision for payment of compensa- tion. But from those facts the conclusion cannot be drawn that the provisions as to compensation in the Act are illu- sory.

In none of the cases could it be said that the provisions of the impugned Act would result in nonpayment of compensation. Great emphasis was laid on the circumstance that nothing was being paid for non-income fetching properties. It has, however, to be observed that these non-income fetching properties are integral parts of an estate as defined in article 31-A and it cannot be said when payment of compensation is provided for on the basis of the net income of the whole of the estate, that the legislation is of a confiscatory character. Different considerations might have prevailed if the estates as a whole were not being acquired but different pieces of property were made the subject-matter of acquisition. Properties comprised in an estate may be incomefetching and non-income fetching, the value of these to the owner in the market may well be on the basis of income and if the Act has laid down the principle of payment of compensation on the foot of net income, it cannot be said that the legislation is outside the ambit of entry 42 of List III.

Dr. Ambedkar frankly conceded that he was not prepared to go to the length of contending that the compensation provided for in the Act was illusory. He, however, said that it was inadequate, whether tested subjectively or objective- ly. During the period that the Balrampur Raj was under the

supervision of the Court of Wards, part of the property acquired was purchased on payment of Rs. 24,09,705 fetching a net income of Rs. 25,915. This property, however, under the Act would be acquired on payment of Rs. 2,08,000. Under the U. P. Encumbered Estates Act the Government itself had valued properties in various places in Uttar Pradesh for the purpose of the Act on standard multiples, viz., from 37 to 20 times the net income. Price of part of the property acquired on this basis comes to Rs. 47,14,696, while compen- sation according to the Act payable would be about onefourth of this amount. Be that as it may, article 31 (4) is a complete answer to all these contentions, as held by me in the Bihar appeals. This Bill was pending in the legislature of the. State on the 26th January, 1950, when the Constitu- tion came into force and this circumstance makes article 31 (4) applicable to all these cases. It was contended by Mr. Varma that the U.P. Assembly was prorogued on the 21st January, 1950, and the Bill was reintroduced on the 7th February, 1980, and on the 26th January, 1950, when the Constitution came into force it could not be said to be pending as it had lapsed. This contention seems to be based on a misapprehension as to the provisions of the Constitution Act of 1935 and the provisions of the present Constitution. Section 73 of the Government of India Act, 1931, and article 196 of the present Constitution provide in unambiguous terms that a Bill pending in the legislature of a State shall not lapse by reason of the, prorogation of the House or Houses thereof. In view of these clear provisions the contention of the learned counsel that the Bill was not pending on 26th January, 1950, has to be rejected. Further the provisions of articles 31-A and 31-B completely shelter this law from any attack based on any of the provisions of Part III of the Constitution. This proposition was not disputed. As the validity of the Act could not be impugned on any of the provisions of Part III of the Constitution, that was the reason why the attack on its constitutionality was made on other grounds-ingenious but unsubstantial--lying outside the ambit Part III.

As regards the contention that the provisions with regard to payment of compensation would result in non-pay- ment of it as it is payable at the pleasure of Government and the debts of the zamindars are to be deducted out of it, my view is that both these contentions are unsound. Under the provisions of the Act above cited, compensation becomes due on the date of the vesting of the estate. Inter- est at two and a half per cent runs from that date and becomes payable forthwith. Section 27 of the Act makes it obligatory on the Government to pay compensation. Section 65 in clear terms provides that there shall be paid to every intermediary as compensation the amount declared in that behalf under section 60. Section 68 gives option to the Government to pay compensation either in cash or in bonds, or partly in cash and partly in bonds as may be prescribed. If the Government does not prescribe anything, it is obvious that compensation will be payable forthwith. If, on the other hand, Government makes any rules and prescribes that compensation will be payable at some remote time and not within a reasonable period it will be open to the parties affected to challenge the validity of the rules on the ground of abuse of power. These provisions, however, do not vitiate the Act and affect its validity. So far as the debts are concerned, they were payable in certain instal- ments out of the income of the lands, they have been made payable at once and provision has been made that the amount be deducted from the amount of compensation. Instalments had been fixed because of the fact that they were recovera- ble from the income of the land. When the lands are convert- ed into money, it follows as a matter of course that the right to recover the debts from the income of the lands is transferred to the compensation money and the provision regarding instalments becomes infructuous by the fact of acquisition. Dr. Ambedkar further contended that in

fixing the amount of compensation the State was a judge in its own cause and this was against the spirit of the Constitution. There is no substance in this contention as the actual amount of compensation is to be determined by the compensa- tion officer and his adjudication on the point is subject to an appeal. Government is not the judge of the actual amount of compensation. So far as the law is concerned, it is the act of the legislature and being within its competence, no challenge can be made against the validity of the Act on this ground.

The question that the Act does not postulate any public purpose and is thus unconstitutional was argued by Mr. Dhar and Dr. Ambedkar with some vehemence and it was con- tended that there was no public purpose behind this legisla- tion. Mr. Dhar urged that the sole purpose of the acquisi- tion of zamindars' estates was for increasing the revenues of the State and for selling the intermediaries' interests to private individuals, the intention being to make money by trading activities and at the same time root out the zamin- dars who constitute one-fourth of the population of Uttar Pradesh. It was contended that no community in Uttar Pra- desh derived any benefit from the provisions of the Act because the tenants whose status was intended to be raised, had been given sufficient relief under statutes already passed and what was humanly possible to do for them had been done, that they were at present more prosperous than the middle class people and that the creation of a classless society by destroying a class was not a public purpose. Dr. Ambedkar on the other hand argued that he would have been content had the State nationalised the zamindaries because then the acquisition would be for a public purpose, but as under the impugned Act the State had merely constituted itself a trustee for dis- tribution of the intermediaries' interests amongst the"

> haves" and not amongst the "have nots": i.e., amongst the bhumidars, sirdars, asamis and adhivasis and not amongst the landless, the Act was not for a public purpose at all but was an unfortunate piece of legislation as property was being acquired for the private benefit of persons and not for public use and that giving of property to gaon samaj also could not be held to be for public benefit or public use.
>
> In my opinion, as already stated by me in the Bihar appeals, these arguments are unsound. The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be denned by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual. Prof. Willis has summarized the present position in the United States on this subject, at pages 817 and 818 of his book, in these words :-
>
> "What is public use? On this question there have been two view-points. One may be called the older view-point and the other newer view-point. According to the older view- point, in order to have a public use, there must be the use by the public ....According to the newer view-point there 11074 is a public use if the thing taken is useful to the public. This makes public use for eminent domain practically synony- mous with public purpose for taxation and somewhat like social interest for police

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

The High Court took the view that acquisition of proper- ty under compulsory powers for securing an aim declared in the Constitution to be a matter of State policy is an acqui- sition for a public purpose. The following observations from the judgment of Bhargava J. may be quoted with advantage :-

"The effect of the impugned Act is to vest the ownership and control of a considerable part of the material resources of the community in the State Government; ..... the vesting in the State of the estate of the intermediaries is an indispensable preliminary to the pursuit of measures for the eradication or mitigation of the principal causes of agricultural poverty. Two of such measures are embodied in the Act, which makes provision for three new classes of tenure-holders, bhumidar, sirdar and asami, and for the formation of co-operative farms. The provisions of Chapter Vii of the Act, which depend in some measure for their efficacy on the transfer of property to the State effected by Part I of the Act, are clearly directed to the develop- ment of village self-government. It can, we think, be in- ferred from the Act that the scope is given for more effec- tive development of the State's 'agricultural resources than is at present possible ..... Reading the Act as a whole there can, we think, be no doubt that the primary object of the legislature is to effect a radical change in the system of the land tenure now prevailing in this State. In my opinion, legislation, which aims at elevating the status of tenants by conferring upon them the bhumidari rights to which status the big zamindars have also been levelled down cannot be said as Wanting in public purposes in a democratic State. It aims at de- stroying the inferiority complex in a large number of citizens of the State and giving them a status of equality with their former lords and 'prevents the' accumulation of big tracts of land in the hands of a few individuals which is contrary to the expressed intentions of the Constitution. Dr. Ambedkar combated this view and urged that the ex- pression "public purpose" was not a new concept when the Constitution of India was framed; on the other hand, it had a settled meaning in the past legislative history of this country and it must be presumed that the Constitution used the expression in the same sense in which it had been used in the earlier Acts and in the Government of India Act, 1935, and that it should not be construed in the light of the directive principles laid down in Part IV of the Consti- tution. He contended that had the constitutionmakers intend- ed to give this concept a different meaning than it had acquired in the past, they would have clearly given expres- sion to that intention by saying that the expression "public purpose" includes purposes which aim at implementing the directive principles Of State policy and that Part IV of the Constitution merely contained glittering generalities which had no justification behind them and should not be taken into consideration in construing the phrase "public purpose".

In my opinion, the contentions raised by Dr. Ambedkar, though interesting, are not sound because they are based on the assumption that the concept of public purpose is a rigid concept and has a settled meaning. Dr. Ambedkar is right in saying that in the concept Of public purpose there is a negative element in that no private interest can be created in the property acquired compulsorily; in other words, property of A cannot be acquired to be given to B for his own private purposes and that there is a positive element in the concept that the property taken must be for public benefit. Both these concepts are present in the acquisition of the zamindari estates. Zamindaries are not being taken for the private benefit of any particular individual or individuals, but are being acquired by the State in the general interests of the community. Property acquired will be vested either in the State or in the body corporate, the gaon samaj, which has to function under the supervision of the State. Tenants, sirdars, asamis etc., are already in possession of the lands in which their status is to be raised to that of bhumidars. Zamindars who are being re- duced to the status of bhumidars are also in possession of the lands. There is no question in these circumstances of taking property of A and giving it to B. All that the Act achieves is the equality of the status of the different persons holding lands in the State. It is not correct to say that Government is acquiring the properties for the purpose of carrying on a business or a trade. The moneys received from persons seeking bhumidari status or from the income of zamindari estates will be used for State purposes and for the benefit of the community at large. For the reasons given above I hold that the impugned Act is not void by reason of the circumstance that it does not postulate a public purpose.

As regards the question of delegation, our attention was drawn particularly to the provisions of sections 6 (e) and

(g) and 68. These sections provide for the prescription of the rate of interest by the executive government on mort- gages and they also authorize the local government to deter- mine the period of redemption of the bonds and the fixation of the ratio between payment of compensation in bonds and payment in cash. In my opinion, the delegation is within the permissible limits and does not amount to delegation of essential legislative power. The main principles on these matters have been laid down in the Act and matters of detail have been left to the rule-making power.

As regards the appeal of the Maharaja of Kapurthala (Appeal No. 285 of 1951), the facts are these: By article 12 of the Covenant of Merger dated the 5th May, 1948, entered into between the Rulers of the States now comprised in the Pepsu Union, the properties which are the subject-matter of the appeal were declared and guaranteed as the private properties of the Maharaja. Tha Maharaja was also guaranteed a privy purse of Rs. 2,40,000, It was sug- gested that the Maharaja accepted this sum which was smaller in amount than what was allowed to other Rulers as privy purse because he was assured of the income of the Oudh estate. On these facts it was contended that the impugned Act contravened the provisions of article 362 of the Consti- tution inasmuch as it has not paid due regard to the guaran- tees contained in article 12 of the Covenant. As already held by me in the Madhya Pradesh petitions, this contention is devoid of force. The impugned Act has fully respected the Covenant of the 5th May, 1948, inasmuch as it has treated the Oudh estate as the private property of the Maharaja as distinguished from the State properties and it is on that basis that it has proceeded to acquire it on payment of compensation. The allegation that the income of this estate was to supplement the privy purse and that the appellant accepted a lower sum by way of privy

purse than given to the other Maharajas has been denied by the Government and we see no reason to hold in the absence of any material to the contrary, that this denial is not true. This Act, therefore, constitutes no breach of the guarantees given in article 362 of the Constitution. It was urged by the learned Attorney- General that article 363 of the Constitution bars the juris- diction of this Court from going into this question. Dr. Ambedkar, on the other hand, contended that this article has no application because of the fact that the Government of India was not a party to this Covenant. As at present advised, I see good deal of force in the point raised by the learned Attorney-General. Not only did the Government of India sign the Covenant as a guarantor but it also signed it as a concurring party and that being so, the provisions of article 363 seem to be attracted to the case. The appeal of the Maharaja therefore fails on this point.

Mr. Bishan Singh, who appeared in Appeals Nos. 284, 285, 288, 289 and 290, argued the special cases of the taluqdars of Oudh. It was contended that the taluqdars were absolute owners of these holdings at the time of the annexa- tion of Oudh in February, 1856, that subsequently the Brit- ish Government under the directions of Lord Dalhousie tried to take away the taluqdars' rights, but that after the mutiny they were reinstated in their earlier status and that status was reaffirmed by the enactment of the Oudh Estates Act, I of 1856, that the permanent and hereditary rights of the appellants under that Act in the lands granted to them under the sanads could not be affected by any legislation made by the successors in interest of the British Government and that Government could not derogate from its grant. It seems to me that the lands held by the taluqdars stand on no higher footing than the properties of other owners in Oudh. Be that as it may, the matter seems to have been set at rest by the decision of their Lordships of the Privy Council in Thakur Jagannath Baksh Singh v. United Provinces (1). At page 119 of the report it was observed as follows:-

> "It is,however,desirable to examine the particular grounds on which it is sought to induce the court to arrive at this paradoxical conclusion. Some of these are said to be based on the general principle of law that the Crown cannot dero- gate from its own grant, others are said to depend on par- ticular provisions of the Government of India Act. It has not been possible for the appellant to adduce any authority for the principle involved, which their Lordships apprehend to be that Parliament, whether Imperial, Federal or Provin- cial, in the absence of express prohibition, is debarred from legislating so as to vary the effect of a Crown grant."

The Crown cannot deprive a legislature of its legisla- tive authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists (1) [1946] F.C.R. 111.

and no court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign compe- tence. If therefore it be found that the subject-matter of a Crown grant is within the competence of a provincial legislature, nothing can prevent that legislature from legislating about it, unless the Constitution Act itself expressly prohibits legislation on the subject either abso- lutely or conditionally.

Dr. Asthana, who appeared in Appeals Nos. 291 to 294 of 1951, argued the case of the religious institutions. He contended that the properties held by these institutions had already been dedicated for public purposes, that the income of these properties was being used for holding melas, feed- ing sadhus and other charitable purposes and that any reduc- tion in that income would adversely affect those institu- tions and the properties that were already dedicated for public purposes could not be acquired under compulsory powers of acquisition. The argument is fallacious. A charity created by a private individual is not immune from the sovereign's power to compulsorily acquire that property for public purposes. It is incorrect to say that the vesting of these properties in the State under the provisions of the Act in any way affects the charity adversely because the net income that the institutions are deriving from the proper- ties has been made the basis of compensation awarded to them.

Mr. Varma, who appeared in Appeal No. 295 of 1951, raised several new and ingenious points, none of which, however, he was able to substantiate. He contended that the impugned Act may not be void but the notification which the Government was authorised to issue under the powers con- ferred on it by the statute would be void because the executive government could not infringe fundamental rights by a notification which remained unaffected by articles 31 (4), 31-A and 31-B. The argument does not seem to be valid because it suffers from the defect that if the statute is good, the notification which is of a consequential nature cannot be held to be bad it was next contended by the learned counsel that the zamindars had vested rights in existing law, namely, the Land Acquisition Act and the impugned statute could not deprive them of the benefits of the provisions of that Act. Similar argument was raised in the Bihar appeals and for the reasons given therein it is repelled. It was then contended that in view of the provisions of the Religious Endowments Act, lands of religious endowments could not be acquired under the provi- sions of the impugned statute. This contention seems to have been raised on some misapprehension as to the scope and extent of the Religious Endowments Act, XX of 1863. It is not proved that Act has any application to the properties sought to be acquired under the impugned Act. Moreover, that Act only deals with management of certain properties and does not stand in the way of their acquisition. Great effort was made by Mr. Varma to establish that the impugned Act was a piece of fraud on the Constitution. It was contended that the U.P. Government had been since a long time enacting laws with the fraudulent intention of depriv- ing the zamindars of compensation by reducing their incomes,--he made mention of half a dozen Acts that were enacted in U.P. prior to the impugned Act. The argument, to my mind, is based on a confusion of thought. The enactments referred to were enacted by the legislature of U.P. between 1930 and 1940, before the COnstitution came into force, and have no connection whatever with acquisition of properties. Mr. Varma attacked the validity of section 840 of the Act which enacts that-

> "where any orders had been made ..... or jurisdiction exercised under the provisions of the U.P. Agriculture Tenants (Acquisition of Privileges) Act, 1949, the provisions of the said Act shall be so read and con- strued as if the amendments mentioned in Schedule IV had been made therein and were in force from the commencement of the said Act."

It was contended that the U.P. Agriculture Tenants (Acquisition of Privileges) Act, 1949 was an existing law in U.P. and had not been repealed by the impugned Act and that being so, this Act could not validate notifications made under that existing law. I have not been able to see the force of this suggestion. Be that as it may, the con- stitutionality of this section does not affect the legisla- tion as a whole. The point was never raised before the High Court and has no substance.

It was also contended that mere rights in land apart from the lands themselves could not be acquired under com- pulsory power and that the U.P. Legislature could not ac- quire proprietary rights in lands and leave the bhumidari rights with the landlords. This proposition sounds strange. It is open to Government to acquire the whole of the rights of an owner or a part of that right. Leasehold and other similar rights can always be acquired and if a person owns the totality of rights, it is not necessary to acquire the whole interest of that person if it is not needed for public purposes.

Lastly, it was urged that in truth the legislation in question fell under legislative power conferred by entry 18 of List II and this power could only be exercised subject to the freedom guaranteed by article 19(f) of the Constitution, that the total abolition of the zamindaris could not be protected by the provisions of clause 6 of article 19 in that it could not be regarded a reasonable restriction on the exercise of the right to hold property. This argument loses sight of the fact that no help can be sought in these cases from any of the provisions of Part III; moreover, the legislation in question has been enacted under legislative powers given by entry 36 of List II and not under entry 18 of that List. Mr. Varma raised some other contentions also but during the discussion he eventually abandoned them. The result therefore is that there is no substance in any one of the appeals and I would accordingly dismiss all of them. I would, however, make no order as to costs in any of them in view of the peculiar circum- stances of these cases. The Constitution was amended during the pendency of the litigation and any costs allowed to the Government would further reduce the inadequate compensation that the Government is paying for the acquisition of these estates.

MUKHERJEA J.--I agree that these appeals should be dismissed.

DAS J.--This group of appeals arises out of various proceedings instituted in the High Court of Allahabad under article 226 of the Constitution questioning the validity of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. I of 1951) hereinafter referred to as The Act.

On 8th August 1946, the United Provinces Legislative Assembly passed a resolution accepting the principle of the abolition of the zamindari system in the Province involving intermediaries between the cultivators and the State and resolving that the rights of such intermediaries should be acquired on payment of equitable compensation. To prepare the necessary scheme a committee, called the Zamindari Abolition Committee, was appointed. That committee submit- ted its report in August, 1948, making various recommenda- tions which have been summarised by Mr. S.K. Dhar appearing for some of the appellants as follows :--

(1) Abolition of zamindari on payment of Rs. 137 crores at 21/2 per cent interest;

(2) Establishment of gaon samaj;

(3) Supply of rural credit by Government;

(4) Introduction of a modified form of peasant proprie- torship combined with voluntary co-operative farming; (5) Introduction of a restricted form of landlordism; (6) Prohibiting sub-letting and permitting alienation only to the extent that the alienee will not get more than 35 acres including his previous possessions, To give effect to the recommendations of the committee a Bill which eventually became the Act was introduced in the U.P. Legislative Assembly on 17th July, 1949. After having been passed by the U.P. Legislature the Bill received the assent of the President on 24th January, 1951. There is no dispute in this case that the provisions of article 31 (3) have been complied with. It is also clear, notwithstanding that at one stage it was disputed by one of the learned counsel evidently out of some misapprehension, that the Bill was pending before the Legislature at the commencement of the Constitution and comes within article 31 (4) of the Constitution.

The title and preamble of the Act follow the wording of the resolution of the Legislature. The preamble recites that it is expedient to provide for the abolition of the zamind- ari system which involves intermediaries between the tillers of the soil and the State in the Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make a provision for other matters connected therewith. The body of the Act is divided into two parts, each part containing six chapters. Chapter 11 of Part I deals with acquisition; Chapter III with as- sessment of compensation and Chapter IV with payment of compensation. Chapter V is concerned with rehabilitation grant, while Chapter VI deals with mines and minerals. Chapter VII, which is in Part II, deals with the constitu- tion of gaon samaj and gaon sabha. Chapter VIII relates to tenure, Chapter IX to Adhivasis. Chapter X is concerned with land revenue and Chapter XI with co-operative farms. Chapter XII deals with miscellaneous matters. Broadly speak- ing, the Act provides for acquisition of the interest of intermediaries for a compensation calculated at eight times the net income arrived at by deducting from the gross assets (which are the same as the gross income) the Government revenues, cesses and local rates, agricultural income-tax and costs of management.

Before notification was issued by the State Government under section 4 of the Act, the intermediaries filed peti- tions under article 226 of the Constitution praying, inter alia, for the issue of a writ in the nature of mandamus or other appropriate directions, orders or writs calling upon the State to forbear from giving effect to or acting in any manner by virtue of or under the Act. By a judgment of a Full Bench of the Allahabad High Court delivered on 10th May, 1951, the petitions were dismissed. The High Court, however, certified, under article 132(1), that the cases involved substantial questions of law as to the interpreta- tion of the Constitution. The intermediaries accordingly have come up on appeal before us.

Mr. P.R. Das who appears in support of several of these appeals raises the same questions as were raised by him in the Bihar appeals. Other learned counsel appearing for the other appellants mainly

supported Mr. P.R. Das and also sought to reinforce the appellants' cases on some additional grounds.

Mr. S.K. Dhar has taken us through the provisions of the Act and drawn our attention to the facts and figures appear- ing in the affidavit of Sri J. Nigam filed in Appeal No. 285 of 1951 and the Report of the Zamindari Abolition Committee. He has contended that of the 20, 16,783 zamindars in U.P. about 20,00,000 are tillers of the soil also; that one- fourth of the cultivable lands is with peasant proprietors and the remaining three-fourths is with tillers who pay rent to the zamindars. Most of the tillers have occupancy rights and cannot be ejected. Since 1947, the Congress Government has carried out extensive agrarian reforms; the zamindars profits have gone down from 1108 crores in 1939-40 to 1,069 crores in 1945-46, that is to say, there has been a drop of about 39 crores;cess has been raised by 27 lacs and income- tax has been imposed to the extent of about one crore of rupees. The price of agricultural produce has gone up by 400 per cent so that the price of produce aggregates to about rupees 851 crores while the rent payable by the tenants is only 17 crores. Therefore, it is contended that there does not appear any essential or urgent public purpose for which the impugned Act was necessary at all.

Dr. Ambedkar appearing for the appellants in Appeals Nos. 285 and 288 of 1951 has addressed us at length as to the meaning ,of the expression "public purpose" as explained in various judicial decisions and text books. He has con- tended that it is wrong to say that the Act proposes to acquire the zamindaries for the State. What, he asks, is the destination of the property acquired ? Under the Act the State assumes the function of a trustee for distributing the property. The main purpose of the Act is to convert the tenants into bhoomidars, sirdars and so on. The net result of the Act, according to him, is that the property of the zamindars is taken away and vested in the tenants. He points out that the Act makes no provision for the land- less labourers. Dr. Ambedkar maintains that this cannot be called "acquisition for a public purpose". He submits that public purpose must be distinguished from a mere public interest or public benefit or public utility. He further contends that the establishment of gaon samaj cannot be said to be a public purpose.

As regards compensation Mr. Dhar points out that in fixing compensation under Table A regard is to be had only to income. Non-income yielding property goes without any compensation, e.g., culturable waste. In point of fact Government acquired a large area of culturable waste at Rs. 300 per acre and yet no compensation will be paid under the Act for culturable waste. Abadi sites also will bring no compensation. Even income yielding property, e.g., irriga- tion works like 600 miles of canal in Balrampur and 143 1/2 miles in Bird estate, will yield no compensation although the Government will get additional revenue out of them. Scattered trees in Balrampur alone will come up to 85,000 in number. The income of Seyer property will only be taken at the figure recorded in Khataunis, although it is well-known that actual incomes are not recorded therein. Seyer and khud khast were never assessed to revenue, but under the Act they will be so assessed. No compensation is, however, provided for the loss of status from Zamindari to Bhoomidari. Rent- free holdings granted by the zamindar which at present yield no income are not taken into account although there is always a possibility of their resumption. Agricultural income-tax is deducted and forest is valued on an average of 20 to 40 years' income, although forest industry is of a very recent growth. Finally, the income of mines is to be computed on an average of 12 years' income. The undeveloped mines or

mines which have not started yielding any income will not fetch any compensation. These are, in short, the main objections of the landlords as summarised by Mr. S.K. Dhar as to the method of assessment of compensation. As regards the manner of payment of compensation Mr. S.K. Dhar points out that the Act does not really provide for payment of compensation at all in the eye of the law. Under section 68 no time is fixed for payment. It is left to be pre- scribed by rules, but no rules have been made. Compensation payable, say in 40 years or 50 years or 200 years, may be a charity or a dole but is certainly not compensation, prompt and certain such as is contemplated by the decision of the United States Supreme Court in Sweet v. Rachel(1) and sever- al other cases cited by him. He maintains that the compensa- tion is illusory because-

(i) it is based not on the actual income but on arbi- trarily determined income;

(ii) the determination of time and manner of payment is left entirely at the discretion of the appropriator, and

(iii) the source of payment is not the community as a whole but the expropriated proprietors' own property. In my judgment in the Bihar appeals I have dealt at length with the meaning of "public purpose" and I have also dealt with the question of compensation.

(1) 4x L. Ed. 188 at pp. 196-97.

It is, therefore, unnecessary for me to reiterate the prin- ciples as I apprehend them. For reasons stated by me in that judgment the impugned Act cannot be questioned on the ground of absence of a public purpose or absence of just compensation. If anything, the public purpose in the im- pugned Act is much more evident and pronounced than it is in the Bihar Land Reforms Act. It is impossible to say that the impugned Act is not a law with respect to principles on which compensation is to be determined and the manner of its payment. If the Government does not prescribe how much of the compensation will be paid in cash and how much will be paid by bonds as mentioned in section 18, the intermediaries will not suffer because under section 65 their right will remain enforceable.

I have also dealt with the questions of fraud on the Constitution and the improper delegation of essential legis- lative power in my judgment in the Bihar appeals and I need not repeat the answers given by me. Suffice it to say that for reasons stated in my judgment in the Bihar appeals the main grounds on which the Act is impugned must be rejected. Dr. Ambedkar has urged that the spirit of the Constitu- tion is a valid test for judging the constitutionality of the impugned Act. He maintains that our Constitution being one for establishing liberty and equality and a government of a free people it must be held to contain an implied prohibition against the taking of private property except for a public purpose and on payment of just compensation. The necessity for the existence of a public purpose and for providing for compensation are, as I have said in my judg- ment in the Bihar appeals, provisions of article 31 (2) and, therefore, it is not necessary to have recourse to any spirit of the Constitution, for the letter of the Constitu- tion itself requires the two requisites. Dr. Ambedkar, however, argues that, so far as the appellants are con- cerned, Part III of the Constitution does not exist and, therefore, the maxim expressum facit cessare taciturn does not apply. I am not prepared to accept this argument as sound. It is true that the appellants cannot

question the impugned Act on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provisions of Part III, but this circumstance does not imply that Part III is wholly erased out of the Constitution. It exists for all other purposes. For instance, article 3 I-A protects a law providing for acquisition by the State of any estate, but it does not protect a law providing for acquisi- tion by the State of any property which does not come within the expression "estate" as defined in that article. For all laws for acquisition of all other properties Part III certainly exists and if it is conceded that the provisions of Part III exist in so far as such other laws are concerned the provision of article 31 (2) requiring the existence of a public purpose and the provision for compensation must exclude any theory of the implied existence of those two requirements. In the next place, the spirit of the Consti- tution has to be inferred from some provision, express or implied, of the Constitution. Mr. P.R. Das based his argu- ment on the implications to be deduced from the language of entry 36 in List II and entry 42 in List III. Dr. Ambedkar, however, says that it is not necessary for him to go to any entry at all. He points out that the American Courts have held that where in a Constitution there is a representative form of government in which there is liberty and equality and when the government is a limited one such a Constitution carries with it the implication that the State cannot take private property except for a public purpose and on payment of compensation. I find it very difficult to accept this argument. The existence of a public purpose and the neces- sity for payment of compensation have been insisted upon from very old times when the constitutions of governments in different countries were entirely different from the Constitution of the United States. It follows, therefore, that these two elements cannot be said to be an inherent part of the spirit of any particular form of government. Our Constitution has in article 31 (2) recognised the exist- ence of the two elements as a prerequisite to the exercise of the power of eminent domain, The impugned Act having been expressly taken out of the operation of those provisions, the question of invoking any imaginary spirit of the Constitution cannot be entertained. Indeed, invocation of such an imaginary spirit will run counter to the express letters of articles 31 (4), 31-A and 31-B. Dr. Ambedkar appearing for the Maharaja of Kapurtha- la, who is the appellant in Case No. 289 of 1951, has also raised the point that the private property of the appellant is protected by article 362 of the Constitution and as the impugned Act does not pay any regard to those rights it is void. On 5th May, 1948, certain covenants of merger were entered into between the rulers of seven Punjab States. Under article 12 of the covenant each ruler is to be enti- tled to the ownership, use and enjoyment of all private properties. A list was furnished to the Rajpramukh in which certain Oudh properties belonging to the appellant were shown as his private property. The appellant states that the amount of his privy purse was fixed at a low figure in consideration of the income of the Oudh estate. These allegations are not admitted by the respondents. I have already dealt with the correctness of a similar argument raised by Dr. Asthana on behalf of the ruler of Khairagarh in petition No. 268 of 1951 which was concerned with the Madhya Pradesh Act. Shortly put, my view is that this claim to the private property is not within article 362, that by offering him compensation the Act has recognised his owner- ship, that, in any event, that article imposes no legal obligation on the Parliament or the State Legislature and, finally, that article 363 bars the jurisdiction of this Court with respect to any dispute arising out of the covenant of merger. Those covenants were entered into by the seven rulers and the Government of the Dominion of India was a party thereto in that it concurred in the covenants and guaranteed the same. In my opinion, for reasons stated in my judgment in the Madhya Pradesh petitions, there is no substance in this point.

Dr. Asthana appearing for certain religious institutions which are appellants in Appeals Nos. 291 to 294 of 1951 contended that their property already dedicated to a public purpose cannot be acquired for another public purpose. I see no substance in this contention. The property belonging to the religious institutions will only change its form, namely, from immovable property into money. Certain subsidiary points raised by Mr. Bishun Singh and Mr. Prem Manohar Verma have been dealt with by my learned brother Mahajan J. and it is unnecessary for me to add anything thereto.

In my judgment, for reasons stated in ray judgments in the Bihar appeals and the Madhya Pradesh petitions and those mentioned above, these appeals should be dismissed. CHANDRASEKHARA AYYAR J.-I agree that the appeals should be dismissed without any order as to costs. Appeals dismissed.

Agent for the appellant: S.S. Sukla.

Agent for the respondents: C.P. Lal.