Visweshwar Rao vs The State Of Madhya Pradesh(And Other ... on 27 May, 1952

Equivalent citations: 1975 AIR 1083

PETITIONER:
VISWESHWAR RAO

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH(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:
Madhya Pradesh Abolition of Proprietory Rights (Estates, Mahals, Ahenated Lands) Act (1 of 1951)--Law for abolision of proprietory estates and tenures---Compensation inadequate--Jurisdiction of Court to inquire in to validity of Act--Right of eminent domain--Necessity of provision for payment of compensation and public purpose--Spirit of Constitution--Delegation of legislative powers--Fraud on the Constitution--Passing of Bills--Certificate of Speaker that Bill was passed--Conclusiveness--Omission to note on record that Bill was passed--Effect--Reserving law for assent of President--Governor's signature to Bill, whether necessary-"Law," " Legislature", "Public purpose" meanings of--Compulsory acquisition of malguzari villages, and property set apart as private property of Ruler under covenant of merger----Legality----Constitution of India, 1950--Constitution (First Amendment) Act, 1951--Arts. 31, 31-A, 31-B, 362, 363.

HEADNOTE:
Held by the Full Court (PATANJALI SASTRI C.J., MAHAJAN, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ.)--The Madhya

Pradesh Abolition of Proprietory Rights {Estates. Mahals, Alienated Lands}, Act (1 of 1951) is valid in its entirety. In view of the provisions contained in arts. 31 (4J, 31-A and 31-B of the Constitution the court has no jurisdiction to enquire into an objection to the validity of the Act on the ground that it does not provide for adequate compensation. The Act does not involve any delegation of legislative powers and the provisions relating to compensation therein are not a fraud on the Constitution.

Held also, that the certificate of the Speaker on the original Bill when it was submitted to the President for his assent, that the Bill was passed by the House was conclusive. proof that the Bill was passed, and the mere fact that there was nothing on the record of the proceedings to show that the motion that the Bill be passed was voted upon and carried, as required by rule 20(1) of the Rules of Procedure, could not invalidate the Act. Per PATANJALI SASTRI C.J.__In any case, the omission to put the motion formally to the House, even if true, was, in the circumstances no more than a mere irregularity of procedure as it was not disputed that the overwhelming majority of the members

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present were in favour of carrying the motion and no dissentient voice was actually raised.

Held further, (i) that though art. 31(3) speaks of a" law" being reserved for the consideration of the President, the Constitution does not contemplate that before submitting a Bill which has been passed by a Legislative Assembly for the assent of the President, the Governor should give his assent to it;

(ii) that the President can perform both the duties entrusted to him under art. 200 and art. 31 (3) and {4) at one and the same time; he need not give his assent twice, once to make the Bill a law under art. 200 and then give his assent once more in order to make the law effective against art. 31 (2); the word "Legislature" used in this connection in art. 31(4) means the House or Houses of Legislature and does not include the Governor;

(iii) that though malguzari villages are not included in the expression "estate" as defined in art. 31-A, art. 31-B (which is not merely illustrative of art. 31-A, but an independent provision) validated the Act even in respect of malguzari villages, and since art. 31 (4) is not limited to "estates" its provisions also saved the law in its entirety;

(iv) Article 362 does not prohibit the acquisition of properties set apart as private properties of a Ruler by a covenant of merger.

Per MAHAJAN and DAs JJ.--In any event, the jurisdiction of the Court to decide disputes which arise out of a covenant of merger was barred by art. 363.

JUDGMENT:

PETITIONS under article 32 of the Constitution of India for enforcement of fundamental rights. (Petitions Nos. 166, 228, 230, 237, 245, 246, 257, 268, 280 to 285, 287 to 289, 317, 318 and 487 of 1951). The facts which gave rise to these petitions and the arguments of counsel are stated in the judgment.

B. Somayya (V. N. Swami, with him) for the petitioner in Petition No. 166 of 1951.

N.S. Bindra (P.S. Safeer, with him) for the petitioner in Petition No. 317 of 1951.

V.N. Swarni for the petitioners in Petitions Nos. 228, 230, 237, 245, 246, 280 to 285 of 1951, 257 and 287 to 289 of 1951.

K.B. Asthana for the petitioners in Petition No. 26 of 1951.

S.N. Mukherjee for the petitioner in Petition No. 318 of 1951.

M.N. Jog for the petitioner in Petition No. 487 of 1951. T.L. Shivde (Advocate-General of Madhya Pradesh), with T.P. Naik for the respondent.

1951. May 2, 5, The judgment of the CHIEF JUSTICE print- ed at pp. 893-916 supra covers these cases also. MAHAJAN, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ. delivered separate judgments.

MAHAJAN J.

Petition No. 166 of 1951.

This is a petition under article 32 of the Constitution of India by Shri Visheswar Rao, zamindar and proprietor of Ahiri zamindari, an estate as defined in section 2(3) of the Central Provinces Land Revenue Act, II of 1917, and situated in tehsil Sironcha, district Chanda (Madhya Pradesh), for the enforcement of his fundamental right to property under article 31(1) of the Constitution by the issue of an appro- priate writ or a direction, to the respondent State re- straining it from disturbing his possession of the estate, and eighty malguzari villages situate in the Garchiroli tehsil of the same district.

The petitioner and his ancestors have been owning and enjoying these properties in full proprietary right for several generations past. On the 5th April, 1950, the Madhya Pradesh Legislative Assembly enacted an Act called the Madhya Pradesh Abolition of Proprietary Rights Act. The Act received the assent of the President of India on the 22nd January, 1951, and was published in the Madhya Pradesh Gazette on the 26th January, 1951, as Act I of 1951. By a notification in a gazette extraordinary issued on the 27th January, 1951, the Madhya Pradesh Government fixed 31st March, 1951. as the date of vesting of the estates under section 3 of the Act. The petitioner thus was to lose

his estate and lands on the 31st March, 1951. On the 9th March, 1951, i.e., before the vesting date, he presented the present application to this court for the issue of appropri- ate writs against the Government prohibiting it from taking possession of his properties. It was alleged that the Madhya Pradesh Act, I of 1951, was unconstitutional and void and infringed the fundamental rights of the peti- tioner in a variety of ways.

For a proper appreciation of the ground on which the validity of the Act is being challenged, it is necessary to set out the relevant provisions of the Act and to state the facts which led to this enactment.

Madhya Pradesh is a composite State, comprising the Central Provinces, Berar and the merged territories. By an agreement of merger made between-the rulers of States and the Dominion of India dated the 15th December, 1947, certain territories which at one time were under the Indian States Agency and were held by these rulers were integrated with the Dominion. The integration actually took place on the 1st January, 1948. On the 1st August, 1949, the States were merged in the Madhya Pradesh. There were in all 106 estates in Madhya Pradesh as defined in section 2(3) of Act I of 1951 and held by zamindars. Most of the lands are owned by malguzars of mahals in the status of "Malkan cabza"

> The land system prevailing in Madhya Pradesh is malgu- zari (except in certain areas where the ryotwari system is in vogue), the malguzar being an intermediary between the State and the tiller. Land is also held on a variety of subordinate tenures by absolute occupancy tenants, occupancy tenants, ryots, thikedars, mafidars, ilaqadars, etc. Land revenue in Madhya Pradesh was last assessed under the Central Provinces Land Revenue Act, II of 1917. The estate holders pay land revenue on the lands comprised in the estates at a concession rate. The payment is technically called "tekoli". In 1939 there was an adhoc increase in the amount of tekoli by the Central Provinces Revision of Land Revenue Estates Act, I of 1939.
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> On the 3rd September, 1946, the Central Provinces and Berar Legislative Assembly passed a resolution for the elimination of intermediaries between the 'State and the peasant. Soon after the passing of this resolution several laws were enacted, it is said, with a view to achieve this result, the impugned Act being the last of that series. In 1947, the Central Provinces Land Revenue Estates Act, XXV of 1947, was enacted. The revenue assess- ment, viz., tekoli, on the estates was, we are told, en- hanced in some places from thirty to fifty per cent. of the full jama and in others from forty to sixty per cent. In the same year was enacted the Central Provinces Land Revenue Revision Mahals Act, XXVI of 1947. The land assessment on malguzari villages was, it is alleged, raised to 75 per cent. from 45 to 50 per cent. of malguzari assets. This was done without recourse to a settlement. In 1948 came the Central PrOvinces and Berar Revocation of Exemptions Act, XXXVII of 1948, making persons exempted from payment of land revenue liable for it. This legislation, it is urged, re- sulted in the reduction of the net income of the proprietors to a large extent. On the 11th October, 1949, the impugned Act was introduced in the Madhya Pradesh Assembly. It was

referred to a Select Committee on the 15th October, 1949; the Select Committee reported on the 9th March, 1950, the report was published on the 17th March, 1950, and was taken into consideration on the 29th March. 1950, by the Assembly. On the 30th March, 1950, the opposition moved for the circu- lation of the Bill. The circulation motion was negatived on the 3rd April, 1950, and the Bill was discussed clause by clause and the clauses were passed between the 3rd of April and the 5th of April. On the 5th April, 1950, the member in charge of the Bill moved as follows :-

"Speaker Sir, I now move that the Central Provinces & Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill, 1949 (No. 64 of 1949) as considered by the House be passed into law."

The Hon'ble the Speaker said:"Motion moved, that the Central Provinces & Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill, 1949 (No. 64 of 1949) as considered by the House be passed into law,"

A number of speeches were made at the third reading stage. The opposition was in a hopeless minority. The trend of the speeches was of a laudatory character, each member hailing the Bill as a piece of great reform in the Madhya Pradesh land system. No motion of a dilatory nature was tabled and as a matter of fact there was no opposition whatsoever to the passing of the Bill. Some members ex- pressed the opinion that the provisions of the Act did not go far enough, others thought that the provisions as to compensation should have been more liberal, but there was none who was for rejecting the Bill as it stood. The report of the proceedings of the5th April, 1950, does not contain the note that the motion that the Bill be passed into law was carried.

The omission of this note in the proceedings of the legislature has furnished a basis for the argument that the Bill was never passed into law. The proceedings were print- ed on the 21st June, 1950, and were signed by the Speaker on the 1st October, 1950. The original BiLl that was submitted to the President for his assent was printed on the 29th April, 1950, and it bears on it the certificate of the Speaker dated the 10th May, 1950, stating that the Bill was duly passed by the legislature on the 5th April, 1950. This certificate was signed by the Speaker a considerable time ahead of his signing the proceedings. The Act, as already stated, received the assent of the President on the 22nd January, 1951, and was published in the Madhya Pradesh Gazette on the 26th January, 1951, as Madhya Pradesh Act I of 1951.

Against the constitutionality of this Act a number of petitions were made in the High Court of Nagpur but they were all dismissed by that court on the 9th April, 1951, while this petition along with some others was pending in this Court.

The preamble of the Act is in these terms :--

> "An Act to provide for the acquisition of the rights of proprietors in estates. mahals, alienated villages and alienated lands in Madhya Pradesh and to make provision for other matters connected therewith."

The legislation clearly falls within entry 36 of List II of the Seventh Schedule of the Constitution. 'the Madhya Pradesh Legislature had therefore undoubted competence to enact it. The Act is divided into eleven chapters and three schedules. Chapter II deals with "the vesting of proprietary rights in the State and states the conse- quences of the vesting. Section 3 is in these terms :--

> "Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification vesting in a proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes State free of all encum- brances .....".

Section 4 provides that after the publication of the notification under section 3, all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land. scrub jungle, forest, trees, fisheries, wells, tanks, ponds, water-channels, ferries, pathways, village sites, hats, bazars and melas; and in all subsoil, including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State for purposes of the State free of all encumbrances; but that the proprietor shall continue to retain the possession of his homestead, home-farm land, and in the Central Provinces, also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting- The proprietor is entitled to recover any sums which became due to him before the date of vesting by virtue of his proprietary rights. All open enclosures used for agricultural or domestic pur- poses, all buildings, places of worship, wells situated in and trees standing on lands included in such enclosures or house sites etc. continue to remain in possession of the proprietor and are to be settled with him by the State Government on such terms and condi- tions as it may determine. Similarly, certain private wells, trees, tanks and groves continue to remain in possession of the proprietor or other person who may be interested in them. Chapter III deals with the assessment of compensa- tion. It is provided in section 8 that the State Government shall pay compensation to the proprietor in accordance with the rules contained in Schedule I. Besides the amount so determined, Government has to pay compensation for any amount spent on the construction of a tank or well used for agricultural purposes where such tank or well vests in the State Government. In addition to all these amounts, the State Government has to pay compensation for lands within the area of a municipality or cantonment in accordance with the rules contained in Schedule II. The compensation for divestment of proprietary rights becomes due from the date of vesting and it is enacted that it shall carry interest at the rate of two and a half per cent. per annum from the date of vesting to the date of payment. Section 9 provides as follows :-

> "The compensation payable under section 8 may, in ac- cordance with the rules made in this behalf. be paid in one or more of the following modes, namely:--

(i) in cash in full or in annual instalments not exceed- ing thirty;

(ii) in bonds either negotiable or not negotiable carry-

ing interest at the rate specified in sub-section (4) of section 8 and of guaranteed face value maturing within a specified period not exceeding thirty years. The other sections in this chapter deal with interim payment and appointment of compensation officers and lay down the procedure for the determination of compensation. Schedule I provides that the amount of compensation in the Central Provinces and in Berar shall be ten times the net income determined in accordance with the rules mentioned in the schedule. In merged territories the compensation is payable on a sliding scale varying from two times to ten times the net income. Schedule 11 lays down the measure of compensation on a scale varying from five to fifteen times the assessment on the land as speci- fied in the schedule. Section 2 of Schedule I provides for the calculation of the gross income by adding the amount of income received by a proprietor from the aggregate of the rents from the tenants as recorded in the jamabandi for the previous agricultural year; the siwai income, that is, income from various sources such as jalkar, bankar, phalkar, hats, bazars, melas, grazing and village forest calculated at two times the income recorded in the current settlement of 1923; and the consent money on transfer of tenancy lands--the average of transactions recorded in the village papers for ten years preceding the agricultural year in which the date of vesting falls. The schedule also provides the method of determination of the gross income of a mahal as well as of an alienated village or alienated land sepa- rately. It also provides for the determination of this income in the case of mines and forests. The method suggest- ed for assessing the net income is that out of the gross income the following items have to be deducted, i.e., the assessed land revenue, sums payable during the previous agricultural year on account of casses and local rates, the average of income-tax paid in respect of income received from big forests during the period of thirty agricultural years preceding the agricultural year in Which the relevant date falls and cost of management varying from 8 to 15 per cent. of the gross annual income on incomes varying from Rs. 2 000 to Rs. 15,000. It is further provided that notwith- standing anything contained in sub-rule (2) the net income shall in no case be reduced to less than five per cent. of the gross income. Chapter IV deals with certain incidental matters in respect of the determination of the debts of proprietors. Its provisions are analogous to the provisions of Debt Concilia- tion or Relief of Indebtedness Act. It is provided in Chap- ter V how the actual amount of compensation is to be deter- mined and paid. Chapter VI deals with that part of Madhya Pradesh which is defined as Central Provinces in the Act. It is provided herein' that a proprietor who has been di- vested of his estate will have malik-makbuza rights in his homefarm lands. Absolute occupancy tenants and occupancy tenants can also acquire malik-makbuza rights. Provision is made for reservation of grazing lands and for the collection of land revenue. Similar provisions are made in Chapter VII in respect of management and tenures of land in the merged territories Chapter VIII deals with management and tenures of lands in Berar. Separate provision has been made for the determination of compensation payable to lessees of mines and minerals under the provisions of section 218 of the Central Provinces Land Revenue Act and section 44 of the Berar Land Revenue Code there is a presumption that all mines and minerals belong to the State and the proprietary rights in them could be granted by the State to any person. Wherever a right of minerals has been so assigned, provision has been made regarding its acquisition and the conse- quences as resulting from such acquisition. The Act pro- vides for the

giving of rehabilitation grant to expropriated proprietors within a certain range provided for in Schedule III. The last chapter in the Act deals with miscellaneous matters including the power of making rules. The main purpose of the Act is to bring the actual tillers of the soil in direct contact with the State by the elimination of intermediary holders. In short, the Act aims at converting malguzari into ryotwari land system. It also aims at giving to the gram panchayats the management of common lands freed from the grip of proprietors and contem- plates the establishment of self-government for the vil- lages. The provisions of the Act in respect of payment of compensation, though they do not in any way provide for an equivalent money of the property taken and in that sense nay not be adequate, cannot be called illusory. This Act is a definite improvement on the Bihar Act; at leaves the arrears of rents due in the hands of the proprietors and does not operate artificially to reduce the net income by any device. It also provides that in no case the net income should be reduced below five per cent. of the gross income. The result is that in every case some amount of money becomes payable by the State by way of compensation to the proprietor and in no case does the compensation work into a negative sum or to a mere zero or a minus figure. In other respects the provisions of the Act in regard to compen- sation follow the pattern which is common to all zamindari legislation, which is to inflate the amount of expenditure and deflate the actual income. The siwai income from jal- kar, bankar, etc. and from village forests is calculated at two times the siwai income recorded in the settlement made in 1923. This Act was passed in 1951. The siwai income recorded in the year 1923 is appreciably less than the actual income of the proprietors from these sources in 1951. Similarly the income from consent money has to be calculated by taking the average income for ten years preceding the date of vesting and not the actual income as in the case of rent realized during the previous agricultural year. The expenditure has been inflated by taking in respect of the big forests the average income tax paid during the period of thirty agricultural years. No agricultural income-tax exist- ed during most of this period. It only came into existence recently. The cost of management has been calculated at a flat rate of eight to fifteen per cent. There can there- fore be no doubt that the principles laid down for determi- nation of compensation cannot be called equitable and they do not provide for payment of just compensation to the expropriated proprietor.

The petitioner's case is that under the formula stated in the Act, a compensation of 25 lakhs which would be due to him on the basis of the value of the property taken, has been reduced to a sum of Rs. 65,000 and is payable in thirty unspecified instalments and therefore it is purely nominal and illusory. This figure of Rs. 65,000 is arrived at by the following process :-

(a) Gross income from rents ... Rs. 55,000

(b) Siwai income ... Rs. 80,050 Actually (according to the affidavit the petitioner was realizing 4,65,000 from this source).

Total ... 1,35,000 Deductions permissible under the Act are the following :-

(a) Revenue ... 45,000

(b) Income-tax on 30 years' average 66 600

(c) Cost of management ... 21 000

	Total	... 1,32,600
Net income		... 2,400

Ten times net income would be Rs. 24,000; but as the net income cannot be reduced below five per cent. of the gross income which comes to Rs. 6 500, compensation payable is Rs.

65,000, while the yearly income of the petitioner was in the neighbourhood of Rs. 5,65,000 and the market value of his property is 25 lakhs.

The first and the main objection to the validity of the Act taken by the learned counsel is that the Bill was never passed into law. As already indicated, this objection is founded on the omission from the proceedings of the Madhya Pradesh Legislative Assembly dated the 5th April, 1950, of a statement to the effect that the Bill was put to the House by the Speaker and was passed by it. Reference was made to rules 20, 22, 34 and 115 of the rules regulating the proce- dure of the legislature framed under the Government of India Act, 1935, in the year 1936, which provides as follows :--

"20 (1). A matter requiring the decision of the Assem- bly shall be decided by means of a question put by the Speaker on a motion made by a member.

22. After a motion has been made, the Speaker shall read the motion for the consideration of the Assembly. 34 (1). Votes may be taken by voices or division and shall be taken by division if any member so desires. The Speaker shall determine the method of taking votes by divi- sion.

(2). The result of a division shall be announced by the Speaker and shall not be challenged.

115 (1). The Secretary shall cause to be prepared a full report of the proceedings of the Assembly at each of its meetings and publish it as soon as practicable. (2) One impression of this printed report shall be submitted to the Speaker for his confirmation and signature and when signed shall constitute the authentic record of the proceedings of the Assembly."

It was urged that the authentic report of the proceed- ings of the Assembly was conclusive on the point, that the Bill was not put to the Assembly by means of a question and was not voted upon, and hence it could not be said to have been passed by the legislature. It was said that even if there was no open opposition to the passing of the Bill, it was possible that if it was put to the Assembly, it might have rejected it. As already pointed out, the proceedings were signed by the Speaker on the 1st October, 1950, while the certificate that the Bill was passed was recorded by him on the original Bill when it was submitted to the President for his assent on the th May, 1950. The certificate of the Speaker is conclusive on the point that the Bill was passed by the legislature (Vide Craies' Statute

Law, 4th Edn., p.

36). It seems to me that by an oversight it was not record- ed in the proceedings that the motion was put to and passed by the House and the Speaker while signing the proceedings six months after the event failed to notice the error. There can be no doubt that the sense of the House on the 5th April, 1950, was for passing the Bill and there was no one present who was for rejecting it, The motion before the House was that the Bill be passed' The Speaker could not possibly have appended a certificate on a Bill that it was passed by the House if it had not been so passed. There are no grounds whatever for doubting the correctness of his certificate. In my opinion, the conten- tion raised that the Bill was not passed into law fails and must be rejected.

Next it is contended that articles 31-A and 31-B have no application to this Bill as it never became law by following the procedure prescribed in the Constitution and that those articles have only application to a Bill that had become an Act. The Legislature of Madhya Pradesh consists of the Governor and the Legislative Assembly. It was said that even if the Bill was passed by the Legislative Assembly, it was not assented to by the Governor but was straightaway sent to the President and that without the assent of the Governor the Bill could not become law despite the fact that it was assented to by the President and it was pointed out that sub-clause (3) of article 31 of the Constitution speaks of "law" being reserved for the consideration of the President and not merely a "Bill". This argument, in my opinion, has not much force having regard to the terms and scope of article 200.The Governor under that article could assent to a Bill or could reserve it for the consideration of the President at his option. The Governor being empowered to reserve the Bill for the consideration of the President and this having been done, it was for the President either to assent to the Bill or to withhold his assent. The President having given his assent, the Bill must be held to have been passed into law. It does not seem to have been intended that the Governor should give his assent to the Bill and make it a full-fledged law and then reserve it for the President's consideration so that it may have effect. Mr. Somayya pressed the point that the President could not perform both his functions under article 200 and article 31(4) concerning this Bill at one and the same time, that first the procedure laid down in Article 200 for the passing of the Bill into law should been followed, i.e., the Governor should have either assented to the Bill or should have reserved it for the consideration of the President, and if it was so reserved,, the President should then have given his assent and the Bill would then become law, that after the Bill had become law, the Governor should again have reserved this Bill for the consideration of the President as required by the provisions of article 31 (3) in order to make it effective law against the provisions of article 31 (2) and that if the President then gave his assent, the law so assented to could not be called in ques- tion in a court of law. It was said that only in case where this double procedure is followed that it could be said that the President had satisfied himself that the law did not contravene the provisions of article 31 (2). In my opinion, the argument is fallacious. It would be a meaningless for- mality for the President to give his assent to the same Bill twice over. I cannot see why the President cannot perform both the duties entrusted to him by articles 200 and 31 (3) and (4) at one and the same time. He is not disabled under the Constitution from applying his mind to such a Bill once and for all and to see whether it has to be passed into law and whether it fulfils the requirements of article 31 (2). The President's assent therefore to the Bill attracts the application of articles 31-A and 31-B to it and deprives persons affected by it of the rights guaranteed in Part III of the Constitution.

The provisions of article 31 (4) support the view of the learned Attorney-General that what has to be sent to the President is the Bill as passed by the legislature and not the Bill after it has been assented to by the Governor. The article reads thus :-

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

In this context the- word "Legislature" means the House or Houses of Legislature and does not include the Governor within its ambit. This word has not the same meaning in all the articles. In some articles it means the Governor as well as the Houses of Legislature, while in a number of other articles it only means the House or Houses of Legisla- ture. Article 31(4) means that if any Bill contravening the provisions of clause (2)of article 31 is passed by the House or Houses of Legislature but is reserved for the consideration of the President and receives his assent, then it shall become law, not open to any objection on the ground of such contravention.

Next it was contended that the obligation to pay compen- sation was implicit in the legislative power contained in entry 36 of List II and that the Act was unconstitutional as it had provided for acquisition of zamindaris without pay- ment of compensation, the provisions relating to it being illusory. This contention fails for the reasons given in my judgment in the Bihar case. Moreover, the compensation provided for in the impugned Act cannot be dubbed as illuso- ry. All that can be said is that it is grossly inadequate and it is not the equivalent of the value of the property acquired, but this issue is not justiciable in view of the provisions of article 31 (4). This Bill was pending at the commencement of the Constitution, it was reserved for the consideration of the President and the President gave his assent to it. The conditions for the application of article 31(4) thus stand fulfilled. Besides the obstacle of article 31(4), two further hurdles, viz., of articles 31-A and 31-B introduced by the amendments to the Constitution, stand in the way of the petitioner and bar an enquiry into the ques- tion of the quantum of compensation.

The contention that there is no public purpose behind the impugned Act has also to be repelled on the same reasoning as given by me in the Bihar case. The purpose behind the Act is to establish direct contact between till- ers of the soil and the Government and to eliminate the intermediaries, as in the view of the Government this is for the welfare of the society as a whole. It is also the purpose of the Act to confer malik maqbuza status on occu- pancy tenants and improve their present position and to vest management of village affairs and cultivation in a democrat- ic village body. It is too late in the day to contend that reform in this direction is not for general public benefit. The next argument of Mr. Somayya that the Act is a fraud on the Constitution in that in legislating under entry 42 of List III, it has legislated for non-payment of compensation has also to be repelled, for the reasons given in the Bihar case. Under the provisions of this Act compensation can in no case work out into a mere nothing. On the other hand, in every case some amount of compensation is payable and in the majority of cases it is also not inadequate. Mr. Somayya contended that payment of Rs. 65,000 as compensation to his client for property worth twenty-five lakhs of rupees was purely

illusory. The assessment of value by the peti- tioner cannot be taken at its full value. It cannot at any rate be held that legislation which provides for the payment of a sum of Rs. 65,000 provides for no compensation. The amount of instalments, Hpayment is to be in instalments, is bound to be fixed by the rules made under the statute and in case the rules are so made that they amount to an abuse of the exercise of that power, they can always be challenged on that ground.

The argument that the Act is bad inasmuch as it dele- gates essential legislative power to the executive is nega- tived for the reasons given in the Bihar case. A point was raised that the constitutional amendments in articles 31-A and 31-B could not affect the petitioner's guaranteed rights contained in Part III of the Constitution in so far as the eighty malguzari villages were concerned, because those mahals did not fall within the ambit of the word "estate" as defined in article 31-A. In sub-clause (2) (a) the definition is in these terms :-

> "The expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant."

Section 2 (3) of Act II of 1917, C.P. Land Revenue Act, defines the expression "estate" thus :"an estate as declared by the State Government." The learned Advocate-General conceded that these villages are not within the ambit of this definition but he contended that they are within the scope of the definition of the expression given in article 31-A, as mahals in Central Provinces are local equivalents of the expression "estate", though not so declared by the Act. There is nothing on the record to support this conten- tion. The contention that those eighty mahals are not "an estate" and are thus excluded from the reach of article 31-A does not, however, very much advance the petitioner's case, because the hurdles created in his way by articles 31-B and 31(4) stand in spite of the circumstance that article 31-A has no application. It was contended that article 31-B was merely illustrative of the rule stated in article 31-A and if article 31-A had no application, that article also should be left out of consideration. Reference was made to the decision of the Privy Council in King Emperor v. Sibnath Banerjee(1) on the construction of sub-sections (1) and (2) of section 2 of the Defence of India Act. The material portion of section 2 considered in that ease runs thus :--

> "(1). The Central Government may, by notification in the official gazette, make such rules as appear to it to' be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining sup- plies and services essential to the life of the community. (1) (T945) L.R. 72 J.A. 241; [1945] F.C.R. 195.
>
> (2). Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely,.....".

Their Lordships made the following observations about the meaning to be given to the language of subsection (2) :-

> "the function of sub-section (2) is merely an illustra- tive one; the rule-making power is conferred by sub-section (1), and 'the rules' which are referred to in the opening sentence of sub-section (2)are the rules which are author-

ized by, and made under, sub-section (1); the provisions of sub-section (2) are not restrictive of sub-section (1), as, indeed, is expressly stated by the words' without prejudice to the generality of the powers conferred by sub-section (1)'."

Article 31-B is in these terms :

> "Without prejudice to the generality of the provi- sions contained in article 31-A, none of the Acts and Regu- lations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void .....on the ground that such Act, Regulation or provision is incon- sistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstand- ing any judgment, decree or order of the court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

On the basis of the similarity of the language in the opening part of article 31-B with that of sub-section (2) of section 2 of the Defence of India Act, "without prejudice to the generality of the provisions contained in article 31-A", it was urged that article 31-B was merely illustrative of article 31-A and as the latter was limited in its applica- tion to estates as defined therein, article 31-B was also so limited. In my opinion, the observations in Sibnath Baner- jee's case(1) (1) (1945) L.R. 72 I.A. 24z; [1945] F.C.R. x95.

far from supporting the contention raised, negatives it. Article 31-B specifically validates certain Acts v mentioned in the schedule despite the provisions of article 31-A and is not illustrative of article 31-A but stands independent of it. The impugned Act in this situation qua the acquisi- tion of the eighty malguzari villages cannot be questioned on the ground that it contravenes the provisions of article 31 (2) of the Constitution or any of the other provisions of Part III. The applicability of article 31 (4) is not limited to estates and its provisions save the law in its entirety. This petition is accordingly dismissed but in the cir- cumstances I make no order as to costs.

Petition No. 317 of 1951.

Mr. Bindra, who appeared for the petitioner, placed reliance on the observations of Holmes C.J. in Communica- tions Assns. v. Douds(1), viz., "that the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth", and contended that if the Consti- tution of India was construed in the light of these observa- tions, then despite the express provisions of article 31 (2) it would be found that there is something pervading it which makes the obligation to pay real compensation a necessary incident of the

compulsory acquisition of property. It was said that the right to compensation is implied in entry 36 of List II of the Seventh Schedule and that article 31(2) does not confer the right but merely protects it. Mr. Bindra merely tried to annotate the arguments of Mr. Das but with no better result. The dictum of Holmes C.J. has no application to the construction of a Constitution which has in express terms made the payment of compensation obligatory for compulsory acquisition of property, which again in express terms by an amendment of it, (1) 319 U.S. 38z, 384.

has deprived persons affected by the impugned Act of this right.

One further point taken by Mr. Bindra was that "nation- alization" of land is a separate head of legislation and that "acquisition in general" does not fall within the scope of entry 36 of List II of the Seventh Schedule. This propo- sition was sought to be supported by reference to a passage from Stephen's Commentaries on the Laws of England, Vol. III, p. S41. The passage, however, read in its entirety, negatives the contention, It may be mentioned that under powers of compulsory acquisition a number of properties have been nationalized in England and other countries. Lastly, it was urged that the legislation in question was not enacted bona fide inasmuch as in 1946 the legisla- ture having passed a resolution to end zamindaries, proceed- ed to enact laws with the purpose-of defeating the constitu- tional guarantees regarding payment of compensation by various devices. As a first step in this direction the revenue was enhanced in order to reduce the gross income of the zamindars, then other Acts mentioned in the earlier part of the main judgment were enacted with the same end in view. In my opinion, this argument is void of force. It was within the competence of the Government in exercise of its govern- mental power to enhance land revenue, to withdraw exemption of land revenue, wherever those had been granted, and to enact other laws of a similar character. There is no evidence whatsoever that all these enactments were enacted with a fraudulent design of defeating the provisions of payment of compensation contained in the Constitution. The Constitution had not even come into force by the time that most of these statutes were enacted.

The petition is therefore dismissed. I, however, make no order as to costs.

This petition is concluded by my decision in Petition No. 166 Of 1951 except as regards one matter, The properties belonging to the petitioner and acquired under the statute were originally situate in an Indian State which became subsequently merged with Madhya Pradesh. It was contended that by the terms of the covenant of merger those properties were declared as the petitioner's private properties and were protected from State legislation by the guarantee given in article 362 of the Constitution and hence the impugned Act was bad as it contravened the provisions of this article. Article 362 is in these terms :--

> "In the exercise of the power of Parliament or of the legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of article 291 with respect to the personal rights, privi- leges and dignities of the Ruler of an Indian State."

Article 333 takes away the jurisdiction of the courts regarding disputes arising out of treaties, agreements, covenants, engagements, sanads etc. It is true that by the covenant of merger the properties of the petitioner became his private properties as distin- guished from properties of the State but in respect of them he is in no better position than any other owner possessing private property. Article 362 does not prohibit the acqui- sition of properties declared as private properties by the covenant of merger and does not guarantee their perpetual existence. The guarantee contained in the article is of a limited extent only. It assures that the Rulers' proper- ties declared as their private properties will not be claimed as State properties. The guarantee has no greater scope than this. That guarantee has been fully respected by the impugned statute, as it treats those properties as their private properties and seeks to acquire them on that assump- tion. Moreover, it seems to me that in view of the compre- hensive language of article 363 this issue is not justicia- ble This petition is accordingly dismissed but there will be no order of costs.

Petitions Nos. 228,230. 237, 245,246,257,280, 281, 282, 283, 284, 285,287, 288 and 289 of 1951.

In all these fifteen petitions, Mr. Swami appeared for the petitioners. Seven of these are by zamindars from Madhya Pradesh who are owners of estates. The petitioner in Petition No. 246 also owns certain malguzari villages. Petitioner in Petition No. 237 is a malguzar of eighteen villages but owns no estate. Petitions Nos. 280 to 285 and 257 relate to merged territories. The petitioner in Peti- tion No. 282 was ruler of a State (Jashpur) and the petition concerns his private properties. Petitioners in Petitions Nos. 283, 284 and 257 are Ilakadars and in Petitions Nos. 280 and 285 they are mafidars. Petitioner in Petition No. 281 is a Thikedar. i.e., revenue farmer of three villages. Mr. Swami reiterated the contention raised by Mr. Somayya that the Act was not duly passed by the legislature. For the reasons given in Petition No. 166 of 1951, I see no force in this contention. Mr. Swami also reiterated Mr. Bindra's contention that the legislation was not bona fide. For the reasons given in Petition No. a17, this contention is' not accepted. Mr. Swami vehemently argued that the Government has by this Act become a super-zarnindar, that there is no public purpose behind the Act, that there is no change in the existing order of things, that the Act has achieved nothing new, the tenants remain as they were, the malikan cabza were also already in existence, that acquisi- tion of that status by occupancy tenants was possible under existing statutes and that they had also the power of trans- fer of their holdings. In my opinion, the argument is based on a fallacy. As already stated, the purpose of the Act is to bring about reforms in the land tenure system of the State by establishing direct contact between the tillers of the soil and the Government.

These petitions are accordingly dismissed, I make no order of costs in them.

Petition No. 318 of 1951.

Mr. Mukherji who appeared in this petition merely adopt- ed the arguments taken in other petitions. For the reasons given therein this petition is also dismissed, but I make no order as to costs in it.

Petition No. 487 of 1951.

Mr. Jog appeared in this petition and raised the same points as in other petitions. This petition also fails and is dismissed. There will be no order as to costs. MUKHERJEA J.--I agree with my Lord the Chief Justice that these petitions should be dismissed. DAS J.--The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act I of 1951)having on January 22, 1951, received the assent of the President of India a Notification was published in the Madhya Pradesh Gazette of January 27, 1951, fixing March 31, 1951, as the date of vesting of all proprietary rights in the State under section 3 of the Act. A number of applica- tions were made under article 226 of the Constitution to the Madhya Pradesh High Court by or on behalf of different persons variously described as Zamindars or Malguzars or Proprietors of "alienated villages" praying for the issue of appropriate writs against the State of Madhya Pradesh pro- hibiting them from proceeding under the Act the validity of which was challenged on a variety of grounds. Eleven of these applications came up for hearing before a Full Bench of the High Court (B.P. Sinha C.J. and Mangalmurthi and Mudholkar JJ.) and were, on 9th April, 1951, dismissed. The High Court certified under article 132 (1) that the cases involved a substantial question of law as to the interpreta- tion of the Constitution. No appeal, however, appearsto have been actually flied presumably because the present applica- tions under article 32 had already been flied in this Court. It may be mentioned here that the States of Bihar and Uttar Pradesh also passed legislation for the abolition of zamindaries in their respective States and the validity of those legislations was also contested by the proprietors affected thereby. While the High Court of Allahabad upheld the validity of the Uttar Pradesh Act, the High Court of Patna held the Bihar Land Reforms Act, 1950, to be unconstitutional only on the ground that it offended the fundamental right of equal protection of the laws gua- ranteed by article 14 of the Constitution. In the circum- stances, the Constituent Assembly passed the Constitution (First Amendment) Act, 1951, by sections 4 and 5 of which two new articles, namely, article 31-A and article 31-B were inserted into the Constitution. A new schedule called the Ninth Schedule specifying 13 several Acts and Regulations including the Madhya Pradesh Act, I of 1951, was also added to 'the Constitution. The legal validity of the Constitu- tion (First Amendment) Act, 1951, which was challenged, has, however, been upheld by this Court and all Courts must give effect to the two new articles which are now substantive parts of our Constitution. Article 31-A relates back to the date of the Constitution and article 31-B to the respective dates of the Acts and Regulations specified in the Ninth Schedule.

The present bunch of petitions has been flied in this Court under article 32 of the Constitution challenging the validity of the Madhya Pradesh Act and praying for appropri- ate writs, directions and orders restraining the State of Madhya Pradesh from acting under that Act and disturbing the petitioner's title to, and possession of, their respective estates, villages or properties. Learned counsel appearing for the different petitioners accept the position that as a result of the Constitutional amendments the impugned Act has been removed from the operation of the provisions of Part III of the Constitution and that consequently the attack on the Act will have to be founded on some other provisions of the Constitution. Mr. B. Somayya appearing for the petition- er in Petition No. 166 of 1951 (Visheshwar Rao v. The Slate of Madhya Pradesh) challenged the validity of the Act on the following grounds :-

(a) that the Bill itself was not passed by the Madhya Pradesh Legislature;

(b) that the procedure laid down in article 31 (3) had not been complied with;

(c) that the Madhya Pradesh Legislature was not compe- tent to enact the said Act, inasmuch as-

(i) the acquisition sought to be made under the Act is not for a public purpose, and

(ii) there is no provision for payment of compensation in the legal sense;

(d) that the Act constitutes a fraud on the Constitu- tion;

(e) that the Act is unenforceable in that it provides for payment of compensation by instalments but does not specify the amount t of the instalments;

(f) that the Act has delegated essential legislative functions to the executive Government;

(g) that the Act in so far as it purports to acquire the Malguzari villages or Mahals is not protected by article 31-A. Learned counsel for other petitioners adopted and in some measure reinforced the arguments of Mr. B. Somayya.

Re (a): In dealing with this ground of objection it will be helpful to note the course which the Bill took before it was put on the Statute Book. There is no dispute as to the correctness of the dates given to us by counsel fort he petitioners. The Bill was introduced in the Madhya Pradesh Assembly on 11th October, 1949. It was referred to a Select Committee on 15th October, 1949. The Select Committee made its Report on 9th March, 1950, which was pre- sented to the Assembly on 29th March, 1950. The Assembly considered the Bill in the light of the Report between that date and 5th April, 1950, during which period the amendments proposed by the Select Committee were moved and disposed of. It appears from the Official Proceedings of the Madhya Pradesh Legislative Assembly of 5th April, 1950. that after the last amendment had been put to the House and accepted, the Hon'ble Minister for Educa- tion (Sri P.S. Deshmukh) moved that the Bill be passed into law and delivered a short speech inviting the members to finally pass the Bill The Speaker then read out the motion. Then followed speeches by 11 speakers congratulating the Government and so, me of the members who took an active part in carrying through this important measure of land reform and relief to the tillers of the soil. Nobody put forward any reasoned amendment and the trend of the speeches shows that the House accepted the Bill. From the Official Report of proceedings it does not, however, appear that after the speeches the Speaker formally put the motion to the vote or declared it carried. It only shows that the House passed on to discuss another Bill, namely, the Madhya Pradesh State Aid to Industries (Amendment) Bill, 1950. The text of the Bill as it emerged through the House was printed on 29th April, 1950, and the Speaker signed a copy of the Printed Bill on 5th May, 1950, and certified that it had been passed by the House and forwarded it to the Governor. By an en- dorsement on that copy of the Printed Bill the Governor reserved the Bill for the assent of the President and the President., on 22nd January, 1951, signified his assent by endorsing his signature at the foot of that copy of the Printed Bill. The learned Advocate-General has produced the original

printed Act signed by the Speaker, the Governor and the President. It appears that the Official Report of Proceedings of the Legislative Assembly of 5th April, 1950, was printed in June, 1950, and were on 1st October, 1950, signed by the Speaker along with the ,proceedings of many other meetings of the Assembly. It is to be noted that the Speaker simply signed the printed proceedings without stat- ing one way or the other whether the Bill in question was passed or not.

The objection formulated by learned counsel for the petitioners is founded on the Rules of Procedure framed by the Assembly under section 84 of the Government of India Act, 1935, which were continued in force until new rules were framed under article 208 of the Constitution. That old rule 22 which required that after a motion was made the Speaker should read the motion for the consideration of the Assembly has been complied with is not disputed. What is contended is that the provisions of old rule 20 (1) have not been followed. That rule was in these terms:

> "A matter requiring the decision of the Assembly shall be decided by means of a question put by the Speaker on a motion made by a member."

It is urged that the question that the Bill be passed into law was not put to the Assembly under rule 20 and if it was at all put the result of the voting, whether by voices or division, was never announced by the Speaker as required by old rule 34. There being a presumption of regularity attached to all official business the onus is undoubtedly on the petitioners to allege and prove that the procedure prescribed by the rules was not followed. There is no evidence on affidavit by anybody who was present at the meeting of the Assembly held on 5th April, 1950, as to what had actually happened on that date. The petitioners rely only on the absence in the Official Report of proceedings of any mention of the question being put to or carried by the Assembly. The Official Proceedings were prepared and con- firmed in terms of old rule 115 which was as follows :--

> "(1) The Secretary shall cause to be prepared a full report of the proceedings of the Assembly at each of its meetings and publish it as soon as practicable. (2) One impression of this printed report shall be submitted to the Speaker for his confirmation' and signature and when signed shall constitute the authentic record of the proceedings of the Assembly."

The argument is that the initial onus that was on the petitioners has been quite adequately and effectively discharged by the authentic record of the pro- ceedings of the Assembly and consequently 'it must be held that the Bill did not actually become law at all. I am not prepared to accept this contention as sound. I have already pointed out that the original printed Act produced before us clearly shows that on 5th May, 1950, the Speaker certified that the Bill had been passed by the Assembly. It is pointed out that old rule b7 under which the Speaker certi- fied that the Bill had been passed did not give any finality or conclusiveness to the Speaker's certificate that the Bill had been passed, such as is provided for in old rules 34 (2) or 39 (3) and, therefore, the certification under old rule87 cannot affect the authenticity of the record confirmed and signed by the Speaker under old rule 115. This does not appear to me to be a correct approach to the problem. The question before us is whether as a matter of fact the Bill had been duly passed according to the rules. The certifica- tion of the Speaker was within a month from 5th April. 1950, while the confirmation of the proceedings

took place on 1st October, 1950. There can be no doubt that the memory of the Speaker was fresher on 5th May, 1950, than it was on 1st October, 1950, when he signed a bunch of reports of proceedings Therefore, as a statement of a fact more reliance must be placed on the certification of the Bill than on the confirmation of the proceedings and it will not be unreason- able to hold that the omission of any mention of the ques- tion having been put wand carried by the Assembly was an accidental slip or omission. Further, the speeches delivered by the eleven speakers clearly indicate that at that stage there was no opposition to the Bill. Therefore, putting the question at the end of the third reading of the Bill would have been at best a mere formality. (See May's Parliamen- tary Practice, 14th Edn., p. 544). It is, after all, a matter for the Speaker to declare the result. The authenti- cation by the Speaker on the printed Act that the Bill was passed involves such a declaration having been duly made. In British Parliamentary practice the Speaker's authentication is taken as conclu- sive. (See Crates' on Statute Law, 4th Ed., p. 36). The petitioners, as I have said, strongly rely on the Official Report of the Proceedings. It should, in this connection be borne in mind that article 208 of the Constitution continued the old rules until new rules were framed. It appears that new rules were framed and actually came into force on 8th September, 1950. New rule 148 does not reproduce sub-rule (2) of old rule 115. After the new rules came into force it was no longer the duty of the Speaker to confirm the pro- ceedings at all. Therefore, the purported confirmation of the proceedings by the Speaker on 1st October, 1950, cannot be given any legal validity and the argument founded on authentication under defunct rule 115 (2) must lose all its force. Finally, the irregularity of procedure,. if any, is expressly cured by article 212. , I am not impressed by the argument founded on the fine distinction sought to be made between an irregularity of procedure and an omission to take a particular step in the procedure. Such an omission in my opinion, is nothing more than an irregularity of procedure. In my judgment this ground of attack on the validity of the Act is not well-founded and must be rejected. Re (b): Article 31 (3) on which this ground of attack is based runs as follows :--

> "(3). No such law as is referred 'to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent."

Great stress is laid on the words "law" and "legislature of a State". It is said that this clause postulates a "law" made by the "Legislature of a State". Reference is then made to article 168 which provides that for every State there shall be a Legislature which shall consist of the Governor and, so far as Madhya Pradesh is concerned, of one House, i.e., the Legislative Assembly. The argument is that article 31(3) requires that a "law" must be reserved for the consideration of the President. If a Bill passed by the Assembly is 135 reserved by the Governor for the consideration of the Presi- dent without giving his own assent thereto, it cannot be said that a "law" is reserved for the consideration of the President, for up to that stage the Bill remains a Bill and has not been passed into law. Therefore, it is urged, that after a Bill is passed by the State Assembly, the Governor must assent to it so that the Bill becomes a law and then that law to have effect, must be reserved for the considera- tion of the President. This, admittedly, not having been done, the provisions of article 31 (3) cannot be said to have been complied with and, therefore the Act cannot have any effect at all. I am unable to accept this line of reasoning. For one thing, it assumes that a Bill passed by the State Assembly can become a law only by the assent of the Governor. That is not so. The procedure to be followed

after a Bill is passed by the State Assembly is laid down in article 200. Under that article, the Governor can do one of three things, namely he may declare that he assents to it, in which case the Bill becomes a law, or he may declare that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed, or he may declare that he reserves the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in article

201. Under that article the President shall declare either that he assents to the Bill in which case the Bill will become law or that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed. Thus it is clear that a Bill passed by a State Assembly may become a law if the Governor gives his assent to it or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. In the latter event happen- ing. the argument of learned counsel for the petitioners will require that what has become a law by the assent of the President will, in order to be effective, have to be again reserved for the consideration of the President, a curious conclusion I should be 1oath to reach unless I am compelled to do so. Article 200 does not contemplate a second reservation by the Governor. The plain meaning of the language of article 31 (3) does not lead me to the con- clusion. The whole argument is built on the word ' 'law". I do not think that what is referred to as law in article 31(a) is necessarily what had already become a law before receiving the assent of the President. If that were the meaning, the clause would have said "unless such law, having been reserved lot the consideration of the President, re- ceives his assent". The words "has received his assent"

> clearly imply and point to an accomplished fact and the clause read as a whole does not grammatically exclude a law that eventually became a law by having had received the assent of the President. The question whether the require- ments of article 31 (3) have been complied with will arise only when the State purports to acquire the property of any person under a law and that person denies that the asserted law has any effect. It is at that point of time that the Court has to ask itself--' 'is it a law which, having been reserved for the consideration of the President, has re- ceived his assent". I think it is in this sense that the word "law" has been used. In other words, the word "law" has been used to mean what at the time of dispute purports to be or is asserted to be a law. The language of article 31 (4) also supports this interpretation. In my judgment article 31 (3), on its true interpretation, does not require that the Governor must first assent to the Bill passed by the Assembly so as to convert it into a law and then reserve that law for the consideration of the President. I have already pointed out that article 200 does not contemplate a second reservation which will be necessary if initially the Governor instead of himself assenting to the Bill had re- served it for the consideration of the President. In my opinion there is no substance in the second objection which must, therefore, be overruled.
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> Re (c), (d),(e) and (f): Similar heads of objections were formulated and argued at considerable length by Mr. P. R. Das in the Bihar appeals and learned counsel appearing for the petitioners in the present proceedings have adopted the same. Shortly put, the argument is that although the impugned Act cannot, in view of

articles 31 (4), 31-A and 31-B be called in question on the ground that it takes away or abridges or is inconsistent with the funda-

mental rights, it can, nevertheless, be challenged on other grounds. Thus it is open to the petitioners to show that the Legislature had no power to enact the law or that it offends against any other provision of the Constitution. Mr. N. S. Bindra and Mr. Swami have sought to reinforce those arguments by citing certain further passages from certain text books and reported decisions. The provisions of the impugned Act have been analysed and summarised by Mahajan J. in the judgment just delivered by him and it is not necessary for me to recapitulate the same. Nor is it necessary for me to formulate in detail the various heads of arguments founded principally on what is said to be the legislative incompe- tence of the Madhya Pradesh Legislature to enact the im- pugned Act in view of the language of legislative topics set forth in entry 36 in List II and entry 42 in List III or on the ground that the Act is a fraud on the Constitution or that it delegates essential legislative power to the execu- tive Government which is not permissible. Suffice it to say that for reasons stated in my judgment in the Bihar appeals I repel these heads of objections. If anything, the exist- ence of a public purpose is more apparent in the Madhya Pradesh Act than in the Bihar Land Reforms Act. Further, the compensation provided in the Madhya Pradesh Act is more liberal than that provided in the Bihar Act, for under clause 4(2) of Schedule I the net income can in no case be reduced to less than 5 per cent. of the gross income. In any event the Act cannot, for reasons stated by me in my judgment in the Bihar appeals, be questioned on the ground of absence of public purpose or of compensation. The fact that the Madhya Pradesh Legislature passed several Acts one after another, e.g., C.P. Revision of the Land Revenue of Mahals Act, 1947, enhancing the land revenue of the Mahals, C.P. Revision of Land Revenue of Estates Act, 1939 and C.P. Revision of Land Revenue of Estates Act, 1947, increasing the land revenue of the estates, Revocations of Exemptions Act, 1948, revoking the exemptions from land revenue enjoyed by certain proprietors and finally the impugned Act, has been relied on as evidence of a systematic scheme for expro- priating the zamindars and it is contended that such a conduct clearly amounts to a fraud on the constitution. I am unable to accept this line of reasoning, for the series of legislation referred to above may well have been con- ceived and undertaken from time to time in utmost good faith. It is true that section 9 of the Act does not spe- cifically indicate when the instalments will begin or what the amount of each instalment will be but the section clear- ly contemplates that these details should be worked out by rules to be framed under section 91 of the Act. Further, under section 10 the State Government is bound to direct payment of an interim compensation amounting to one-tenth of the estimated amount of compensation if the whole amount is not paid within a period of six months from the date of vesting of the property in the State. I see no improper delegation of legislative power at all. In my opinion all these heads of objections must be rejected. Re (g): The last ground of attack is that the 80 Malguzari Mahals belonging to the petitioner in Petition No. 166of 1951 are not estates and, therefore, the impugned Act in so far as it purports to acquire the Malguzari Mahals is not a law which is protected by article 31-A. Learned Advo- cate-General of Madhya Pradesh concedes that these Malguzari Mahals are not estates within the meaning of the C.P. Land Revenue Act but contends that the word "estate" has been used in a larger sense in article 31-A. In any case the im- pugned Act is protected by article 31-B. I do not think it necessary to discuss the meaning of the word "estate" as used in article 31-A for, in my opinion, the argument of the learned Advocate-General founded on article 31-B is well- founded and ought to prevail.

Mr. B. Somayya has drawn our attention to the words "without prejudice to the generality of the provisions of article 31-A occurring in the beginning of article 31-B and contended that the interpretation put upon these words by the Judicial Committee in Shibnath Banerjee's case(1) should be applied to them. I do not see how the principles enunciated by the Judicial Committee can have any possible application in the interpretation of article 31-B. Article 31-B is neither illustrative of, nor dependant on., article 31-A. The words referred to were used obviously to prevent any possible argument that article 31-B cut down the scope or ambit of the general words used in article 31-A. A question was raised by Mr. Asthana appearing for the Ruler of Khairagarh who is the petitioner in Petition No. 268 of 1951. Khairagarh is one of the States which formerly fell within the Eastern States Agency. On 15th December, 1947, the Ruler entered into a covenant of merger. In that covenant the properties in question were recognised as the personal properties of the Ruler as distinct from the State properties. Reference is made to article 362 which provides that in the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of article 291 with respect to the personal rights, privi- leges and dignities of the Ruler of an Indian State. It is said that the impugned Act is bad as it contravenes the above provisions. There occur to me several answers to this contention. The guarantee or assurance to which due regard is to be had is limited to personal rights, privileges and dignities of the Ruler qua a Ruler. It does not extend to personal property which is different from personal rights. Further, this article does not import any legal obligation but is an assurance only. All that the covenant does is to recognise the title of the Ruler as owner of certain proper- ties. To say that the Ruler is (1) (1945) L.R. 72 I.A. 241 1[1945] F.C.R. the owner of certain properties is not to say that those properties shall in no circumstances be acquired by the State. The fact that his personal properties are sought to be acquired on payment of compensation clearly recognises his title just as the titles of other proprietors are recog- nised. Finally, the jurisdiction of the Court to decide any dispute arising out of the covenant is barred by article

363. In my judgment, for reasons stated above and those stated in my judgment in the Bihar appeals, these petitions must be dismissed.

CHANDRASEKHARA AIYAR J.-- I have nothing useful to add and I agree with the orders made by my Lord the Chief Jus- tice and my learned brothers.

Petitions dismissed.

Agents for the petitioners:

Petition No. 166 of 1951: M.S.K. Sastri.

,, No. a317 of 1951: R.S. Narula.

,, Nos. 228, 237,245, 246 and 280 to 285 of 1951: M.S.K. Bastri.

,, Nos. 230, 257 and 287 to 289 of 1951:

Rajinder Narain.

" No. 268 of 1951: S.P. Varma.

,, No. 318 of 1951: Ganpat Rai.

,, No. 487 of 1951: Naunit Lal.

Agent for the Respondent (the State of Madhya Pradesh) in all the petitions:P. A. Mehta.