Kunjukutty Sahib Etc. Etc vs State Of Kerala & Anr on 26 April, 1972

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Author: I.D. Dua

Bench: I.D. Dua, S.M. Sikri, J.M. Shelat, Hans Raj Khanna

PETITIONER:
KUNJUKUTTY SAHIB ETC. ETC.

Vs.

RESPONDENT:
STATE OF KERALA & ANR.

DATE OF JUDGMENT26/04/1972

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
MITTER, G.K.
SIKRI, S.M. (CJ)
SHELAT, J.M.
KHANNA, HANS RAJ

CITATION:
1972 AIR 2097 1973 SCR (1) 326
1972 SCC (2) 364
CITATOR INFO :
RF 1973 SC1461 (4,13,46,2030)
RF 1976 SC2316 (18)
RF 1980 SC2097 (20)
R 1981 SC 522 (29,32,35)

ACT:
Kerala Land Reforms Act 1963 (Act 1 of 1964) as amended by the Kerala Land Reforms (Amendment) Act 1969-Amending Act not put in 9th Schedule to the Constitution-Whether protected by Art. 31-A of Constitution-Validity of s. 73 providing for liquidation of arrears of rent-Such arrears whether interest in land-Whether 'estate' within meaning of Art. 31-A-Validity of s. 45-A, and of explanation to s. 85(1)-Reduction of ceiling limit under Act-Land above new ceiling but under original ceiling acquired without payment

of market value compensation-Validity-Rights given to Kudikidappukars-Validiy of-Rights of landlords vis-a-vis the tenant, such as quarrying rights, whether vest in Government under s. 72.

HEADNOTE:

The Kerala Land Reforms Act, 1963 (Act 1 of 1964) as originally enacted was specified in the Ninth Schedule to the Constitution and was thus protected under Art. 31-B of the Constitution., However the subsequent amending act namely the Kerala Land Reforms (Amendment) Act.1969, was not placed in the Ninth Schedule. The validity of the Act as amended was challenged in the High Court in the writ petitions out of which the present appeals arose. The State relied on Art. 31-A of the Constitution. The High Court help some of the provisions of the Act to be unconstitutional. In appeal by the State and by some of the writ petitioners the questions that fell for determination by this Court were : (i) whether arrears of rent being a charge on the interest of the tenant under s. 42 of the Act constituted an interest in land within the meaning of the word 'estate' as defined in s. 31-A, and consequently whether s. 73; of the Act which provided for the liquidation of arrears of rent was protected by Art. 31-A although held violative of Art. 19(1) (f) of the Constitution by the High Court; (ii) whether s. 45-A of the Act was valid it being conceded by the parties that its validity depended on that of s. 73: (iii) whether the explanation to s. 85(1) of the Act was violative of the second proviso to Art. 31-A (1); (iv) whether the amended Act when it reduced the ceiling limit and required surrender of the land held in excess of the limit fixed by the amended Act, without payment of com-pensation at market value, violated the constitutional inhibition contained in the second proviso to Art. 31-A(1); (v) whether the High Court after striking down s. 50-A(2) of the Act was justified in adding the rider that the finding would not affect the vesting of the landlord's rights in the Government if they had so vested under s. 72; (vi) whether the rights given to the Kudikidappukars under the Act were a measure of agrarian reform even though the definition of 'Kudikidappukaran' in s. 2(25) of the Act was not confined to agricultural labourers: and (vii) whether the extinguishment or modification of land-lord's rights vis-a-vis the tenant would also be within the ambit of Art. 31-A of the Constitution.

HELD:(i) The argument that arrears of interest is a charge on the estate and, being, therefore a right in land, can be extinguished as an estate was unacceptable on the language of the impugned statutory provisions. The liability to pay arrears of rent under the impugned Act, assuming the charge created by s. 42 is an interest in land,

is not a
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right in land; besides the liability being also a personal liability it would clearly amount to a debt, Acquisition or extinguishment of such a personal liability for payment of money cannot be covered by Art. 31-A, That money cannot be acquired is clear from the majority view of this Court's decision in Kameshwar Singh's case. Looking at the table incorporated in s. 73 it is obvious that the amount of rent to be paid for getting discharge of the whole debt has been arbitrarily fixed and does not seem to be founded on any rational, logical or just basis. [337 E--F]
The amelioration of indebtedness of tenants is a laudable and desirable object. But the person to whom the arrears of rent are due to also entitled to seek protection of his legitimate right and if the acquisition of arrears of rent is outside the protection of Art. 31-A then the provisions cannot but be held invalid. It prima facie partakes of the character of forfeiture of confiscation of the discharged arrears. Art 39 of the Constitution to which reference was made can be implemented by other permissible means without violation or abridging the just and legitimate rights of those to whom the arrears of rents are clue. Section 73 was, therefore, rightly struck down by the majority opinion, [337 H-338 B]
Pritam Singh Chahil v. Stale of Punjab, [1967] 2 S.C.R. 536, State of Gujarat v. Jetawat Lalsingh Amarsingh & Ors., A.I.R. 1969 S.C. 270, M. K. Subbachariar v, The State of Madras, I.L.R. [1967] 2 Mad. 646, Ranjit Singh v. State of Punjab, [1966] 1 S.C.R. 82, State of Bihar v. Umesh Jha, [1962] 2 S.C.R. 687, State of Bihar v. Maharadhiraja Sir Kaineshwar Singh of Darbhanga, [1952] S.C.R. 889 at 1000-1002, K. K. Kochunni v. State of Madras, [1963] 3 S.C.R. 887 and Khajamian Wakf Estates v. The State of Madras, A.I.R. 1971 S.C. 161, referred to.
(ii)On the above finding s. 45-A which broadly speaking provides that rent received after May 19, 1967 but before the commencement of the amendment Act of 1969, and appropriated towards arrears of rent for the period prior to May 1, 1966 shall be adjusted towards rent accrued due for period after May 1, 1966, must also be struck down as un-constitutional. [338 B-C]
(iii) Theexplanation to s. 85(1) was rightly struck down by the" High Court. It is clear that by virtue of the second proviso to Art. 31-A(1) landwithin the ceiling limit is expressly protected against acquisition by the State unless the law relating to such acquisition provides for compensation which is not less than its market value. No attempt was made to take the impugned explanation out of this constitutional limitation. [340 F--G]
(iv)Prior to the amendment undoubtedly no land within the personal cultivation of the holder under the unamended Act within the ceiling limit fixed thereby could be acquired

without payment of compensation according to market value, but once the ceiling limit was changed by the amended Act the second proviso to Art, 31-A(1) must be held to refer only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates, only within the ceiling limit fixed under the existing law, at the given time. It is true that the new ceiling limit was fixed contemporaneously with the acquisition of the land in excess of the ceiling limit. But it was not contended that a law so fixing the ceiling limit and acquiring theland in excess would offend any,provision of he Constitution. [341 C-E]

(v)The High Court while holding s. 50-A,(2) invalid should not have added the rider that the finding would not affect the vesting of the land-

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lord's rights in the Government if they had so vested under s. 72. In none, of these cases art- them facts and circumstances on which the rider could operate. The precise point covered by the rider directly arises for determination in a numb& of other cases pending before the High Court. Expression of OPinion on the rider was not necessary for giving relief to the parties approaching the High Court in these cases, The question must, therefore, be left open to be determined by the High Court in cases in which the question directly arises. [341 H, 342 C]

(vi)(a) The mere fact that the definition of 'kudikidappukaran' in s. 2(25) of the Act was not confined to agricultural labourers did not make the provisions relating to the rights or Kudikidappukars invalid. In Ranjit Singh's case this Court considered it proper to place a liberal construction on Art. 31-A so as to cover cases where the general scheme of legislation is definitely designed to carry out agrarian reform and something ancillary thereto has to be undertaken to give full effect to such reforms. According to 'the High Court all the lands in the present cases were agricultural lands constituting estates within the contemplation of Art. 3 1 A(2) (a) (iii) and all the persons benefited by the impugned provisions were occupants of huts on such agricultural lands and were connected with agriculture. The erection of a homestead etc. cannot in the circumstances of these cases deviate from the general agricultural purpose. [343 BC, 348 C]

Ranjit Singh v. State of Punjab, [1966] 1 S.C.R. 82, applied.

Inder Singh v. State of Punjab, [1967] 3 S.C.R. 603, referred to.

[The Court, however, made it clear that it was not expressing any opinion where the provisions of the Act were utilised for lands which are not agricultural lands and do

not constitute estates nor where the beneficiary happens to be a person not substantially connected with agriculture, occupying nonagricultural land or where the facts are not covered by the general test laid down in the case of Ranjit Singh.] [348 E]

(b)The objection that the area of land permitted to be purchased by Kudikidappukars is unreasonably excessive and there is no. obligation on them to use the land for agricultural purposes is without merit. The transfer is mainly of agricultural land to the landless occupant and it is likely to be used only for purposes of cultivation. This is ancillary to agrarian reforms. A part of the land is intended to be used for erecting a homestead etc., by the occupant. Such erection cannot deviate from the general agricultural purpose. [348 G-H]

(vii)The question whether a landlord's right to quarry would be affected by the vesting provision in s. 72 could not be considered because the question was not raised in the writ petition or the High Court. Such opinions partake of the nature of obiter. 'Without dealing with any hypothetical question it was sufficient to point out that extinguishment or Modification of landlord's rights vis-a-vis the tenant would also be within the ambit of Art. 31-A of the Constitution if otherwise it was related to agrarian reforms. [349 C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 143. 203 to 242, 274 and 309 of 1971.

Appeals from the judgment and order dated August 14, 1970 of the Kerala High Court in Original Petitions Nos. 723 of 1970 etc. etc. T.Subramania Iyer and A. Sreedharan Nambiar, for the appellant (in C.A. No. 143 of 1971).

M. M. Abdul Khader, Advocate-General for the State of Kerala, K.M. K. Nair and Varghese Kaliath, for the appellants (in C. s. Nos. 203 to 242 of 1971) and Respondent No. 1 (in C. A s. No,-, 143, 274 and 309 of 1971). T.Subramania Iyer, C. M. Devan, S. Balakrishnan and N. M. Ghatate, for the appellants (in C.A. 274 of 1971). G. S. Ananthakrishna Iyer, C. M. Devan, S. Balakrishnan and N. M. Ghatate, for the appellant (in C.A. 309 of 1971). N.Sudhakaran and P. Kesava Pillai, for respondent No. 8 (in C.A. No. 203 of 1971).

A.Sreedharan Nambiar, for respondents Nos. 1 and 5 (in C.A. No. 206 of 1971) and the respondents (in C.As. Nos. 208, 219 and 235 of 1971).

C.S. Ananthakrishna Iyer, S. Balakrishnan and N. M. Ghatate, for the respondents (in C.As. Nos. 210 and 216 of 1971).

T.Subramania Iyer, and P. Kesava Pillail for the respondent (in C.A. No. 214 of 1971).

S. P. Nayar, for respondent No. 2 (in C.A. No. 221 of 1971).

M. Veerappa, for respondents Nos. 1 to 4 (in C.A. No. 240 of 1971).

The Judgment of the Court was delivered by Dua, J. These are 43 appeals (C.As. Nos. 143, 274, 309 and 203 to 242 of 1971), 40 appeals (C.As. Nos. 203 to 242 of 1971) being by the State of Kerala and the Land Board and the remaining three by some of the writ petitioners in the High Court. Most of the material provisions of the amended Kerala Land Reforms Act, Act No. 1 of 1964 (hereinafter called the impugned Act) were challenged in the High Court as violative of Arts. 14, 19, 25, 26 and 31 of the Constitution. Quite a number of writ petitions, however, assailed the entire impugned Act on that score. The sole defence in sustaining the constitutional validity of the impugned Act was based on Art. 31A of the Constitution. The High Court struck down several provisions of the impugned Act. In the State appeals (C.As. Nos. 203 to 242 of 1971) the judgment of the High Court is questioned only in so far as it struck down s. 73 and explanation to s. 85(1) of the impugned Act. The judgment appealed from is reported as V. N. Narayana Nair v. State of Kerala(1). Raman Nair, C.J., and Raghavan J., expressed their conclusions through the Chief Justice thus :

> "In the result we declare the following provisions of the Act void; Section 29-A, Section 32 in so far as (-and only in so far as) it bars a Civil Court from prohibiting a person who has made an application for determination of fair rent from entering on the land to which the application relates so long as the application is pending. Section 45-A, sub-section (2) of Section 50-A, section 73, the Explanation to sub-section (1) of Section 85 and sub-section (7) of section 125.

For the rest we dismiss the petitions but make it clear that this dismissal involves no pronouncement regarding provisions which we have not expressly considered. We make no order as to costs."

Mathew J., in a separate judgment upheld the validity of s. 73 but on a other points he agreed with the majority. It may at the outset be pointed out that the Kerala Land Reforms Act, 1963 (Act No. 1 of 1964) as originally enacted was specified in the Ninth Schedule to the Constitution (item No. 39 in that Schedule) and is, therefore, immune from constitutional challenge founded on the ground that the provisions of the said Act are inconsistent with or take away or abridge any of the rights conferred by any provision of Part III of the Constitution : vide Art. 31-B. it is only the s ubsequent amendment of the original Act which. having not been specified in the Ninth Schedule, is open to attack as violative of the fundamental rights guaranteed by Part III of the Constitution.

Section 73 of the impugned Act which was substituted for the old s. 73 of the original Act reads :

> "73. Discharge of arrears of rent.-

(1)Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court or tribunal, the landlord of a tenant specified in column (1) of the Table below shall be entitled to recover towards arrears of rent accrued due before the 1st day of May, 1968 and outstanding at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, only the amount specified in the corresponding entry in 'column (2) of the Table (1) A.I.R. 1971 Ker. 98.

Provided that where an intermediary has collected rent from his tenant for any period prior to the 1st day of May, 1968 and has not paid the rent payable by him to his landlord for the period for which he has so collected, he, shall also be liable to pay the rent payable by him for such period to his landlord Provided further that, subject to the foregoing proviso, no intermediary shall be liable to pay to his landlord anything in excess of what he is entitled to receive under this subsection.

Class of tenant	Amount of rent to be paid for discharge
(1)	(2)
Tenant possessing not more than 5 acers actual amount of land in the aggregate, whether as	One year's rent or the in arrears, whichever is less

owner mortgage, lessee or otherwise. Tenant possessing more than 5 acres Two year's rent or the but actual amount not more than actual amount in arrears 10 acres of land in the whichever is less aggregate, whether as owner, mortgage, lessee or otherwise.

Tenant possessing more than 10 acres Three years' rent of land in the aggregate, whether or the actual amou as owner,mortage, lessee or nt in arrears, which-

otherwise. ever is less.

Provided that where the tenant is in possession of more than fifteen acres of land in the aggregate, whether as owner, mortgagee, lessee or otherwise, and the landlord is a small holder, the tenant shall be liable to pay the actual amount in arrears.

Explanation.-For the purposes of this section, the rent for an year shall be deemed to be an amount equal to the rent payable for the year immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969 and which has accrued due before such commencement.

(2) Where any suit, appeal, revision or application which involves a claim by a landlord for arrears of rent accrued due prior to the 1st day of May, 1968, is pending, before any court or Land Tribunal, such court or Land Tribunal may, after such enquiry as it deems fit, pass an order specifying.

(a) the amount to which the landlord is entitled under' sub-section (1);

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(b) the costs, if any, awarded to the landlord in connection with the conduct of the proceedings after the commencement of the Kerala Land Reforms (Amendment) Act, 1969;

(c) the costs, if any, awarded to the tenant in connection with-the conduct of the proceedings after such commencement; and

(d) where such costs are awarded to the tenant, the amount due to the landlord deducting such costs.

(3) Where any decree or order has been passed in favour of a landlord before the commencement of the Kerala Land Reforms (Amendment) Act, 1969, by any court or Land Tribunal for the recovery of arrears of rent accrued due prior to the 1st day of May, 1968, such decree or order shall be enforceable only to the extent of the amount due to such landlord under sub-section (1); and to determine such amount, any of the parties to the decree or order may apply to the court or the Land Tribunal, as the case may be, which passed the decree or order, to amend such decree or order in accordance with the provisions of sub-section (1).

(4) On receipt of an application under sub- section (3), the court or the Land Tribunal, as the case may be may, after such enquiry as it deems fit, reopen the decree or order and pass an order containing the particulars specified in sub-section (2).

(5) Any landlord who has not instituted a suit or applied under section 26 for recovery of arrears of rent accrued due prior to the 1st day of May, 1968, before the commencement of the Kerala Land Reforms (Amendment) Act, 1969, may apply to the Land Tribunal under that section for recovery of the amount due to him under sub-section (1) of this section. (6) Notwithstanding anything contained in section 26, on receipt of an application referred to in subsection (5), the Land Tribunal may, after such enquiry as it deems fit, pass an order containing the particulars specified in sub-section (2).

(7) The tenant shall deposit the amount specified in an order under sub-section (2) or subsection (4) or sub-section (6) as due from him in the court or Land Tribunal which passed the order within a period of six months from the date of the order.

(8) If the tenant fails to deposit any amount as required by sub-section (7), such amount shall, on a written requisition from the court or the Land Tribunal, as the case may be, to the District Collector, be reco- vered under the provisions of the Kerala Revenue Recovery Act, 1968, together with interest at the rate of six per cent per annum from the date of the order under sub-section (2) or sub-section (4) or subsection (6) as the case may be.

(9) Notwithstanding anything contained in this section a tenant who has paid the amount as provided in section 34 of the Kerala Agrarian Relations Act, 1960, or in section 5 of the Kerala Ryotwari Tenants and Kudikidappukars Protection Act, 1962, for the discharge of arrea rs of rent outstanding on the 1 1th day of April, 1957, or the arrears of rent accrued due after that date and outstanding on the 15th day of February, 1961, on or before the date specified in those Acts for the

payment of the amount, shall not be liable to pay any amount towards arrears of rent for that period.

(10) The assignment by a landlord of his right to receive arrears of rent to any other person shall not affect the benefits conferred on a tenant under this section."

The majority opinion of the High Court, while striking down this section, observed "Under s. 73, all arrears of rent accrued due before the 1st May, 1968 and outstanding at the commencement of the amending Act are wiped off except to the extent of one year's rent in the case of a tenant possessing not more than five acres of I-and, of two years' rent in the case of a tenant possessing more than five acres but not more than ten acres of land, and three years' rent in the case of a tenant possessing more than ten acres. However, when the tenant is in possession of more than fifteen acres and the landlord is a small holder the tenant is liable to pay the entire arrears. This section, it seems to us, cannot get the protection of Article 31-A. Rent yet to accrue is no doubt a legal incident of the property concerned-see Section 8 of the Transfer of Property Act and the right to receive rent in the future might well be regarded as a right in the estate constituted by the land. But rent in arrear only constitutes a debt, and excepting perhaps to the extent to which it is a charge on the land, is not an interest therein. (See in this connection A.I.R. 1952 S.C. 252). 'Me effect of Section 73 is not merely to deprive the landlord of the charge conferred on him by Section 42 but to wipe off the debt itself and this debt not being an interest in the land, it seems to us clear that the section cannot have the protection of Article 3 1 A. That protection is afforded only in so far as the acquisition, extinguishment or modification of rights in an estate are concerned. That is an essential element of agrarian reform and the so-called incidental or ancillary provisions can get the protection only in so far as they are necessary for effectively implementing the reform or are otherwise an integral part of the reform. The liquidation of debt due, from tenants cannot be said to be necessary for implementing the law relating to the acqui- sition, extinguishment or modification of rights in estates or an integral part of that law and cannot therefore have the protection of Article 3 1 A. If it is necessary to rehabilitate indebted tenants by relieving them of their liability on account of arrears of rent, that must, like any other measure for relief of indebtedness, be justified in so far as it affects the property rights of the landlord as a reasonable restriction in the interests of the general public within the meaning of Clause (5) of Article 19.

No material has been placed before us to show that that is so. The produce from the land is not solely of the tenant's own making. The landlord provides the capital asset necessary for the purpose, namely, the land, I before the Act it was not a crime to do so-and it can-not be in the interests of the general public to deprive him of his due share of the produce. Provisions for the fixation of fair rent have been in force throughout the State at least from 1964, and, in the Malabar area, from much earlier. For many years past, seasons have been favourable and yields have been good. The prices of agricultural produce have been high, while rents, even when payable in kind, are commuted into money at rates much less than the prevailing prices, and it is notorious that cultivators of land have been making big profits even after paying rent. The mere fact that since 1957 the legislature has from time to time thought fit to stay pro- ceedings for the recovery of arrears of rent is not enough to show that tenants were not in a position to pay rent, and there is nothing to show that the arrears of rent accrued due are anything more than what the landowner can reasonably ask for his share or the tenant can reasonably be expected to pay. There were statutes in force by which, on the payment of

rent for one year or more, the entire arrears could discharged, and it does not 33 5 seem to us either a reasonable restriction on the rights of the landlords, or something calculated to further the interests of the general public that persons who declined to take advantage of these statutes and would not pay when they could, should be absolved of the liability to pay their due debts. We hold that Section 73 has not the protection of Article 31-A and is violative of Article 19(1) (f)."

The dissenting opinion, upholding its validity, observed that in construing the reasonableness of the provisions of s. 73 it is legitimate to look to the provisions of Art. 39 in Part IV of the Constitution which emphasises the Directive Policy of the Government so as to give purposive content to the restriction which Part III imposes upon the fundamental rights guaranteed by the Constitution. The I earned Advocate General, in support of the 40 appeals by the State of Kerala and the Land Board, heavily relied on Pritam Singh Chahil v. State of Punjab (1) in support of his attack on the majority view of the High Court and in his submission this decision completely covers the present case. While developing his argument the learned Advocate General referred us to s. 42 of the impugned Act which provides that arrears of rent due to the landlord together with interest thereon shall be a charge on the interest of the tenant, from whom they are due, in the holding and shall, subject to the priority of the rights of the Government and any local authority for arrears of land revenue, tax, cess or other dues, be a first charge on such interest of the tenant. According to the submission, creation of charge by this section creates a right in the land which means a right in the estate and, therefore, the discharge of arrears of rent in accordance with the table contained in s. 73 being extinguishment of a right in the estate, is protected 'by Art. 31-A. Reference in support of the argument that charge is an interest in property was also made to the decision in the State of Gujarat v. Jetawat Lalsingh Amarsingh & ors. (2) where, while construing s. 14(1) of the Bombay Merged Territories and Areas (Jagir Abolition) Act, 39 of 1954 this Court observed in para 8 "We are also in agreement with the High Court that the right to receive cash allowance of Rs. 234/12/- annually from the Jagir is one of those rights that have got to be compensated under s. 14(1). That liability was not the personal liability of the Jagirdar. The first respondent was entitled to get that amount from the Jagir. In other words it was a charge on the Jagir. Therefore, it is an interest in property."

(1) [1967] 2 S.C.R. 536. (2) A.I.R 1969 S.C. 270.

It is noteworthy that S. 14(1) there covered the case of a person other than Jagirdar who, was aggrieved by the provisions of the impugned Act abolishing, extinguishing, or modifying "any of his rights to or interest in property" and such person's right to get the allowance was held to amount to an interest in property. It was not held to be a right in property. Indeed, it was expressly observed at p. 272 of the report that it was "not necessary to consider whether that interest can be considered as a right in the property". Reliance in this connection was also placed by the learned Advocate-General on M. K. Subbachariar v. The State of Madras(2), Ranjit Singh v. State of Punjab (2), State of Bihar v. Umesh Jha (3) and on the observations of S. R. Das, J., (as he then was) on the question of legality of acquisition of arrears of rent in State of Bihar v. Maharadhiraja Sir Kameshwar Singh of Darbhanga(4). The majority view in Kameshwar Singh's case (supra), it may be pointed out, was not in accord with these observations, for the majority held the acquisition of arrears of rent to be unconstitutional. The other decisions cited by the learned Advocate-General also do not support his submission. Ranjit Singh's case (supra) is an authority for the view that the

expression agrarian reform" calls for a wider meaning than was given to it by K. K. Kochunni v. State of Madras (5) and in Jha's case (supra) the validity of s. 4(b) of the Bihar Land Reforms Act, 1950 as amended in 1959 which authorised annulment of anticipatory transfer of land designed to defeat the object of the Act, was held to be protected by Art. 31-A of the Constitution. The Acts impugned in the Madras decision in Subbachariar's case (supra) were held to fulfill the requirements of Art. 3 1 -A (1) (a), and, therefore, protected from attack founded on violation of Arts. 14, 19 and 31 of the Constitution. After so holding the High Court observed :

> "It follows that the validity of the Acts cannot be questioned even on the ground that no compensation whatsoever has been provided for the acquisition of certain specific interests.
>
> On this conclusion strictly speaking it is unnecessary to have any elaborate survey of the provisions of the Acts and examine whether and if so to what extent they are violative of Articles 14 and 31 of the Constitution."

The decision of this Court in Kameshwar Singh's case (supra) was distinguished. A passing reference was also made by the appellant to Khajamian Wakf Estates v. The State of Madras(6). But there (1) I.L.R. (1967) 2 Mad. 646.

(3) [1962] 2 S.C.R. 687.

(5) [1963] 3 S.C.R. 887.

(2) [1965] 1 S.C.R. 82.

(4) [1952] S.C.R. 889 at 1000-1002.

(6) A.I.R. 1971 S.C. 161.

the enactments challenged being laws providing for the acquisition by the State of "estate" as contemplated by Art. 31-A were held to be completely protected 'by Art. 31-A of the Constitution from the attack on the ground of violation of Arts. 14, 19 and 31. In regard to the provision reducing the liability of the tenant with respect to the arrears of rent the only challenge raised in that case questioned the competency of the legislature to make the law and this was repelled with the observation :-

> "Those arrears are either arrears of rent or debts due from agriculturists. If they are treated as arrears of rent then the State legislature had legislative power to legislate in respect of the same under Entry 18 of List II of the VIIth Schedule. If they are considered as debts due from the agric ulturists then the State legislature had competence to legislate in respect of the same under Entry 30 of the same list."

The precise question with which we are concerned was not canvassed there.

The argument that arrears of interest is a charge on the estate and, being, therefore, a right in land, can be extinguished as an estate, is not supported by the true ratio of the decisions cited by the learned Advocate General and is otherwise too unacceptable on the language of the impugned statutory provisions. The liability to pay arrears of rent under the impugned Act, assuming the charge created by s. 42 is an interest in land, is not a right in land : besides the liability being also a personal liability it would clearly amount to a debt. Acquisition or extinguishment of such a personal liability for payment of money cannot be covered by Art. 3 1 A. That money cannot be acquired is clear, as already pointed out, from the majority view of this Court's decision in Kameshwar Singh's case(). Looking at the table incorporated in s. 73 it is obvious that the amount of rent to be paid for getting discharge of the whole debt has been arbitrarily fixed and does not seem to be founded on any rational, logical or _just basis.

But the learned Advocate General contended that without discharging the arrears of rent or at least a major part of it, the object of the land reforms would be stultified as the indebtedness of the tenants would remain unameliorated. To reduce the indebtedness of the tenants appreciably is a reasonable restriction on the rights of the creditors and the law thus providing for amelioration of indebtedness of tenants deserved to be upheld as constitutional. We grant that amelioration of indebtedness of tenants is a laudable and desirable object. But the person to whom the arrears of rent are due is also entitled to seek protection of his legitimate right and if the acquisition of arrears of rent is outside the protection of Art.

(1) [1952] S. C. R 889.

31 A then the impugned provision cannot but be held invalid. It prima facie partakes of the character of forfeiture or confiscation of the discharged arrears. Article 39 of the Constitution to which reference was made can be implemented by other permissible means without violating or abridging the just and legitimate rights of those to whom the arrears of rents are due. Section 73, therefore, in our opinion, was rightly struck down by the majority opinion. It was conceded before us that if s. 73 goes, then, s. 4/5-A must also be struck down as unconstitutional. Section 45-A, broadly speaking, provides that rent received after May 19, 1967 but before the commencement of the amendment Act of 1969, and appropriated towards arrears of rent for the period prior to May 1, 1966 shall be adjusted towards rent accrued due for period after May 1, 1966. This takes us to the explanation to s. 85(1) which was the only other provision with respect to which the judgment of the High Court was assailed by the learned Advocate General in this Court. That provision, so far as relevant, reads :

> "85. Surrender of excess lands.-
>
> (1) Where a person owns or holds land in excess of the ceiling area on the date notified under s. 83, such excess land shall be surrendered as hereinafter provided Provided that where any person bona fide believes that the ownership or possession of any land owned or held by such person or, where, such person is a member of a family, by the members of such family, is liable to be purchased by the cultivating tenant or kudikidappukaran or to be resumed by the landowner or the intermediary under the provisions of this Act, the extent of the land so liable to be purchased or to

be resumed shall not be taken into account in calculating the extent of the land to be surrendered under this sub-section.

Explanation.-Where any land owned or held by a family or adult unmarried person owning or holding land in excess of the ceiling area was transferred by such family or any member thereof or by such adult unmarried person, as the case may be, after the 18th December, 1957, and on or before the date of publication of the Kerala Land Reforms Bill, 1963, in the Gazette, otherwise than--

(i) by way of partition; or

(ii) on account of natural love and affection; or

(iii) in favour of a person who was a tenant of the holding before the 18th December, 1957, and continued to be so till the date of transfer; or

(iv) in favour of a religious, charitable or educational institution of a public nature solely for the purposes of the institution, the extent of land owned or held by such family or adult unmarried person shall be calculated for purposes of fixing the extent of land to be surrendered under this section as if such transfer had not taken place, and such family or adult unmarried person shall be bound to surrender an extent of land which would be in excess of the ceiling area on such calculation, or, where such family or person does not own or hold such extent of land, the entire land owned or held by the f amily or person; but nothing in this Explanation shall affect the rights of the transferee under the transfer."

The High Court struck down this provision with the following observations :

> "Section 85 provides for the surrender of excess land, but sub-section (1) thereof contains an explanation which we think cannot stand. Under the explanation, subject to certain exceptions, any land transferred by a person holding land in excess of the ceiling area between the 18th December, 1957 (the date of publication of the Kerala Agrarian Relations Bill) and the date of the publication of the Kerala Land Reforms Bill, 1963 (here we think that ceiling means the ceiling area under the Act, for it does not appear there was any ceiling area during the period in question) is to be regarded as still held by him for the purpose of fixing the extent of land to be surrendered by him and such surrender is to be made out of the land still held by him. his can lead to absurd results. For example, supposing a person holding land just one cent in excess of the ceiling area had transferred some lands between the dates mentioned and bought the lands now held by him, possibly at a higher price, he will have to surrender all his land for the nominal compensation provided by section 88. No doubt, absurdities like this can only be attacked under Articles 14, 19 or 31 which are not available in the case of a legislation protected by Art. 31-A, but, there is the second proviso to sub-clause (a) of clause (1) of the article which enjoins the payment of compensation not less than the 34 0 market value for the acquisition of any land within the ceiling limit under the law for the time being in force. The effect of the

> explanation is to offend this proviso since it means that even land held by a person within the ceiling limit applicable to him under the Act (the law for the time being in force within the meaning of the article) can be taken away for the nominal compensation payable under section 88, by the fiction of regarding lands disposed of by him within the dates mentioned as if those lands were still held by him although the transfer remains untouched, in other words, as if the ceiling limit for such a person is different from the ceiling limits for persons who had not disposed of land between the relevant dates, That is not so. The ceiling limits imposed by the Act are the same for all, but, in the case of a person who has so disposed of land, that 1-and is to be regarded as still held by him (although, in fact, it is not) for the purpose of calculating the extent of the land to be surrendered by him, and the surrender is to be made out of the land still held, even if its effect be to leave him with land less than the ceiling limit, indeed with no land at all. If a fiction by which land not held by a person could be taken into account for the determination of the excess land to be surrendered by him, and he could be forced to surrender land actually held by him although it is within the ceiling limit without payment of the market value thereof, were permitted, the proviso in question could easily be rendered nugatory. That would be to mock the proviso."

This reasoning seems to us to be unexceptionable and the learned Advocate General was wholly unable to offer any serious criticism of these observations. It is clear that by virtue of the second proviso to Art. 31-A(1) land within the ceiling limit is expressly protected against acquisition by the State unless the law relating to such acquisition provides for compensation which is not less than its market value. No attempt was made to take the impugned explanation out of this constitutional inhibition. We therefore, do not find any reason to differ from the conclusions of the High Court.

These were the only provisions with respect to which the learned Advocate-General addressed us in support of his appeals. The result, therefore, is that these appeals fail and are dismissed with costs.

We now turn to the three appeals (C.As. Nos. 143, 274 and 309 of 1971). In C.As. Nos. 274 and 309 of 1971. the first point urged before us was founded on Art. 31-A(1), second proviso by 3 41 virtue of which the State can have no power to acquire any portion of land held by a person under his personal cultivation in the estate, which is within the ceiling limit applicable to him under a law unless the law empowering acquisition provides for compensation at a rate not less than the market value of such land. According to the argument when the amended Act reduced the ceiling limit and required surrender of the land held in excess of the limit fixed by the amended Act, without payment of compensation at market value, it violated the constitutional inhibition contained in the second proviso to Art. 31-A(1). We are unable to sustain this contention. It was not disputed that the ceiling limit fixed by the amended Act was within the competence of the legislature to fix; nor was it contended that the ceiling fixed by the original unmended Act by itself debarred the legislature from further reducing the ceiling limit so fixed. Prior to the amendment undoubtedly no land within the personal cultivation of the holder under the unamended Act within the ceiling limit fixed thereby could be acquired without payment of compensation according to the market value, but once ceiling limit was changed by the amended Act the second Proviso to Art. 3 1 -A (1) must be held to refer

only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates only within the ceiling limit fixed under the existing law, at the given time. I It is true that the new ceiling limit was fixed contemporaneously with the acquisition of the land in excess of that ceiling limit. But it was not contended that a law so fixing the ceiling limit and acquiring the land in excess would offend any provision of the Constitution. This submission must, therefore, be rejected.

The next point urged in C.A. 274 of 1971 relates to s. 50- A(2) of the amended Act. According to this sub-section where The tenant in respect of a nilam is a varamdar and the fishing right in that nilam is exercised by the landlord then such right of the landlord shall cease to exist and the tenant shall be entitled to exercise such right., "Nilam", it may be pointed out, means land adapted for the cultivation of paddy : s. 2(38). "Varamdar" means the person who undertakes cultivation under a varam arrangement and "varam" means an arrangement for the cultivation of nilam with paddy and sharing the produce, made between the owner or other person in lawful possession of the nilam and the person who undertakes cultivation under such arrangement, and includes the arrangements known as pathivaram, pankuvaram and pankupattam: s. 2(60). Section 50-A(2) operates notwithstanding anything contained in any law or contract or any judgment, decree or order of the court. The High Court has struck down this provision but has added a rider. This is what the High Court has observed "Accordingly, we strike down this provision, but might add that this cannot in any way affect the vesting of the landlord's rights in the Government if they have so vested under Section 72. That the income derived from fishing might not be taken into account in determining the compensation payable for the vesting cannot affect the provision for vesting so long as it has the protection of Art. 31-A".

It is agreed at the bar that there is no case before us on the facts and circumstances of which this rider can operate. It is also stated at the bar that a number of cases are pending in the High Court in which the precise point covered by the rider directly arises for adjudication. In our view, the High Court should not have expressed any opinion on this point in the manner it has been done, such expression of opinion being unnecessary for giving relief to the parties approaching the High Court. This question must, therefore, be left open to be determined by the High Court in cases in which the question directly arises.

The next question raised in C.As. Nos. 143 and 274 of 1971 ,relates to the rights of kudikidappukars. The argument raised before us on behalf of the appellants in these two appeals is that the definition of "kudikidappukaran" is not confined to agricultural labourers alone but it covers even non-agriculturists with the result that it cannot be held to be covered by the provision which protects legislation dealing with agrarian reform. The High Court, dealing with this challenge has observed "The principal objection taken to the provisions relating to kudikidappukars is that having regard to the definition of "kudikidappukaran", the rights will be available even to persons who have no connection with agriculture, in occupation of huts on land which is not agricultural. The conferment of rights on such persons would not be agrarian reform, and, therefore, the provisions cannot have the protection of Article 31-A. But, in no case before us is it alleged that there is any such person claiming or likely to claim the 'benefit of the provisions in question. In fact, as we have

said, all the lands with which these petitions are concerned are agricultural lands constituting estates, and, to deny the pro- tection of Article 31-A to any particular provision it must be shown that that provision is not a measure of agrarian reform. As we have already remarked, the mere possibility of the provisions in question being applicable to cases not falling within Article 31 -A is no ground for denying the protection of that article in respect of the cases falling within its ambit.

It is pointed out that the proviso to Section 2(25) makes a kudikidappukaran even of a trespasser so long as he was in occupation on the 16th August, 1968-the Bill of the amending Act was published on the 15th August-and continued to be in occupation till the com- mencement of the Amending Act, namely, till the 1st January, 1970. And that would be so even if the landowner has obtained a decree for possession against him. To encourage trespass by conferring rights on trespassers, even on trespassers against whom there is a decree for possession, cannot, it is said, be regarded as a measure of agrarian reform. That might well be so, but, we are not called upon to consider the validity of the proviso in question since, so far as the cases before us are concerned, the application of the proviso is a mere theoretical possibility. In none of the cases is it said that there is any person claiming the benefit of the proviso against the petitioner concerned, and the challenge to the proviso must be left to be decided in a case where the question actually arises.

Generally speaking, it might be said that a kudikidappukaran is a hutment dweller in permissive occupation of the land on which his hut stands and who holds no land on which he could erect a homestead. Three cents of land in a city or major municipality, five cents in any other municipality and tenents in any panchayat area or township (it is said that there is no place in this State which is not comprised within a city or a municipality or a panchayat or' a township) is regarded as the minimum land required for the purpose of erecting a homestead and it is only if the person concerned holds land in excess of there limits that he is disqualified. It would however, appear from Explanation I to the definition in Section 2(5) that the total extent of all the land held by a person, not necessarily land continuously situated, is to be taken into account for the purpose of the disqualification, the conversion being made on the basis that three cents of land in a city or major municipality is equivalent to five cents in any other municipality and to ten cents in a panchayat area or township. Kudikidappus are mainly a feature of the coconut gardens in the coastal areas of the State and are largely confined to the Cochin and Travancore areas. As we have seen, the occupation originates in permission, and, although in most cases, the permission might, in some measure, be prompted by charitable considerations, it is 3 44 never wholly so. Some benefit in return, other than spiritual, is always expected. In some cases the kudikidappukars are agricultural labourers who were in the earlier days, expected to work for the holder of the land for a lower wage than the prevailing wage, and in all cases they are expected to keep watch over the land and prevent theft or trespass. In the case of coconut gardens, the very existence of these dwelling houses in the midst of the gardens is beneficial to the trees in the immediate vicinity of the houses and increases their yield. So far as agricultural land is concerned, it seems to us that there is in all cases some connection between the existence of ,a kudikidappu therein and the cultivation of that land so that the conferment of benefits on kudikidappukars must prima facie be regarded as a measure of agrarian reform."

And again, "The real controversy is centered round Section 80-A to 80-G which by enabling a kudikidappukaran to buy not merely the site of his hut but also the surrounding land upto an extent of three cents in a city or major municipality or five cents in any other municipality or ten cents in a panchayat area or township for a price which, both with regard to its amount and to the manner and time of its payment, can only be described as nominal, virtually make a gift of the land to the kudikidappukaram. It has been argued that such a transfer of land to a person who had no manner of interest therein (by definition of kudikidappukaran has no interest in the land as such being only in permissive occupation of the site of his hut) cannot come within the ambit of subclause (a) of clause (1) of Article 3 1 -A since it involves no acquisition by the State and no, extinguishment or modification of any rights in the land constituting the estate. The provision is really for the compulsory acqui- sition of the land by the kudikidappukaran without payment of compensation and the circumstance that the article expressly provides only for acquisition by the State is a clear indication that acquisition by others is not included within its ambit, even if such acquisition might involve the extinguishment of the rights of the person to whom the land previously belonged. if the extinguishment involved in a transfer of the land from one person to another, namely, the extinguishment of the rights of the original owner, were comprised within the term, "extinguishment" as used in the article, it was unnecessary to have made separate and express provision for :acquisition by the State. Therefore, it is said, that extinguishment within the meaning of the article is extinguishment pure and simple and not extinguishment which is only an incident of something else like a transfer or an acquisition. It means a total annihilation of the rights, not the substitution of one person by another in that right. So runs the argument. But, although the argument sounds attractive enough, we are afraid it has to be rejected in view of the decision of the Supreme Court in AIR 1959 S.C. 459 and AIR 1959 SC 519. In the former, it was held that the transfer of a landlord's right to a tenant was an extinguishment, or, in any event, a modification of the landlord's right in the estate, well within the meaning of these words as used in the article. In the latter, which also deal with compulsory acquisition of a landlord's right by a tenant, it was pointed out that provision for such acquisition was a modification of the owner's rights in the land in that it obliges him to sell the land not at his own price but at the price fixed by the statute, and not to anyone he chooses but to the person specified therein and in accordance with its provisions. A transfer of his rights by the owner of a land to a person like a tenant already having some interest therein stands on no different footing from a transfer to a person having no interest in the land from the point of view of the extinguishment or modification of the rights of the trans- feror. Although this is not expressly mentioned, we think it is clear that the purpose of the transfer of the land to the landless occupant of the hut is only for pur- poses connected with agriculture-we are here speaking only of agricultural land. In the case of such land, even if the kudikidappukaran is not exclusively an agricultural labourer, the land transferred to him is likely to be used only for purposes of cultivation like growing a kitchen garden as an adjunct to his dwelling house. It is hardly likely to be used in entirety for building purposes (although there might be some little extension of the dwelling house) or for industrial or commercial purposes. Thus, the transfer being of agricultural land to a landless person primarily for agricultural purposes-it would in all probability make for more intensive cultivation-we do not think that it can be said that it is not a measure of agrarian reform."

It was contended on behalf of the appellants that a large number of kudikidappukarans are engaged in non-agricultural pursuits and they are free to deal with the homestead, the hut and the land

transferred to them in any way they like. There being no obligation on them to personally use the land for agricultural purposes, there is no question of agrarian reform being promoted by this provision. The learned Advocate-General--controverted the appellants' contention and sought further to support the conclusions of the High Court by drawing our attention to the report of the Agrarian Problem Enquiry Committee published by the Government of Cochin in 1949, particularly relying on para 146 of that report, a copy of which was produced be-fore us in the course of hearing. The learned Advocate-General also drew our attention to the report of the Land Policy Committee, Travancore-Cochin published by the Government in 1950, abstracts of which were also produced before us in the course of hearing. Para 91 of this report was specifically relied upon. Our attention was further drawn by the learned Advocate-General to the proclamation promulgated by His Highness the Maharajah of Cochin in June, 1947, giving relief against eviction of kudikidappukars, as also to certain provisions of the Travancore Prevention of Eviction of kudikidappukars Act, 1949 and to the provisions of the Travancore-Cochin Prevention of Eviction of Kudikidappukars Act 1955. Placing reliance on the background as emerging from these reports the proclamation and the statutes, the learned Advocate- General submitted that providing for accommodation and some appurtenant land to kudikidappukars is an important part of agrarian reform and must be upheld. In the alternative, however, it was suggested that the provisions of the Act may be read down so as to confine the statutory benefit only to those kudikidappukars who are agricultural labourers. According to him the definition arid the relevant provi- sions of the statute can be so read down as to bring them within the object of agrarian reform as understood in the light of the decisions of this Court.

Now as observed by the High Court in the passage already re- produced, transfer of land to the landless occupant of the hut, though not expressly so mentioned is only for the purposes connected with agriculture and the land in this passage is expressly stated to mean agricultural land. The term agricultural land, it may also be pointed out, is used in the judgment of the High Court in the sense of the definition contained in Art. 31A (2) (a) (iii) of the Constitution. The High Court has further stated, and it is not shown that this is incorrect, that in none of the cases before it, is there any allegation that any person unconnected with agriculture is claiming the benefit of ss. 75 to 80G of the Act. In fact all the lands, with which the present cases are concerned, are agricultural lands constituting estates as contemplated by Art. 31-A of the Constitution. This is what the High Court says in the Judgment "It might be that the expression, 'agrarian reform' is wide enough to include ameliorative measures for agriculturists, unrelated to right's in land, but, in the context of Article 31 -A, it can comprise only measures affecting rights in estates and we shall hereafter use the expression in that limited sense.

It would appear that all the lands held by the petitioners in these cases are agricultural lands-at any rate, no arguments have been addressed before us on the footing that any of them are not; the assertions in some of the petitions, such as that a paddy land is not agricultural land because for part of the year, when it is under water, fishing is profitably conducted thereon, or that a coconut garden is not agricultural land because it happens to be situated within a city, have been rightly forgotten. We might here repeat that we are using the term, 'agri- cultural land' in the sense relevant in the context of Article 31-A, namely, in the sense of the definition in subclause (iii) of cl. 2(a) of that article. It is the purpose for which the land is held, not its accidental use at a particular point of

time,, that determines whether it is agricultural land or not. If the land is held for purposes of agriculture or for purposes ancillary thereto (such as, for pasture or for the residence of cultivators of land, agricultural labourers or village artisans), it is agricultural land. Otherwise not. We suppose that something or other can be, and often is, grown on any vacant land, but that would not necessarily make it agricultural land for our purposes. To give an example, the possibility of cultivating, or even the actual cultivation of, what is essentially a building site in the heart of a town would not make, it agricultural land. It is the, purpose for which it is held that determines its character and the existence of a few coconut trees or a vegetable, patch on the land cannot alter the fact that it is held for purposes of building and not for purpose of agriculture."

And again, after observing that constitutionally bad portion of the Act, if severable, is liable to be struck down while upholding the valid portions, the High Court adds :

> "For the aforesaid reasons, we shall consider the impugned provisions only in the in application to agricultural land-was we have said, these petitions are not concerned with non-agricultural land, at any rate, not directly. We wish to make it clear that we are expressing no opinion whatsoever about their validity or otherwise in their application to non-agricultural land. We do not think it can be denied that the, Act as a whole is a measure of agrarian reform, its main object
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> -L128Aup CI/72 being to confer such benefits as fixity of tenure and fair rent on cultivating tenants, to abolish intermediaries like landlords, between the cultivator and the State, and to distribute lands held in excess of the ceiling to the landless. The Act as a whole must, therefore, get the protection of Article 31-A even if portions thereof have to fail for want of that protection."

Nothing convincing was said in this Court against these observations. In Ranjit Singh's case (supra) this Court considered it proper to place a liberal construction on Art. 31-A so as to cover cases where the general scheme of legislation is definitely designed to carry out agrarian reform and something ancillary thereto has to be undertaken to give full effect to such reforms. This decision was approvingly referred in Inder Singh v. State of Punjab(1). These decisions were noticed and followed by the High Court. The learned Advocate-General in his reply also contended that we may, if necessary, read down the provisions of the Act so as to ,confine its beneficial operation to those kudikidappukars who are primarily agricultural labourers and to the transfer of agricultural land to them so as to restrict the statutory power to agrarian reform as enunciated by this Court in Ranjit Singh's case (supra) and other relevant cases. It may, however, be recalled that according to the High Court all the lands in the cases with which we are concerned are agricultural lands constituting estates within the contemplation of Art. 3 1 A (2) (a) (iii) and all the persons benefited by the impugned provisions are occupants of huts on such agricultural lands and are connected with agriculture. On the facts of these cases, therefore, there is no occasion for saying anything beyond what the High Court has said on this aspect. We should, however, like to make it clear that we express no opinion where the provisions of this Act are utilised for lands which are not agricultural lands and do not constitute estates nor where the beneficiary happens to be a person not substantially connected with agriculture, occupying non- agricultural land or where the facts are not

covered by the general test laid down in the case of Ranjit Singh (supra). Finally the objection raised at the bar was that the area of land permitted to be purchased by kudikidappukars is unreasonably excessive and there is no obligation imposed on them to use the land for agricultural purposes. Here again, if as observed by the High Court, the main purpose of the transfer of agricultural land to the landless occupants is connected with agriculture and such land is likely to be used only for the purposes of cultivation, with which observation we are not persuaded to disagree, then, such (1) [1967] 3 S.C.R. 603.

transfer can properly be held to be ancillary to agrarian reforms. The transfer appears to us to be mainly of agricultural land, a part of which is intended to be utilised for the purpose of erecting a homestead etc., by the occupants. Such erection of a homestead etc., cannot in the circumstances of these cases deviate from the general agricultural purpose. The appellants' objection must on this view be held to be devoid of merit. In C.A. No. 309 of 1971 it was argued that under s. 72 what vests in the Government is only the landholder's right vis-a-vis the tenant and that this does not amount to acquisition. The counsel added that other rights of the appellants as owners could not be adversely affected. By way of illustration reference was made to quarrying rights and it was suggested that the right to quarry could not be affected by this vesting. We do not consider it necessary to go into the question of the impact of the impugned provision of the Act on the rights to quarry as there was no allegation to this effect in the writ petitions. This point was not canvassed even in the High Court. This Court. as a rule, does not decide questions which are not necessary for determining or resolving the actual controversy arising in the case. Such opinions partake of the nature of ;biter. Without deciding any hypothetical question posed before us we consider it sufficient for our present purpose to point out that extinguishment or modification of landlord's lights vis-a-vis the tenant would also be within the ambit of Art. 31-A of the Constitution if otherwise it is related to agrarian reforms. Section 72 is accordingly not liable to be struck down on this ground.

With the foregoing observations these three appeals are also dismissed; but without any order as to costs.

V.P.S. Appeals dismissed.