Ambika Prasad Mishra Etc vs State Of U.P. And Ors. Etc on 9 May, 1980

Equivalent citations: 1980 AIR 1762, 1980 SCR (3)1159, AIR 1980 SUPREME COURT 1762, 1980 (3) SCC 719

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, Y.V. Chandrachud, P.N. Bhagwati, V.D. Tulzapurkar, A.P. Sen

PETITIONER:
AMBIKA PRASAD MISHRA ETC.

Vs.

RESPONDENT:
STATE OF U.P. AND ORS. ETC.

DATE OF JUDGMENT09/05/1980

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
CHANDRACHUD, Y.V. ((CJ)
BHAGWATI, P.N.
TULZAPURKAR, V.D.
SEN, A.P. (J)

CITATION:
1980 AIR 1762 1980 SCR (3)1159
1980 SCC (3) 719
CITATOR INFO :
R 1981 SC 271 (66)
F 1988 SC1194 (9)
RF 1990 SC1480 (52)
RF 1990 SC1789 (96)

ACT:
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960-Constitutional Validity-Value of stare decisis-vis-a-vis judicial review.

HEADNOTE:
Dismissing the appeals and the Writ Petitions, the

Court
^

HELD: (1).-It is fundamental that the nation's Constitution is not kept in constant uncertainty by judicial review every season because it paralyses, by perennial suspense, all legislative and administrative action on vital issues deterred by the brooding interest of forensic blow-up. This, if permitted, may well be a kind of judicial destabilisation of State action too dangerous to be indulged in save where national crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shake up. The decision in Kesavananda Bharati's case, therefore, upholding the vires of Article 31A in unequivocal terms binds the court on the simple score of stare decisis and the constitutional ground of Article 141. Further, fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned". And none of these misfortunes can be imputed to Bharati's case. [1164 C-G, 1165 C-D]

(2). The sweep of Article 31A is wide and indubitably embraces legislation on land ceilings. Equitable distribution of lands, annihilation of monopoly of ownership by imposition of ceiling and regeneration of the rural economy by diverse planning and strategies are covered by the armour of Article 31A. Article 31A repulses, therefore, all invasions on ceiling legislation armed with Articles 14, 19 and 31. [1165 D-E, 1166 D-E]

Ranjit Singh and ors. v. State of Punjab and Ors. [1965] 1 S.C.R. 82, State of Kerala and Anr. v. The Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. etc. [1974] 1 S.C.R. 671, reiterated.

(3). The decision in Maneka Gandhi's case is no universal nostrum or cure all. Nor can it be applicable to the land reform law which is in another domain of constitutional jurisprudence and quite apart from personal liberty in Article 21. To contend that land reform law, if unreasonable violates Article 21 as expansively construed in Maneka Gandhi case is incorrect. [1168 E-G]

(4). Section 5(6) d the U.P. Imposition of Ceiling on Land Holdings Act, 1960 is fair, valid and not violative of Article 19(1)(f) of the Constitution. There is no blanket ban by it but only qualified invalidation of certain sinister assignments etc. There is nothing in this section which is morally wrong nor is such an embargo which comes into force only on a well recognised date not from an arbitrarily retrospective past constitutionally anathematic. Article 19(1)(f) is not absolute in operation and is subject, under Article 19(6), to
1160
reasonable restrictions such as the one contained in Section

5(6). Further it is perfectly open to the legislature as ancillary to its main policy to prevent activities which defeat the statutory purpose, to provide for invalidation of such action. When the alienations are invalidated because they are made after a statutory date fixed with a purpose, there is sense in this prohibition. Otherwise, all the lands would have been transferred and little would have been left by way of surplus. [1169 A-B, D, F-G, 1170 C, E-F]

(5). Articles 14 and 15 and the humane spirit of the Preamble rebel against the defacto denial of proprietory personhood or womanhood. But this legal sentiment and jural value must not run riot and destroy the provisions which do not discriminate between man and woman qua man and woman but merely organise a scheme where life realism is legislatively pragmatised. Such a scheme may marginally affect gender justice but does not abridge, wee-bit, the rights of women. If land-holding and ceiling thereon are organised with the paramount purpose of maximizing surpluses without maiming women's ownership, any plea of sex discrimination as a means to sabotage what is socially desirable measure cannot be permitted.. [1173 D-F]

From a reading of Section 3(7) read with Section S(3) it is clear that no woman's property is taken away any more than a man's property. Section 5(3) does not confer any property on an adult son nor withdraw any property from adult daughter. Legal injury can arise only if the daughter's property is taken away while the son's is retained or the daughter gets no share while the son gets one. The legislation has not done either. [1171 G, 1173 F, H, 1174 C-D]

(6). Section 3(17) of the Act is not discriminatory Land does not offend Articles 14 & 15 of the Constitution. True, Section 3(17) makes the husband a tenure holder even when the wife is the owner. This is a legislative device for simplifying dealings and cannot therefore be faulted. [1174 E, F-G]

(7). Neither ceiling proceedings abate nor taking surplus land from the tenure holder is barred under the provisions of Section 4 of the U.P. Consolidation of Holdings Act, 1953 read with Section 5(2) of the Ceiling Act. [1177 C]

The whole scheme of consolidation of holdings is to restructure agrarian landscape of U.P. so as to promote better farming and economic holdings by 'eliminating fragmentation and organising consolidating. No one is deprived of his land. What happens is, his scattered bits are taken away and in lieu thereof a continuous conglomeration equal in value is allotted subject to minimal deduction for community use and better enjoyment. Whatever land belongs to the tenure holder at the time when consolidation proceedings are in an on-going stage, may or may not belong to him after the consolidation proceedings are completed. Alternative allotments may be made and so the

choice that he may make before the prescribed authority for the purpose of surrendering surplus lands and preserving 'permissible holding' may have only tentative value. But this factor does not seriously prejudice the holder. While he chooses the best at the given time the Consolidation Officer will give him its equivalent when a new plot is given to him in tho place of the old. There is no diminution in the quantum of land and quality of land since the object of consolidation is not deprivation but mere substituting of scattered pieces with a consolidated plot. The tenure holder may well exercise his option before the prescribed officer and if, later, the Consolidation Officer takes away there lands, he will allot a real equivalent thereof to the tenure holder elsewhere. There is no reduction or damage or other prejudice by this process of statutory exchange. [1177 C-G] 1161

When land is contributed for public purposes compensation is paid in that behalf, and in the event of illegal or unjust orders passed, appellate and revisory remedies are also provided. On such exchange or transfer taking place, pursuant to the finalisation of the consolidation scheme, the holding, upto the ceiling available to the tenure-holder, will be converted into the new allotment under the consolidation scheme. Thus there is no basic injustice nor gross arbitrariness in the continuance of the land reforms proceedings even when consolidation proceedings are under way. [1178 B-D]

Agricultural & Industrial Syndicate Ltd. v. State of U.P. and Ors., [1974] 1 S.C.R. 253, distinguished.

Khetarpal Singh v. State of U.P. (High Court) [1975] Recent Decisions p. 366, approved.

8. There is no time-wise arbitrariness vitiating the statute in that various provisions in the Act were brought into force on random dates without any rhyme or reason, thus violating, from the temporally angle, Article 14. It is true that neither the legislature nor the Government as its delegate can fix fanciful dates for effectuation of provisions affecting the rights of citizens. Even so, a larger latitude is allowed to the State to notify the date on which a particular provision may come into effect. Many imponderables may weigh with the State in choosing the date and when challenge is made years later, the factors which induced the choice of such dates may be buried under the debris of time. Parties cannot take advantage of this handicap and audaciously challenge every date of coming into force of every provision as capriciously picked out. [1179 B-D]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 1543 of 1977. Under Article 32 of the Constitution of India.

WITH W.P. No. 1542/77 and C.A. No. 1379/77, W.P. No. 838/78. 2360-2363/78 and S.L.P. (C) Nos. 1727/79 & 2333 & 2530 of AND S.L.P. (C) No. 2539 of 1978 and W.P. No. 228 of 1979. M.S. Gupta for the petitioners in WPs. 1542, 1543, 838 & CA 1379/77.

Arvind Kumar, Mrs. Lakshmi Arvind & Prakash Gupta for the petitioners in SLPs. 1727, 2333 & 2530.

P.R. Mridul, R.K. Jain & Sukumar Sahu for the petitioners in WPs 2360-63.

Veda Vyasa, S.K. Gupta & A.K. Sharma for the petitioners in SLP 2599 and WP 228.

B.P. Singh Chauhan, Addl Adv. Genl. U.P. and O.P. Rana the appearing respondents.

The Judgment of the Court was delivered by KRISHNA, IYER, J.-This judgment deals with a flood of cases from Uttar Pradesh relating to limitation on agricultural land holdings and specifically disposes of the writ petitions, civil appeals and petitions for special leave listed below.

The pervasive theme of this litigative stream is not anti-land-reform as such but the discriminatory laws in the relevant legislation which make it 'unlaw' from the constitutional angle.

The march of the Indian nation to the Promised Land of Social Justice is conditioned by the pace of the process of agrarian reform. This central fact of our country's progress has made land distribution and its inalienable ally, the ceiling on land holding, the cynosure of legislative attention. And when litigative confrontation with large holders has imperilled the implementation of this vital developmental strategy, Parliament, in exercise of its constituent power, has sought to pre-empt effectively and protect impregnably such statutory measures by enacting Art. 31A as the very first amendment in the very first year after the Constitution came into force. Consequent on the Constitution (First Amendment) Act, 1951, this court repelled the challenges to land reform laws as violative of fundamental rights in State of Bihar v. Kameshwar Singh but the constant struggle between agrarian reform legislation and never-say-die litigation has led to a situation where every such enactment has been inevitably accompanied by countless writ petitions assailing its vires despite Art. 31A, not to speak of the more extensive Chinese walls like Arts. 31B, 31C and 31D. The forensic landscape is cluttered up in this court with appeals and writ petitions and petitions for leave to appeal, the common feature of each of which is a challenge to the validity of one or other of the State laws imposing ceiling on land holding in an inegalitarian milieu of the landed few and the landless many. Of course, the court is bound to judge the attack. On the legislative projects for acquisition and distribution, on their constitutional merits and we proceed to as say the task with special reference to the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (abbreviated hereafter as the Act). Several counsel have argued and plural objections have been urged but we will grapple with only those contentions which have been seriously pressed and omit others which have either been only formally mentioned or left to lie in silent peace, or but feebly

articulated. In this judgment, we side- step the bigger issue of the vires of the constitutional amendments in Articles 31 A, 31 and 31 as they are dealt with in other cases disposed of recently. Indeed, the history of land reform, in its legislative dimension has been a perennial race between judicial pronouncements and constitutional amendments.

The anatomy of the Act must be scanned as a preliminary exercise so that the Constitutional infirmities alleged may be appreciated in the proper setting. The long title gives the primary purpose of the Act as imposition of ceilings on land holdings in Uttar Pradesh and the Preamble amplifies it further. All this is tersely spelt out in the Statement of objects and Reasons which runs thus:-

> "With a view to provide for more equitable distribution of land by making the same available to the extent possible to landless agricultural labourers and to provide for cultivation on cooperative basis and to conserve part of the available resources in land so as to increase the production and up reserve stock of foodgrains against lean years by carrying on cultivation on scientific lines in State-owned farms, it is expedient to impose Ceiling on existing large land holdings. It is necessary to provide some land to the village communities for their common needs, such as establishment of fuel and fodder reserves. The Bill is therefore being introduced to promote the economic interest of the weaker section of community and to subserve the common good."

Thus we get the statutory perspective of agrarian reform and so, the constitutionality of the Act has to be tested on the touchstone of Art 31A which is the relevant protective armour for land reform laws. Even here, we must state that while we do refer to the range of constitutional immunity Art. 31A confers on agrarian reform measures we do not rest our decision on that provision. Independently of Art. 31A, the impugned legislation can withstand constitutional invasion and so the further challenge to Art. 31A itself is of no consequence. The comprehensive vocabulary of that purposeful provision obviously catches within its protective net the present Act and, broadly speaking, the antiseptic effect of that Article is sufficient to immunise the Act against invalidation to the extent stated therein. The extreme argument that Art. 31A itself is void as violative of the basic structure of the Constitution has been negatived by my learned brother, Bhagwati, J. in a kindred group of cases of Andhra Pradesh. The amulet of Art. 31A is, therefore, potent, so far as it goes, but beyond its ambit it is still possible, as counsel have endeavoured, to spin out some sound argument to nullify one section or the other. Surely, the legislature cannot run amok in the blind belief that Art. 31A is omnipotent. We will examine the alleged infirmities in due course. It is significant that even apart from the many decisions upholding Art. 31A, Golak Nath's case decided by a Bench of 11 Judges, while holding that the Constitution (First Amendment) Act exceeded the constituent power still categorically declared that the said amendment and a few other like amendments would be held good based on the doctrine of prospective over-ruling. The result, for our purpose, is that even Golak Nath's case has held Art. 31A valid. The note struck by later cases reversing Golaknath does not militate against the vires of Art. 31A. Suffice it to say that in the Kesavananda Bharati's case. Article 31A was challenged as beyond the amendatory power of Parliament and, therefore, invalid. But, after listening to the marathon erudition from eminent counsel, a 13 Judges Bench of this Court upheld the vires of Article 31A in unequivocal terms. That decision binds, on the simple score of

stare decisis and the constitutional ground of Art. 141. Every now discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with high-pressure advocacy, cannot persuade us to re-open, what was laid down for the guidance of the nation as a solemn pre-posion by the epic Fundamental Rights case. From Kameshwar Singh and Golak Nath (supra) through Kesavananda (supra) and Kanan Devan to Gwalior Rayons and after Art. 31A has stood judicial scrutiny although, as stated earlier, we do not base the conclusion on Art. 31A. Even so, it is fundamental that the nation's Constitution is not kept in constant uncertainty by judicial review every season because it paralyses, by perennial suspense, all legislative and administrative action on vital issues deterred by the brooding threat of forensic blowup. This, if permitted, may well be a kind of judicial destabilisation of State action too dangerous to be indulged in save where national. crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shakeup. It is surely wrong to prove Justice Roberts of the United States Supreme Court right when he said.

> "The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket good for this day and train only.. It is regrettable that in an era marked by doubt and confusion, an era whose greatest need is steadfastness of thought and purpose, this Court which has been looked to as exhibiting consistency in adjudication, and a steadiness which would hold the balance even in the face of temporary ebbs and flows of opinion. should now itself become the breeder of fresh doubt and confusion in the public mind as to the stability of our institutions".

It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned". And none of these misfortunes can be imputed to Bharati's case (supra). For these reasons, we proceed to consider the contentions of counsel on the clear assumption that Art. 31A is good. Its sweep is wide and indubitably embraces legislation on land ceilings. Long years ago, in Ranjit v. State, a Constitution Bench, speaking through Hidayatullah, J., dwelt on the wide amplitude of Art. 31A, referred to Precedents of this Court on agrarian reform vis a vis Art. 31A and concluded that equitable distribution of lands, annihilation of monopoly of ownership by imposition of ceiling and regeneration of the rural economy by diverse planning and strategies are covered by the armour of Art. 31A. We may quote a part:

> The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. which (sic) enure for the benefit of rural population must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, more distribu-

tion of lands to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village panchayat is best designed to promote rural welfare than individual owners of small portions of lands. Further the village panchayat is an authority for purposes of part III as was conceded before us and it has the protection of Art. 31A because of this character even if the taking over of Shamlat deb amounts to acquisition. ..... The setting of a body or agricultural artisans (such as the village carpenter, the village blacksmith, the village tanner, ferrier, wheelwright, barber, washerman etc.) is a part of rural planning and can be comprehended in a scheme of agrarian reforms. It is a trite saying that India lives in villages and a scheme to make villages self-sufficient cannot but be regarded as part of the larger reforms which consolidation of holdings, fixing of ceiling on lands, distribution of surplus lands and utilising of vacant and waste lands contemplate. This review has been reinforced by the later pronouncement of a Constitution Bench in the Gwalior Rayon Case, emphatically expressing support for the conceptual sweep of agrarian reform vis-a-vis Art. 31A. The proposition, therefore, is invulnerable that Art. 31A repulses all invasion on "ceiling legislation" (armed with Arts. 14, 19 and 31).

The professed goal of the legislation is to maximise surplus lands for working out distributive justice and rural development, with special reference to giving full opportunity to the agrarian masses to become a major rural resource of the nation. How to maximise surplus land ? By imposition of severe ceiling on ownership of land holdings consistently with the pragmatics of rural economies and the people's way of life. The pervasive, pivotal concepts are, therefore, ceilings on holdings and surrender of surplus land. The working unit with reference to which the legal ceiling is set is the realistic family. So, the flexible concept of 'family' also becomes a central object of legislative definition. Having regard to the diversity of family units among the various communities making up Indian society and having the object of the legislation as the guiding principle, the statute under consideration has given a viable and realistic definition of 'family', with provision for some variables and special situations. The machinery for implementing the statute is also set up with adjudicative powers, including appeals. Compensation, with-

out invidious discrimination, has to be paid, according to the scheme, when surplus land is taken away and for the determination and payment of such compensation a whole chapter is devoted. The disposal of land secured as surplus is, perhaps, the elimination of the legislative project. and so, Chapter 4 stipulates the manner of disposal and settlement of surplus land. Thus, we have the definitional provision in Chapter 1, followed by imposition of "ceilings" with ancillary provisions for exemption. The judicial machinery for enforcement and the provisions for pre-emption of manipulation and prevention of fraud on the statute, the assessment of compensation and its payment and the like have also been enacted in Chapters 2 and 3. A miscellaneous chapter deals with a variety of factors, including offences and penalties, mode of hearing and appellate powers and kindred matters. Inevitably, such a progressive legislation runs drastically contrary to the feudal ethos of the

landed gentry and the investment intancts of the nouveau riche and green revolutionists. Therefore, the holders who are hurt by the provisions of the Act have chosen to challenge their vires and they must succeed if the ground is good. Since the legislature has plenary power to tile extent conferred by the Constitution, the attack has to be based, and, deed has been on constitutional infirmities which If sound, must shoot down the Act. By way of aside, one might query whether agrarian reform, with all the fanfare and trumpet, has seriously taken off the ground or is still in the hangar? Any way, the court can only pronounce, the Executive must execute.

We will now proceed to formulate the points which, according to counsel, are fatal to the legislation and proceed to scan them in due course.

Various miniscule matters have been raised in the plethora of cases largely founded on some real or fancied inequity, inequality, legislative arbitrariness or sense of injustice. Speaking generally and with a view to set the record straight, injustice is conditioned by the governing social philosophy, the prevailing economic approach and, paramountly, by the constitutional parameters which bind the court and the community.

The Indian Constitution is a radical document, a charter or socio-politico-economic change and geared to goals spelt out in the objectives Resolution which commits the nation to a drive towards an egalitarian society, a note struck more articulately by the adjective 'socialist' to our Republic introduced by a recent Amendment and survives after Parliament, differently composed, had altered the 42nd Amendment. This backdrop suggests that agrarian legislation, organised as egalitarian therapy, must be judged, not meticulously for every indi-

vidual injury but by the larger standards of abolition of fundamental in equalities, frustration of basis social fairness and shocking unconscionableness. This process involves detriment to vested interests. The perfect art of plucking the goose with the least squealing is not a human gift. A social surgery, supervised by law, minimises, not eliminates, individual hurt while promoting community welfare. The court, in its interpretative role, can neither be pachydermic nor hyperreactive when landholders, here and there lament about lost land. We will examine the contentions form this perspective, without reference to Arts. 31B, C and D. Justice Cardozo has a message for us when he says:

Law and obedience to law are facts confirmed everyday to us all in our experience of life. If the result of a definition is to make them seem to be illusions, so much the worse for the definition; we must enlarge it till it is broad enough to answer to realities.

Shri Mridul, who led the arguments, mounted a three- point attack. Article 31A(1) (ii) was the target of an obscure submission which counsel, with characteristic fairness,

did not press at a later stage. Linked up with it was queer nexus between Art. 21 and. the right to property, deprivation of which was contended to be an unreasonable procedure somehow falling within the lethal spell of Art.

21.

Proprietary personality was integral to personal liberty and a may hem inflicted on a man's property was an amputation of his personal liberty. Therefore, land reform law, if unreasonable, violates Art. 21 as expansively construed in Maneka Gandhi. The dichotomy between personal liberty, in Art. 21, and proprietary status, in Arts. 31 and 19 is plain, whatever philosophical justification or pragmatic realisation it may possess in political or juristic theory. Maybe, a penniless proletarian, is unfree in his movements and has nothing to lose except his chains. But we are in another domain of constitutional the jurisprudence. Of course, counsel's resort to Art. 21 is prompted by the absence of mention of Art. 21 in Art. 31A and the illusory hope of inflating. Maneka Gandhi to impart a healing touch to those whose property is taken by feigning loss of personal liberty when the State takes only property. Maneka Gandhi is no universal nostrum or cure-all, when all other arguments fail! The last point which had a quaint moral flavour was that transfers of landed property, although executed after the dates specified in the Act were unreasonably invalidated by the Act even when there was no "mens rea" vis a vis the ceiling law on the part of the transferor and this was violative of Art. 19(1) (f) and of Art. 14 as arbitrary. A facet of over-inclusiveness which breaches Art. 14 was also urged. It is perfectly open to the legislature, as ancillary to its main policy to prevent activities which defeat the statutory purpose, to provide for invalidation of such actions. When the alienations are invalidated because they are made after a statutory date fixed with a purpose, there is sense in this prohibition. Otherwise, all the lands would have been transferred and little would have been left by way of surplus. Let us read the text of s.5(6) which is alleged to be bad being over- inclusive or otherwise anomalous. The argument, rather hard to follow and too subtle for the pragmatic of agrarian law, may be clearer when the provision is unfurled. Section 5(6) runs thus:

> In determining the ceiling area applicable to a tenure holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account . Provided that nothing in this sub-section shall apply to:
>
> (a) a transfer in favour of any person(including Government) referred to in sub-section(2);
>
> (b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument riot being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of the family.

There is no blanket ban here but only qualified invalidation of certain sinister assignments etc. Counsel weaves gossamer webs which break on mere judicial touch when he argues that transfer 'in good faith and for adequate consideration' have been unconstitutionally exempted. The bizarre

submission is that 'adequate consideration' is an arbitrary test. We reject it without mere discussion. The second limb of the submission is that while s. (6) directs the authority to ignore certain transfers it does not void it. The further spin-off adroitly presented by counsel is that the provision violates the second proviso to Art. 31. It is a little too baffling to follow and we dismiss the submission as hollow. The provision in s.5(6), when read in the light of the Provisos, is fair and valid.

Counsel's further argument is to quote his own words that "the impugned provisions do not establish a reasonable procedure" because:

> "The expression 'in good faith' is over-inclusive and takes within its sweep situations which are not only very different but which may not have any nexus or legitimate relationship with the objects and purposes of the ceiling law .. "

We are hardly impressed by it and find no substance on it.

There is no question of morality or constitutionality even if the clause may be a little over-drawn. On the contrary, it is legislative folly not to preserve, by appropriate preventives and enacted contraceptives, the 'surplus' reservoir of land without seepage or spill-over. It is legal engineering, not moral abandonment. Indeed, the higher morality or social legitimacy of the law requires a wise legislature to prescribe transfers, lest the surplus pool be drained off by a rush of transactions. Maybe, individual hardship may happen, very sad in some instances. But every great cause claims human martyrs! Poor consolation for the victim but yet a necessary step if the large owners are not to play the vanishing trick or resort to manipulated alienations! After all, this ban comes into force only on a well-recognised date, not from an arbitrary retroactive past.

We cannot discover anything which is morally wrong or constitutionally anathematic in such an embargo. Article 19(1) (f) is not absolute in operation and is subject, under Art.19(6), to reasonable restrictions such as the one contained in s.5(6). We do not think there is merit in the triple submissions spun by Shri Mridul.

Even on the merits, the transfers have been rightly ignored, the vendees who are the grandsons have been held to be not bona fide transferees for adequate consideration; and the findings are of fact and concurrent. We over-rule the grounds of grievance as unsustainable. In sum, without reliance on Art. 31A, Shri Mridul's contentions can be dismissed as without merit.

We will now consider the mini-arguments of the other counsel some of them do merit serious consideration by the court - and even where direct relief does not flow from the judicial process, State action to avoid anomalies may well be called for in the light of genuine hardships.

Shri Veda Vyas, appearing in W.P. No. 228 of 1979 and SLP No. 2599 of 1978, pleaded powerfully for gender justice and sex equity because, according to his reading, the Act had a built-in masculine bias in the definition of 'family unit' and allocation of ceiling on holdings, and therefore, perpetrated unconstitutional discrimination. Indeed, his case illustrated the anti-woman stance of the statute, he

claimed. The submission is simple, the inference is inevitable but the invalidation does not follow even if Art. 31A is not pressed into service to silence Art. 14.

We will formulate the objections and examine their merit from the constitutional perspective. Maybe, there is force in the broad generalisation that, notwithstanding all the boasts about the legendary glory of Indian womanhood in the days of yore and the equal status and even martial valour of heroines in Indian history, our culture has suffered a traumatic distortion, not merely due to feudalism and medievalism, but also due to British imperialism. Indeed, the Freedom. Struggle led by Mahatma Gandhi, the story of social reforms inspired by spiritual leaders like Swami Vivekananda and engineered by a galaxy of great Indians like Raja Rammohan Roy, Swami Dayananda Saraswati and Maharishi Karve and the brave chapter of participation in the Independence Movement by hundreds and thousands of woman patriots who flung aside their unfree status and rose in revolt to overthrow the foreign yoke, brought back to Indian womanhood its lustrous status of equal partnership with Indian manhood when the country decided to shape its destiny and enacted a Constitution in that behalf. Our legal culture and Corpus juris, partly a heritage of the past, do contain strands of discrimination to set right which a commission elaborately conducted enquiries and made a valuable report to the Central Government. Shri Veda Vyas may be right in making sweeping submissions only to this limited extent but when we reach the concrete statutory situation and tackle the specific provisions in the Act, his argument misses the mark.

A better appreciation of his contention must be preceded by excerption of two definitions and consideration of the concepts they embody. Section 3(7) defines 'family' thus:

> 'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters);
>
> This definition is incomplete without contextually reading s. 5(3) and so we quote the provision which, in the view of Shri Veda Vyas, enwombs the vice of discrimination against women. Sec.5(3)(a) & (b) & Explanation:
>
> Sec. 5(3): Subject to the provisions of sub-sections (4), (5), (6) and (7) the ceiling area for purposes of sub- section (1) shall be
>
> (a) In the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not them selves tenure holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;
>
> (b) in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family),

besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure holders or who held less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares subject to a maximum of six hectares of such additional land Explanation: The expression 'adult son' in clause (a) and

(b) includes an adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure holders or who hold land less than two hectares of irrigated land;

The anti-female kink is patent in that the very definition of family discloses prejudice against the weaker sex by excluding adult daughters without providing for any addition to the ceiling on their account. In the case of an adult son, s. 5(3) (a) of the Act provides for the addition of two hectares of irrigated land for each of his tenure holder's) sons where the family has a strength of less than five. Section 5(3)(b) similarly provides for two additional hectares of irrigated land for each of his (tenure holder's) adult sons where the strength of the family is more than 5. It must be remembered that this addition is on account of the fact that there are adult sons, even though they are not tenure holders or held less than two hectares or none. This previlege of adding to the total extent that the family of a tenure holder may keep is denied to an adult daughter, even though unmarried, and, therefore, dependent on the family for that a married son stands on a different footing from a married daughter, what justice is there in baring a dependent unmarried daughter in the cold? Assuming without admitting, Shri Veda Vyas further urges that having regard to the Child Marriage Restraint Act, 1929 and the increasing prevalence of unmarried adult daughters in families these days, the discrimination is not theoretical but real because no minor girl can now marry.

Another similar invidious provision is the definition of tenure holder. Ceiling on holdings is fixed with reference to tenure-holders.

We wonder whether the Commission on the Status of Women or the Central Governments or the State Governments have considered this aspect of sex discrimination in most land reforms laws, but undoubtedly the State should be fair especially to the weaker sex. Adult damsels should not be left in distress by progressive legislations geared to land reforms. This criticism may have bearing on the ethos of the community and the attitude of the legislators, but we are concerned with the constitutionality of the provision. Maybe, in this age of nuclear families and sex equal human rights it is illiberal and contrary to the zeit geist to hark back to history's dark pages nostalgically and disguise it as the Indian way of life with a view to deprive women of their undeniable half. Arts. 14 and 15 and the humane spirit of the Preamble rebel against the de facto denial of proprietary personhood of woman-hood. But this legal sentiment and jural value must not run riot and destroy provisions which do not discriminate between man and woman qua man and woman but merely organise a scheme where life's realism is legislatively pragmatised. Such a scheme may marginally affect gender justice but does not abridge, even a wee-bit, the rights of women. If land-holding and ceiling thereon are organised with the paramount purpose of maximising surpluses without maiming woman's ownership no submission to destroy this measure can be permitted using sex

discrimination as a means to sabotage what is socially desirable. No woman s property is taken away any more than a man's property.

Section 5(3) reduces daughters or wives to the status of stooges. It forbids excessive holdings having regard to rural realities of agricultural life. 'Family' is defined because it is taken as the unit for holding land-a fact of extant societal life which cannot be wished away. This is only a tool of social engineering in working out the scheme of setting limits to ownership. Section 5(3) does not confer any property on an adult son nor withdraw any property from an adult daughter. That provision shows a concession to a tenure-holder who has propertyless adult sons by allowing him to keep two more hectares per such son. The propertyless son gets no right to a cent of land on this score but the father is permitted to keep some more of his own for feeding this extra mouth. If an unmarried daughter has her own land, this legislation does not deprive her any more than a similarly situated unmarried son. Both are regarded as tenure-holders. The singular grievance of a chronic spinster vis a vis a similar bachelor may be that the father is allowed by s. 5(3) to hold an extra two hectares only if the unmarried major is a son. Neither the daughter nor the son gets any land in consequence and a normal parent will look after an unmarried daughter with an equal eye. Legal injury can arise only if the daughter's property is taken away while the son's is retained or the daughter gets no share while the son gets one. The legislation has not done either. So, no tangible discrimination can be spun out. Maybe, the legislature could have allowed the tenure-holder to keep another two hectares of his on this basis of the existence of an unmarried adult daughter. It may have grounds rooted in rural realities to do so. The court may sympathize but cannot dictate that the land-holder may keep more land because he has adult unmarried daughters. That would be judicial legislation beyond permissible process.

The same perspicacious analysis salvages the provision regarding a wife. True, s. 3(17) makes the husband tenure- holder even then the wife is the owner. So long as the land is within the sanctioned limit it is retained as before without affecting ownership or enjoyment. But where it is in excess, the compensation for the wives land, if taken away as surplus, is paid to her under Chapter III, And even in the choice of land, to declare surplus, the law, in s. 12A, has taken meticulous care to protect the wife. The husband being treated as tenure-holder even when the wife is the owner is a legislative device for simplifying procedural dealings. When all is said and done, married woman in our villages do need their husband's services and speak through them in public places, except, hopefully in the secret ballot expressing their independent political choice. Some of us may not be happy with the masculine flavour of this law but it is difficult to hold that rights of women are unequally treated, and so, the war for equal gender status has to be waged elsewhere. Ideologically speaking, the legal system, true to the spirit of the Preamble and Art. 14, must entitle the Indian women to be equal in dignity, property and personality, with man. It is wrong if the land reforms law denudes woman of her property. If such be the provision, it may be unconstitutional because we cannot expect that "home is the girl's prison and the woman's work-house" But it is not.

It must be said in fairness, that- the legislature must act on hard realities, not on glittering ideals which fail to work. Nor can large landholders be allowed to outwit socially imperative land distribution by putting female discrimination as a mask. There is no merit in these submissions of Sri Veda Vyas.

In the view we have taken, we need not discuss the soundness of the reasoning in the ruling in Sucha Singh v. State(1). The High Court was right, if we may say so with respect, in its justification of the section when it observed:

> The subject of legislation is the person owning or holding land and not his or her children.
>
> Section 5 provides for the measure of permissible are that a person with one or more adult sons will be allowed to select out of the area owned or held by him and his children,- whether male or female, have not been given any right to make a selection for himself or herself. It cannot. therefore, be said that this section makes a discrimination between a son and a daughter in respect of his or her permissible area on the ground of sex alone. The legislature is the best Judge to decide how much area should be left as permissible area with each owner or holder of land. Insofar as no distinction between a male and a female holder or owner of the land has been made in respect of the permissible area in any given circumstances? there is no violation of Article 15 of the Constitution. This section does not provide for any succession to the land; it only provides for the measure of the permissible area to be retained by every holder or owner of the land out of the area held or owned by him or her on the appointed day on the basis of the number of adult sons he or she has. It is for the legislature to prescribe the measure of permissible area and no exception can be taken because only adult sons have been taken into consideration.
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> Shri Veda Vyas objected to the further observations of Tuli, J.
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> It. is evident that distinction between an adult son and an adult daughter has been made not only on the ground of sex but also for the reason that a daughter has to go to another family after her marriage in due course, marriage being a normal custom which is universally practised. This is an institution of general prevalence which is the foundation of organised and civilised societies and communities.
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> Our rapidly changing times, when women after long domestic servitude, seek self-expression, cannot forge new legal disabilities and call it legislative wisdom. But, without assent or dissent, we may pass by these observations because no property right of women is taken away, and discrimination. if any, is not inflicted on rights, but sentiments. Shri Arvind Kumar, who followed, also made some persuasive points and seeming dents in the legislation when read in the light of the U.P. Consolidation of Holdings Act, 1953 (hereinafter called the Consolidation Act). In general terms, the submission turned on the operation of the law relating to consolation of holdings.
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> It is a great pity that a benign agrarian concept- abolition of fragmentation and promotion of consolidation of agricultural holdings- has proved in practice to be a litigative treachery and opened up other vices. The provision for appeals and revisions and the inevitable temptation of the vanquished to invoke Art. 226 and Art.

136 of the Constitution has paved the protracted way for improvident lay-out on speculative litigation. More farmers are cultivating litigation than land, thanks to the multi- docket procedure in the concerned law. Even so, we see no force in counsel's contention which we may now state.

The thrust of his argument, omitting subsidiary submissions which we will take up presently, is that so long as consolidation proceedings under the sister statute (U.P. Consolidation of Holdings Act, 1953) are under way, two consequences follow. Firstly, all other legal proceedings including the ceiling proceedings must abate. A notification under s. 4 of the Consolidation Act has been issued in regard to many areas in the State. Consolidation has been completed in most places but is still pending in some places. Counsel's argument is that once a notification under s.4 has been issued, s. 5(2)(a) operates. This latter provision states that every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land laying in the area, or, for declaration or ad judication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference of revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated;

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard:

Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated; Thus the ceiling proceeding has abated and surplus land cannot be taken from him. This plea has only meretritious attraction and superficial plausibility as we will presently see.

The whole scheme of consolidation of holding is to restructure agrarian landscape of U.P. so as to promote better farming and economic holdings by eliminating fragmentation and organising consolidation. No one is deprived of his land. What happens is, his scattered bits are taken away and in lieu thereof a continuous conglomeration equal in value is allotted subject to minimal deduction for community use and better enjoyment. Once this central idea is grasped, the grievance voiced by the petitioner becomes chimerical. Counsel complains that the tenure-holder will not be able to choose his land when consolidation proceedings are in an on-going stage. True, , whatever land belongs to him at that time, may or may not belong to him after the consolidation proceedings are completed. Alternative allotments may be made and so the choice that he may make before the prescribed authority for the purpose of surrendering surplus lands and preserving 'permissible holding' may have only tentative value. But this factor does not seriously prejudice the holder. While he chooses the best at the given time the Consolidation officer will give him its equivalent when a new plot is given to him in the place of the old. where

is no diminution in the quantum of land and quality of land since the object of consolidation is not deprivation but mere substitution of scattered pieces with a consolidated plot. The tenure-holder may well exercise his option before the prescribed officer and if, later, the Consolidation officer takes away these lands, he will allot a real equivalent thereof to the tenure-holder elsewhere. There is no reduction or damage or other prejudice by this process of statutory exchange.

Chapter III of the Consolidation Act provides, in great detail, for equity and equality, compensation and other benefits when finalising the consolidation scheme. Section 19(1) (b) ensure that 16-610 SCI/80 "the valuation of plots allotted to a tenure-holder subject to deductions, if any, made on account of contributions to public purposes under this Act is equal to the valuation of plots originally held by him. Provided that, except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure-holder shall not differ from the area of his original holding or holdings by more then twenty five percent of the latter." When land ii contributed for public purposes compensation is paid in that behalf in the event of illegal or unjust orders passed, appellate and revisory remedies are also provided. On such exchange or transfer taking place, pursuant to the finalisation of the consolidation scheme, the holding, upto the ceiling available to the tenure holder, will be converted into the new allotment under the consolidation scheme . Thus, we see no basis in justice nor gross arbitrariness in the continuance of the land reforms proceedings even when consolidation proceedings are under way. We are not all impressed with counsel's citation of the ruling in Agricultural & Industrial Syndicate Ltd. v. State of UP and others,(l), particularly because there has been a significant amendment to s. S subsequent thereto. The law as it stood then was laid down by this Court in the above case; but precisely because of that decision an explanation has been added to s. 5 of the Consolidation Act which reads thus:

Explanation:- For the purposes of subsection(2) a proceeding under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 or an uncontested proceeding under Sections 134 to 137 of the U.P. Jamindari Abolition and Land Reforms Act, 1950, shall not be deemed to be a proceeding in respect of declaration of rights or interest, in any land. The view of the Allahabad High Court in Kshetrapal Singh v. State of U.P.(2) (H.C.) is correct, and in effect negatives the submission of Shri Arvind Kumar that there should be a stay of ceiling proceedings pending completion of consolidation proceedings. The head note in Kshetrapal Singh's case (Supra) brings out the ratio and for brevity's sake, we quote it;

By adding the Explanation after sub-section(2) of Section 5 of the Act a legal fiction has been created. What is otherwise a proceeding in respect of declaration of rights or interest in any land is deemed not to be such a proceeding. That is the clear legislative intent behind the Explanation. ordinarily an Explanation is intended to explain the scope of the main section and is not expected to enlarge or narrow down its scope but where the legislative intent clearly and unambiguously indicates an intention to do

so, effect must be given to the legislative intent notwithstanding the fact that the legislature named that provision as an Explanation. A feeble submission was made that there was time-wise arbitrariness vitiating the statute in that various provisions in the Act were brought into force on random dates without any rhyme or reason, thus violating, from the temporally angle, Art. 14. It is true that neither the legislature nor the Government as its delegate can fix fanciful dates for effectuation of provisions affecting the rights or citizens. Even so, a larger latitude is allowed to the State to notify the date on which a particular provision may come into effect. Many imponderables may weigh with the State in choosing the date l) and when challenge is made years later, the factors which induced '7 the choice of such dates may be buried under the debris of time. Parties cannot take advantage of this handicap and audaciously challenge every date of coming into force of every provision as capriciously picked out. In the present case, s.6(1) (g) has been brought into force on 8.6.73, s.6(3) on 10.10.75, s.3(4) on 15.8.72, s.16 on 1.7.73 and s.(l) (e) on 24.1.71. This last date which was perhaps the one which gave the learned Advocate General some puzzlement was chosen because on that date the election manifesto of the Congress Party in all the States announced a revised agrarian policy and that party was in power at the Union level and in most of the States. Although a mere election manifesto cannot be the basis for fixation of a date, here the significance is deeper in that it was virtually the announcement of the political government of its pledge to the people that the agrarian policy would be revised accordingly. The other dates mentioned above do not create any problem being rationally related to the date of a preceding ordinance or the date of introduction of the bill. The details are not necessary except to encumber this judgment. We would emphasise that the brief of the State when meeting constitutional challenges on the ground of arbitrariness must be a complete coverage, including an explanation for the date of enforcement of the provision impugned. Court and counsel cannot dig up materials to explain fossil dates when long years later an enterprising litigant chooses to challenge.

A few other minor infirmities were faintly mentioned but not argued at all or seriously, such as, for instance, the contention that s. 38B of the Act which understandably excludes res judicata is challenged as violative of the basis structure of the Constitution and otherwise exceeds legislative competence. We do not think there is need to dilate on every little point articulated by one or other of the numerous advocates who justify their writ petitions or civil appeals by formal expression of futile submissions.

We dismiss all the appeals and all the writ petitions and all the special leave petitions with costs one set in all the cases together which we quantify as Rs. 5,000/-.

S.R. Appeals and Petitions dismissed.