(1989) 08 KL CK 0054

High Court Of Kerala

Case No: O.P. No. 3496 of 1981

Sankapuram Sabhayogam Kulhanur		APPELLANT
	Vs	
State of Kerala and Others		RESPONDENT

Date of Decision: Aug. 4, 1989

Acts Referred:

- Constitution (Forty-Fourth Amendment) Act, 1978 - Article 19(1), 300A, 31, 31(1), 39
- Constitution (Fourth Amendment) Act, 1955 - Article 141, 31, 31(1), 31(2), 31(2A)
- Constitution (Seventh Amendment) Act, 1956 - Article 245, 246, 247, 248, 249
- Constitution (Twenty-Fourth Amendment) Act, 1971 - Article 368
- Constitution (Twenty-Ninth Amendment) Act, 1972 - Article 31B
- Constitution of India, 1950 - Article 13, 14, 19, 31, 31A
- Government of India Act, 1931 - Section 299(1), 299(2)
- Government of India Act, 1935 - Section 299
- Kerala Land Reforms (Amendment) Act, 1979 - Section 125(1), 14, 16, 17, 27
- Kerala Land Reforms Act, 1963 - Section 10, 11, 13, 14, 15

Hon'ble Judges: V.S. Malimath, C.J; Bhaskaran Nambiar, J

Bench: Division Bench

Advocate: T.R.G. Warrier, P.V. Rama Warrier and Jyothi Prakash, for the Appellant; K. Sudhakaran, General for Respondents 1 and 2 and P.R. Nambiar, for Respondents 6 to 11, for the Respondent

Final Decision: Allowed

Judgement

Bhaskaran Nambiar, J.

Two vital provisions of the Kerala Land Reforms Amendment Act 27 of 1979, Explanation II added to Section 27 of the parent Act and the transitory provision, Section 17, are in challenge in this writ petition. Sri T.R. Govinda Wariyar, counsel appearing for the Petitioner has made his submissions on a broad canvas

contending that the right to property; no longer a fundamental right, after the 44th Amendment to the Constitution is in a better and favoured position as an ordinary Constitutional right under Article 300A and thus requiring this Court to consider the scope and content of Article 300A and also the impact of Article 39(b) and (c) in Part IV of the Directive Principles and the effect of Article 31C of the Constitution.

2. The Petitioner, Sankapuram Sabhayogam is a religious institution consisting of the members of the Namboodiri community in Sankapuram gramam, having as its objects, the performance of certain religious rights and ceremonies and owning several items of properties, mostly in the possession of tenants. When the Kerala Land Reforms Act came into force, the landlord''s rights became vested in the Government and the Petitioner was entitled only to the compensation amount, as provided under the Act. It is the Petitioner''s case that several tenants approached the Land Tribunals constituted under the Act for purchase of the Petitioner''s rights, most of the applications have been disposed of and the purchase price determined u/s 72F of the Act as multiples of the contract rent has been made payable in annual installments as provided in the Act itself. When finality has been given in almost all cases regarding the purchase price payable by the tenants, the Land Reforms Act was amended in 1979. Explanation II to Section 27 was added which directed contract rent to be determined in a particular way and a transitory provision was inserted enabling the Land Board to reopen orders which became final to prefix the compensation amount and to order refund of the excess amount, if any, paid to the land holders.

3. The Land Tribunals proceeded to take action under these amended provisions, reopened the order''s fixing the purchase price and directed that the Petitioner would be entitled only to receive smaller amount as purchase price and in consequence thereof, issued directions to refund the excess amount. There is also the threat of Revenue Recovery proceedings. The Petitioner has impeded Respondents 6 to 11, his erstwhile tenants in representative capacity also, after obtaining necessary permission from the court and after publication in the newspapers. The concerned Land Tribunals are also on the party array.

4. The Petitioner has produced Ext. P-2 a kanam kachit, dated 5th November 1935 in respect of lands held by Respondents 6 to 8. He states that the rent under the said document is 168 paras of paddy and 0.64 Rs. Out of the agreed rent, 121 paras 8 edangazhi 1 1/2 nazhi is deducted by way of interest on the kanam amount and also in lieu of the obligations undertaken by the tenant for the payment of the land revenue. 12 paras of paddy is again deducted to enable the tenant to perform the "Thirvathtra Uttu" on behalf of the landlord and net Michalaras is fixed only 34 paras 1 edangazhi and 2 1/2 nazhi of paddy. The purchase price payable in respect of this whole tenancy was fixed by the Land Tribual by its order, dated 20th February 1979 at Rs. 5,935.04. When Section 17 of the Amendment Act was invoked and the composation amount was re-fixed, the compensation amount has been reduced to

Rs. 1,212.16 on the ground that in the light of Explanation II to Section 27 of the Act, inserted by the Amendment, the contract rent should be treated as 34 paras 1 edangazhi and 2 1/2 nazhi of paddy. On that basis, the compensation amount was only Rs. 1,212.16. The Petitioner has also produced a list of the names of the tenants, the compensation originally awarded and the compensation fixed now. The following particulars in the petition do illustrate the drastic reduction in the purchase price, after the amendment.

Land Tribunal''s Proceedings No.	Original compensation amount awarded Rs.	Compensation amount refixed Rs.
O.A. No. 2604 of 1972	1,267.46	121.52
O.A. No. 1471 of 1975	1,990.48	271.03
O.A. No. 1520 of 1973	2,208.43	281.97
O.A. No. 1655 of 1973	3,724.29	507.60
O.A. No. 1307 of 1973	3,202.16	877.60
O.A. No. 1947 of 1975	7,242.80	1,383.12
O.A. No. 1187 of 1973	9,103.95	1,570.18

5. The Petitioner has therefore field the writ petition challenging the constitutional validity of Section 6 adding Explanation II to Section 27 of the parent Act and the transitory provisions, Section 17 of the Amendment Act 27 of 1979 (for short, the Act, hereafter). Considering the importance of the questions raised in the original petition, the matter has been referred to a Division Bench and that is how this case has come up before us.

6. The Petitioner contends that there cannot be deprivation of property under Article 300A except by authority of law. When deprivation of property is by the process of acquisition, it is an exercise of eminent domain, a right inherent in the sovereign. Article 300A, according to the counsel, therefore recognises this power of eminent domain. The postulate of eminent domain is that there can be no acquisition without public purpose and without payment of compensation. Thus the law contemplated by Article 300A can authorise deprivation of property only if it is for public purpose and provides for payment of compensation. There is no authority of law, according to the Petitioner''s counsel, if property is deprived without compensation. It is also contended that there is no legislative competence to enact a law relating to acquisition without payment of compemation, because public purpose and payment of compensation are the twin requirements of acquisition and the word ''acquisition'' in the relevant legislative entry limits the legislative field to deprivation for a public purpose and on payment of compensation. It is also

contended that the impugned legislation is unconstitutional because it damages and destroys the basic structure of the Constitution.

7. It is also submitted that the law under Article 300A is subject to the fundamental rights and the impugned enactment violates Article 14 of the Constitution. The landlord''s rights became vested in the Government on 1st January 1970. Thereafter, there was no subsisting landlord-tenant relationship. The liability to pay purchase price creates only a debtor-creditor relationship. The creditor''s rights have been substantially affected, when the amendment wiped off a large part of the purchase price which the land holders were entitled to get. It is said that the impugned provisions are not just, right and fair and the fictional contract rent is the basis for the fixation of the purchase price and that the Explanation II to Section 27 now added imparts vagueness and discrimination in the determination of the contract rent; treats one class of land holders who have received advances, differently, even when the advance amount is deducted from the purchase price payable and the retrospectively in Section 17 of the Act unsettles settled position, and takes note of imaginary inability of the tenants to pay the compensation amount in installments without at any time considering the hardship and loss suffered by the poor land holders like the Petitioner.

8. On the merits, it was contended that the Land Tribunals have committed grave errors in their application of Explanation II to Section 27 and in their interpretation of the relevant tenancy documents or kanam transactions. It is submitted that the Land Tribunals have reopened orders which have become final and made excess deduction not even sanctioned by the Explanation to Section 27, that there was in any case no need to order refund when the excess amount, if any, could be adjusted in future installments, that the money value of the contract rent should have been fixed with reference to the prevalent market value of the commodity, that no amount towards revenue should have been deducted from the gross rent, when the liability to pay revenue was on the tenants after the Kerala Land Tax Act came into force on 1st April 1956 in the Travancore-Cochin area and 1st September 1957 in the Malabar area of the State and thus the Tribunals have exceeded their jurisdiction conferred under the amending Act.

9. The learned Advocate General Sri K. Sudhakaran submitted that the right to property is no longer a fundamental right. Deprivation of property is sanctioned by the authority of law and when that law is within the legislative competence and does not transgress any express provision of the Constitution, theories of eminent domain have no place in the interpretation and application of Article 300A. The law under Article 300A need not provide for compensation and as long as it does not offend any fundamental right, it has to be sustained. He submitted that the impugned provisions have the full protection of Article 31C, as the legislation is meant to achieve the objects mentioned in Article 39(b) and (c). In the implementation of agrarian reform in this State, if the legislature thought that the

purchase price payable by the quondam tenants should be reduced, it was submitted that Article 14 cannot have any application.

10. The main prayers in the writ petition are (a) to declare that Sections 6 and 17 of the Kerala Land Reforms Amendment Act, 1979 are unconstitutional and void. (b) To quash the orders and the proceedings initiated by the Land Tribunals against the Petitioner pursuant to Section 17 of the Act and for other consequential relief.

11. We shall first advert to the constitutional questions raised, and refer to the contentions in greater detail later. Meanwhile, it is necessary to note briefly the scheme of the Land Reforms Act, the amendments made, and the relevant decisions on the constitutionality of the parent Act and some of the amendments.

12. The Kerala Land Reforms Act, Act 1 of 1964, is an Act "to enact a comprehensive legislation relating to the land reforms in the State of Kerala". Section 2 to 71, 73 to 82, etc., were brought into force with effect from 1st April 1964, while other provisions were brought into force on different dates. This Act conferred fixity of tenure on tenants, granted a limited right of resumption to a small class of land holders, provided uniform rates of fair rent, restricted ownership and possession of land in excess of the ceiling area and made provisions for disposal of excess lands. Sections 53 to 72 provided for the purchase of the landlord''s rights by tenants and for all incidental matters. There was an extensive amendment in 1979 by Amendment Act 35 of 1979. Section 72 of the Act was substituted by Section 72A to Section 72S and the amendment was given retrospectively with effect from 1st January 1970. The parent Act was challenged before this Court in Narayanan Nair v. State of Kerala 1970 KLT 659 (F.B.) and this Court upheld the validity of the Act, while striking down of Sections 73, 125(1), etc. In two other decisions, in Chami Chettiyar v. T.K.B. Devaswom 1970 KLT 897 (F.B.) and in Narayanan Damodaran v. Naravana Panicker Parameswara Panicker 1971 KLT 484 (F.B.). Section 7B(1), Section 7 and Section 4 Awere struck down. The decision in V.N. Narayanan Nair v. State of Kerala was taken in appeal before the Supreme Court and the Supreme Court in the decision in Kunjukutty Sahib, etc., etc. Vs. The State of Kerala and Another, rendered on 26th April 1972, upheld the decision of the Full Bench of this Court. The Supreme Court held that the parent Act was protected by Article 31A of the Constitution. The parent Act was included as item 39 of the 9th Schedule by the Constitution 17 th Amendment Act and the Amendment Act 35 of 1979 was included as item 65 in the 9th Schedule by the Constitution 29th Amendment Act. The Constitution 24th Amendment Act amended Article 368 of the Constitution and excluded the application of Article 13 to constitutional amendments. The Constitution 25th Amendment Act substituted Article 31(2) in the light of the judgments of the Supreme Court. The 24th, 25th and the 29th Amendments to the Constitution were challenged in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and the majority upheld the amendments by judgment, dated 24th April, 1973. We are not referring to the other amendments to the parent Act, included in the 9th

Schedule, as they are unnecessary for our purpose. It was thereafter that the impugned amendment Act 27 of 1979 was passed, which came into force on the 7th day of July, 1979.

13. Let us now refer to the specific provisions prior to the amendment Act and the provisions challenged in this writ petition. Section 27 provided for the fixation of fair rent in respect of a holding. Fair rent in the case of nilams (paddy fields) is 50 percent of the contract rent or 75 percent of the fair rent determined under any law in force immediately before the 21st January, 1961 or the rent calculated at the rates specified in Schedule III applicable to the class of lands comprised in the holding, whichever is less. In the case of other lands, fair rent is 75 percent of the contract rent, or the fair rent determined under any earlier law or the rent calculated at the rates specified in Schedule III applicable to the class of lands comprised in the holding, whichever is less. The landlord''s rights became vested in the Government as on 1st January 1970 and every landowner and intermediary whose right, title and interest in respect of any holding have vested in the Government is entitled to compensation as provided in the Act. The compensation payable is invariably the aggregate of sixteen times the fair rent of the holding, the value of structures, wells and embankments of a permanent nature belonging to the landowner and the intermediaries, and one-half of the value of timber trees belonging to the landowner and the intermediaries, if any. If the total compensation due to a landlord in respect of all the holdings held by the cultivating tenants under him is more than Rs. 20,000, there is a ceiling on the compensation payable and it is limited to the amounts specified in Section 72(3). The Land Tribunals have been given the jurisdiction to fix the fair rent, consider the applications for assignment of the right, title and interest of the landowner and also fix the compensation amount payable to the landowner. As stated already, compensation payable is geared to the fair rent u/s 27 of the Act. The Land Tribunals fixed the compensation amount payable by the quondam tenants of the Petitioner. Those orders had become final. But an amendment was inserted Explanation II to Section 27 which reads thus:

Explanation II:- Where in respect of a holding there is a stipulation in the contract of tenancy for the payment of interest by the transferor to the transferee on the consideration paid by, or due to, the transferee or for the payment by the transferee of land tax due to the Government or any tax or cess due to a local authority, the contract rent of that holding shall, for the purpose of this section, be calculated after deducting such interest; tax and cess.

14. A transitory provision is also included in Section 17, reading thus:

17. Transitory provision.- (1) Notwithstanding anything contained in any contract, or in any judgment, decree or order of any court or other authority, where the right, title and interest in respect of a holding referred to in Explanation II to Section 27 of the principal Act as amended by this Act has been assigned in favour of a cultivating tenant and the purchase price and compensation or annuity payable in respect of

such holding has been determined on the basis of contract rent calculated without deducting the interest, tax or cess referred to in the said Explanation, the Land Tribunal may, on application made by the cultivating tenant to whom such right, title and interest have been assigned or by his successor-in-interest within a period of one year from the commencement of this Act, by order, re-determine the purchase price and compensation or annuity payable in respect of such holding on the basis of contract rent calculatcd after deducting such interest, tax or cess.

(2) An application under Sub-section (1) shall be in such form and shall contain suoh particulars as may be prescribed.

(3) No order shall be passed under Sub-section (1) without giving any person affected thereby an opportunity of being heard.

(4) Where an order has been passed under Sub-section (1),-

(a) any amount paid to a landowner or intermediary as compensation in excess of the amount payable under such order shall be refunded by the landowner and the intermediary, if any, to the Government within such period as may be prescribed and if the landowner or intermediary makes default in the payment of such amount on or before the date fixed for refund, the same shall be recoverable from him under the provisions of the Kerala Revenue Recovery Act, 1968, as if it were an arrear of public revenue due on land.

(b) any amount paid by the cultivating tenant in excess of the amount payable by him under the said order shall be refunded to him wit''hin such period as may be prescribed.

15. In view of these amendments, the Land Tribunals reopened the orders passed by them earlier and refixed the purchase price and directed the Petitioner to refund excess amount. It is in this context that the Petitioner challenges the validity of Section 6 of the Act, which introduced Explanation II to Section 27 and Section 17, the transitory provision. With this background, we shall proceed to consider the constitutional questions raised:

The Scope and Content of Article 300A:

16. Article 300A reads thus:

300A. Persons not to be deprived of property save by authority of law-No person shall be deprived of his property save by authority of law.

This Article was inserted in Chapter IV under the heading "Right to Property by the Constitution 44th Amendment Act, 1978, which omitted Article 19(1)(f) and Article 31, in its entirety, from the Fundamental rights Chapter, Part III. Article 300A is in the same language of Article 31(1) which read thus:

31. Compulsory acquisition of property.- (1) No person shall be deprived of his property save by authority of law.

Right to property is no larger a fundamental right; it is only a constitutional right. Even then, it is contended that this right to property is "better protected" than when it was under the fundamental rights chapter, because the authority of law contemplated under Article 300A has its own inherent constitutional and legislative restraints. It is this aspect which requires our serious consideration.

17. Article 300A enjoins that there can be no deprivation of property except by authority of law. Thus the power to deprive a person of his property can be exercised only by authority of law and not by mere executive fiat. The executive cannot, without sanction of law, deprive any person of his property. To this extent, there is no dispute, there can be none.

18. Article 300A has probably its echo in the Magna Charta. Magna Charta described as "the most important event in English history" and still "the key stone of English liberty", and by Coke as "the charter of the liberties of the kingdom", declared in the 29th chapter "No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers or by the law of the land". Referring to these provisions, Mr. Justice Mathews in Hurtado v. People of California 110 U.S. 233 observed thus:

The concessions of Magna Charta were wrung from the king as guarantees against the oppressions and usurpations of his prerogative. It did not enter into the minds of the barons to provide security against their own body or in favour of the commons by limiting the power of Parliament; so that bills of attainder, ex post facto laws, laws declaring forfeitures of estates, and other arbitrary Acts of legislation which occur so frequently in English history, were never regarded as inconsistent with the law of the land; for notwithstanding what was attributed to Lord Coke in Bonham''s case, 8 Coke 115, 118a, the omnipotence of Parliament over the common law was absolute, even against common right and reason. The actual and practical security for English liberty against legislative tyranny was the power of a free public opinion represented by the commons.

19. What is the contents of the law which can deprive a person of his property, the content of the "authority of law" in Article 300A? Three aspects require consideration (a) whether the law contemplated under Article 300A should itself provide for payment of compensation. (b) whether there is lack of legislative competence in enacting a law regarding acquisition without a provision for payment of compensation, (c) whether the impugned law damages and destroys the basic structure of the constitution.

20. The contention is that the sovereign has an inherent power to acquire property of private citizens, but that power can be exercised only for a public purpose and on

payment of compensation. This power, it is said is the exercise of a sovereign power and according to counsel for the Petitioner, Article 31(1) as it stood before its repeal and Article 300A as it stands now embody the principles of eminent domain.

21. The constitution does not use the expression "eminent domain", nor does it refer to the inherent rights of a sovereign power. To decide whether the constitution has expressly or by necessary implication imported the theory of eminent domain in our constitutional concept, it is necessary to have an outline of this concept.

22. In Corpus Juris Secundum:

Eminent domain is, broadly, the right or power to take private property for public use. More precisely, it is the right of the nation or the state, or of those to whom the power has been lawfully delegated, to condemn private property for public use arid to appropriate the ownership and possession of such property for such use upon paying the owner a due compensation to be ascertained according to law. It has heen said to apply only to a taking, and not a regulation of the use of private property.

The prevailing view is that the right or power of eminent domain which has been called one of the highest powers of Government, is an attribute of sovereignty, inherent therein as a necessary and inseparable part thereof, and belonging to the state alone:

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Such right antedates constitutions and legislative enactments, and exists independently of constitutional sanction or provisions, which are only declaratory of previously existing universal law. The right can be denied or restricted only by fundamental law, and is ''a right inherent in society'', and superior to all property rights.

The power of eminent domain lies dormant in the state until legislative action is had pointing out the occasions, the modes, and the agencies for its exercise.

Eminent Domain is differentiated from police power thus:

More fully, many statements of the distinction agree to the effect that in the exercise of eminent domain private property is taken for public use and the owner is invariably entitled to compensation, while the police power is usually exerted merely to regulate the use and enjoyment of property by the owner or if he is deprived of his property outright it is not taken for public use but rather destroyed in order to promote the general welfare and neither case is the owner entitled to any compensation for any injury which he may sustain for the law considers that either the injury is damnum absque injuria or the owner is sufficiently compensated by sharing in the general benefits resulting from the exercise of the police power.

Regulations enacted under the inherent power of the state to protect the lives and secure the safety, peace, and welfare of the people are enacted under the police power and do not constitute a taking under the power of eminent domain, although they may interfere with private rights without providing for compensation. Constitutional provisions against the taking of private property for public use without just compensation impose no barrier to the proper exercise of the police power.

23. Cooley in constitutional limitations (1972 edition) states:

The rights of which we here speak are considered as pertaining to the state by virtue of an authority existing in every sovereignty, and which is called the eminent domain. Some of these are complete without any action on the part of the state; as is the case with the rights of navigation in its seas, lakes, and public rivers, the rights of fishery in public waters, and the right of the state to the precious metals which may be mined within its limits. Others only become complete and are rendered effectual through the state displacing, either partially or wholly, the rights of private ownership and control; and this it accomplishes either by contract with the owner, by accepting his gift, or by appropriating his property against his will through an exercise of its superior authority.

More accurately, it is the rightful authority, which exists in every sovereignty, to control and regulate those rights of a public nature which pertain to its citizens in common, and to appropriate and control individual property for the public benefit, as the public safety, necessity, convenience, or welfare may demand.

24. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, Justice B.K. Mukherjea stated thus:

It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as eminent domain in American law, is like the power of taxation, and off-spring of political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner. Article 31(2) of the constitution prescribes a two-fold limit within which such superior right of the state should be exercised. One limitation imposed upon acquisition or taking possession of private property which is implied in the clause is that such taking must be for public purpose. The other condition is that no property can be taken unless the law which authorises such appropriation contains a provision for payment of compensation in the manner laid down in the clause.

In The State of Bihar Vs. Sir Kameshwar Singh, , the same learned Judge expressed thus:

Thus ''Eminent Domain'' is an attribute of sovereign power supposed to be tempered by a principle of natural law which connects its exercise with a duty of compensation. (Vide Encyclopaedia of Social Science, Vol. V. p. 493).

25. In the same case - Kameshwar Singh Case, Justice Mahajan traces the sources of origin of the term ''eminent domain'' thus:

On the continent the power of compulsory acquisition is described by the term ''eminent domain''. This term seems to have been originated in 1625 by Hugo Grotius, who wrote of this power in his work ''De Jure Belli et Pacis.

26. Discussing the individual''s right to compensation and the sovereign power to condemn, the learned Judge quoted a passage in Thayer''s cases on Constitution Law (Vol. I, p. 953) mentioned in Nichol''s on Eminent Domain, thus:

Shorn of all its incidents, the simple definition of the power to acquire compulsorily or of the term ''eminent domain'' is the power of the sovereign to take property for public use without the owner''s consent. The meaning of the power in its irreducible terms is, (a) power to take, (b) without the owner''s consent, (c) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power. Courts have defined ''eminent domain'' so as to include this universal limitation as an essential constituent of its meaning. Authority is universal in support of the amplified definition of ''eminent domain'' as the power of the sovereign to take property for public use without the owner''s consent upon making use compensation.

It is clear, therefore that the obligation for payment of just compensation is a necessary incident of the power of compulsory acquisition of property, both under the doctrine of the English Common Law as well as under the continental doctrine of eminent domain, subsequently adopted in America.

In Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, . the same learned (Judge Justice Mahajan) held thus:

As pointed out in willis on Constitutional Law at p. 716 police power, power of taxation and eminent domain are all forms of social control and probably include all the forms of social control known to the law: but each differs from the Ors. ; though it is possible to distinguish each from the Ors. yet each has characteristics which it is resemple the characteristics of Ors. and there are times when it is very difficult to draw a line between the one and the Ors. .

...In other words, all that Article 31(1) says is that private property can only be taken pursuant to law and not otherwise. A referenc to Colley''s Constitutional Limitations fully bears out what the true content of Article 31(1) is. This is what he has said at p. 1119 (8th edn).

Legislative Authority Requisite: The right to appropriate private property to public uses lies dormant in the state, until legislative action is had, pointing out the occasions the modes conditions and agencies for its appropriations. Private property can only be taken pursuant to law.

Das, J. in The State of West Bengal Vs. Subodh Gopal Bose and Others, reiterated what has been stated earlier thus:

Accordingly I thus explained what I conceived to be the true scope and effect of Clause (1) and (2) of Article 31 in - ''Chiranjitlal''s case (supra),'' at page 63, namely, that Clause (1) deals with deprivation of property in exercise of police power and enunciates the restriction which our constitution makers thought necessary or sufficient to be placed on the exercise of that power, namely, that such power can be exercised only by authority of law and not by a mere executive fiat and that Clause (2) deals with the exercise of the power of eminent domain and places limitations on the exercise of that power.

Patanjali Sastri, C.J. observed thus:

Thus the American doctrine of police power as a distinct and specific legislative power is not recognised in our Constitution and it is therefore contrary to the scheme of the Constitution to say that Clause (1) of Article 31 must be read in positive terms and understood as conferring police power on the Legislature in relation to rights of property.

In the same case, Jagannadhadas, J. stated thus:

Now as regards Article 31, I agree that Clause (1) cannot be construed as being either a declaration or implied recognition of the American Doctrine of ''police power''. The negative language used therein cannot, I think with respect, be turned into the grant, express or implied, of a positive power. Indeed as my Lord the Chief Justice has pointed out in his judgment, no such grant of police power is necessary, having regard to the scheme of the Constitution. That scheme, as I understand it, is this. The respective legislatures in the country have plenary powers assigned to them with reference to the various subjects covered by the entries enumerated in the Lists of the Seventh Schedule by virtue of Articles 245 - 255.

27. On the question of the powers of Parliament in England, the learned Chief Justice observed thus in Subodh Gopal''s Case thus:

In England the struggle between prerogative and Parliament having ended in favour of the latter, the prerogative right of taking private property became merged in the absolutism of Parliament, and the right to compensation as a fundamental right of the subject does not exist independently of Parliamentary enactment. The result is that Parliament alone could authorise interference with the enjoy, ment of private property. Blackstone also says that it is the legislature alone that can interpose and compel the individual to part with his properly commentaries Vol. I. p. 110.

It is this limitation which the framers of our Constitution have embodied in Clause (1) of Article 31 which is thus designed to protect the rights to property against deprivation by the State acting through its executive organ, the Government. Clause (2) imposes two further limitations on the Legislature itself....

Clauses (1) and (2) of Article 31 are thus not mutually exclusive in scope and content, but should, in my view, be read together and understood as dealing with the same subject, namely, the prosecution of the right to property by means of the limitations on the State power referred to above, the deprivation contemplated in Clause (1) being no other than the acquisition or taking possession of property referred to in Clause (2).

28. At this stage it is worthwhile to quote what Justice Vivian Bose said in Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others,

With the utmost respect I deprecate, as I have done in previous cases, the use of doubtful words like ''police power'', ''Social control'', ''eminent domain'' and the like. I say doubtful, not because they are devoid of meaning but because they have different shades of meaning in different countries and because they represent powers which spring from widely differing sources.

In my opinion it is wrong to assume that these powers are inherent in the State in India and then to see how far the Constitution regulates and fits in with them. We have to interpret the plain provisions of the Constitution and it is for jurists and students of law not for judges, to see whether our Constitution also provides for these powers and it is for them to determine whether the shape which they take in India resemble any of the varying forms which they assume in other countries.

29. Article 31 was amended by the Constitution (Fourth Amendment) Act, 1955 by substituting Clause (2) and inserting Clause (2A) reading thus:

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

2(A) Where a law does not provide for transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

30. Article 31, prior to the Constitution (Fourth Amendment) Act, 1955 was understood by the Supreme Court as embracing the entire constitutional

guarantees regarding deprivation of property. While Justice S.R. Das held that Article 31(1) dealt only with police power and Article 31(2) dealt with the power of eminent domain, the majority of the Judges took the view that Article 31(1) and (2) related to the same topic, namely deprivation of property and provided for the doctrine of eminent domain. While Article 31(1) prescribed that deprivation can only be by the authority of law, thus excluding deprivation by executive fiat. Article 31(2) defines the limits of the exercise of that power when it prescribed payment of compensation as a condition pre-requisite for acquisition. There was thus, according to the majority judgments, no dichotomy in our Constitution between eminent domain and police power in our Constitution under Article 31. The Fourth Amendment to the Constitution did not make any change in the phraseology of Article 31(1), but in Article 31(2A) inserted, it was stated that where the law does not provide for transfer of the ownership or the right to possession of any property to the State, it shall not be deemed to provide for compulsory acquisition.

31. It was therefore urged before the Supreme Court in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, that after the Constitution Fourth Amendment Act, 1955, Clause (1) of Article 31 must be read independently of Clause (2) and if so read Clause (1) must be held to deal with police power and without such power the State cannot be expected to usher a welfare State. Justice Subba Rao speaking for the Constitution Bench held thus:

We cannot, therefore, import the doctrine of police power in our Constitution divorced from the necessary restrictions on that power as evolved by judicial decisions of the Supreme Court of the United States. Indeed, uninfluenced by any such doctrine, the plain meaning of the clear words used in Article 31(1) of the Constitution enables the State to discharge its functions in the interest of social and public welfare which the State of America can do in exercise of police power. The limitation on the power of the State to make a law depriving a person of his property, as we have already stated is found in the word ''law.''

The law can be sustained only "if it imposes reasonable restrictions in the interest of the general public" under Article 19(f).

32. We may also profitably refer to the decision of the Supreme Court in Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, where their Lordships held thus:

Clause (1) of Article 31 guarantees the right against deprivation of property otherwise than by authority of law. Compelling an employer to pay sums of money to his employees which he has not contractually rendered himself, liable to pay may amount to deprivation of property, but the protection against depriving a person of his property under Clause (1) of Article 31 is available only if the deprivation is not by authority of law. Validity of the law authorising deprivation of property may be challenged on three grounds: (i) incompetence of the authority which has enacted the law; (ii) infringement by the law of the fundamental rights guaranteed by

Chapter III of the Constitution; and (iii) violation by the law of any express provisions of the Constitution.

33. When right to property was fundamental right and was so declared in Article 19(1)(f) that "all citizens shall have the right to acquire, hold and dispose of property", compulsory acquisition of property, also a fundamental right, was dealt in Article 31 of the Constitution. While Article 31(1) provided that no person shall be deprived of his property save by authority of law, Article 31(2) insisted on payment of compensation as a pre-requisite for acquisition. There was thus in our Constitution a specific provision for payment of compensation whenever property was acquired and there was no necessity to import the principles of eminent domain or police power as understood in the United Kingdom or applied in the United States to grasp the scope and content of Article 31(1). The Supreme Court has considered the scope of Article 31(1) and the combined effect of Article 31(1) and (2). Under the amendment, Article 31(1) alone is brought back to the constitutional front through Article 300A. Article 300A is in pari materia with Article 31(1) as it then stood. The interpretation given by the Supreme Court to Article 31(1) therefore is significant and binding on us.

34. Article 300A enshrines the constitutional protection to private property. Right to property is no longer a fundamental right, but only a constitutional right. It can be deprived without the consent of the owner and against his will; but the mandate of the Constitution is that it can be deprived only by authority of law. Article 300A cannot be construed as declaration of the right of the State to deprive any person of his property, but has to be understood as a limitation on the power of the State to take away private property. Deprivation of property can thus be done only according to law. Without law, there is no deprivation of property. Deprivation of property without the sanction of law has no constitutional support. No law. no deprivation is the principle of Article 300A.

35. Article 300A uses only the expression deprivation of property. Deprivation of property, by any mode is comprehended in this provision. Deprivation may be acquisition; deprivation may be otherwise than through acquisition. Demolition of a building to prevent damage to life and property, destruction of decomposed food articles for preservation of public health, destruction of obscene literature for the promotion of public morality are some forms of deprivation which do not require any payment of compensation. To say, therefore, that one form of deprivation under Article 300A compels payment of compensation and Anr. form dispenses with compensation is to judicially dissect the constitutional provision, a judicial exercise which is not called for.

36 Article 300A therefore, does not compel that the law which authorises deprivation should also provide for compensation. The concept of acquisition has its origin in the sovereign power of the State, a necessity of the Government and the claim of compensation is based on the natural right of the person who is deprived of

his property to be compensated for his loss. Deprivation of property is the power to take, while payrfient of compensation is the condition for the exercise of that power. The power to deprive property is thus found in Article 300A. The condition for the exercise of that power is to be found in the law which gives authority to deprive. It is that law "which provides the occasion, the mode, the conditions and agencies" for its deprivation. A strict compliance with those provisions of the law authorising deprivation is therefore consistent with the mandate under Article 300A.

37. These, in essence, constitute the content of law under Article 300A. "Private property can only be taken pursuant to law; but a legislative act declaring the necessity, being the customary mode in which that fact is determined, must be held to be for this purpose "the law of the land", and no further finding or adjudication can be essential, unless the constitution of the State has expressly required it" - Cooley on Constitutional Limitations.

Whether payment of compensation is implicit in the content of the legislative power:

38. This leads us to the second limb of the submission that payment of compensation is implicit in the content of the legislative power. Entry 42 in the concurrent List, deals with "Acquisition and Requisition of Property" and acquisition, according to the counsel, demands payment of compensation. Thus according to him, there, is an in-built restriction on the exercise of the legislative power to acquire.

39. This identical question was raised and considered in State of Bihar v. Kameshwar Singh A.I.R.. 1952 S.C. 252 and in The State of West Bengal Vs. Subodh Gopal Bose and Others, : Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, and other decisions. In The State of Bihar Vs. Sir Kameshwar Singh, , Patanjali Sastri, C.J. stated thus:

The Entries in the Lists of the Seventh Schedule are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures, and such context is hardly appropriate for the imposition of implied restrictions on the exercise of legislative powers, which are ordinarily matters for positive enactment in the body of the Constitution.

Das, J. stated thus:

It follows, therefore, that the expression "acquisition" does not, by itself and without more, import any obligation to pay compensation...But there is no overriding necessity of constitutional law that I know of, or that has been brought to our notice, which requires that the obligation to pay compensation for the acquisition of property must be made part and parcel of the very legislative power to make a law with respect to the compulsory acquisition of Private property. It must depend on the provisions of the particular constitution under consideration,...In other words, it is not necessary to treat the obligation to pay compensation as implicit in or as a

part or parcel of these legislative heads themselves, for it is separately and expressly provided for in Article 31(2).

40. Reference can usefully be made of Section 299(1) and (2) of the Government of India Act, 1931. The section reads thus:

299(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owing, any commercial or industrial undertaking, unless the law provides for the payment of compensation, for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

41. Referring to this provision, Justice Mahajan in The State of Bihar Vs. Sir Kameshwar Singh, , stated thus:

I agree with the learned Attorney-General that the concept of acquisition and that of compensation are two different notions having their origin in different sources. One is founded on the sovereign power of the State to take, the other is based on the natural right of the person who is deprived of property to be compensated for his loss. One is the power to take, the other is the condition for the exercise of that power. Power to take was mentioned in Entry 36, while the condition for the exercise of that power was embodied in Article 31(2) and there was no duty to pay compensation implicit in the content of the entry itself.

Reference in this connection may be made to the Government of India Act, 1935. By Section 299 of that statute a fetter was Imposed on the power of legislation itself...I am therefore of the opinion that Mr. Das is not right in his contention that unless adequate provision is made by a law enacted under legislative power conferred by Entry 36 of List I for compensation, the law is unconstitutional as Entry 36 itself does not authorise the making of such a law without providing for compensation.

42. The Constitution (Seventh) Amendment Act, 1956, which came into force on the 1st day of November 1956, omitted Entry 33 of the Union list and Entry 36 of the State list and for Entry 42 of the Concurrent list, it was substituted reading as "Acquisition and requisitioning of property". Article 245 empowers Parliament or the States to make laws with respect to the matters enumerated in the lists. There is thus the positive power in the body of the Constitution for the exercise of legislative powers. The entries in the lists only define the respective areas of legislative competence. Article 245 contains no express restriction on the exercise of legislative power with reference to the subject of acquisition and the question is whether there is any implied restriction which can be spelt from the expression ''acquisition'' in

Entry 42. As Chief Justice Patanjali Sastri held in The State of Bihar Vs. Sir Kameshwar Singh, "the entries in the lists are hardly the appropriate context for the imposition of implied restrictions on the exercise of legislative power, which are ordinarly matters for positive enactment in the body of the Constitution". The Constitution has thus conferred power to make a law for acquisition simpliciter and this power is not circumscribed by any obligation to pay compensation. The obligation to pay compensation could have been introduced as a part of the legislative power, as has been done in Section 299(2) of the Government of India Act, but no such limitation was made in Article 245 and no conditions are annexed for the exercise of the power in Entry 42. Entry 42 is thus not a composite provision which provides for payment of compensation as a condition precedent for legislative exercise on "acquisition". As acquisition is an expression of wide connotation, which includes acquisition with or without compensation, it cannot be inferred that the Entry 42 has in-built restriction for making laws regarding acquisition only by providing compensation. It is the power to legislate that is found in Article 245 and Entry 42. How the power is to be exercised is left to Parliament or the State legislature. A right to compensation cannot therefore be held to be inherent in the expression ''acquisition'' in Entry 42. "Acquisition does not by itself, and without anything more, import any obligation to pay compensation". Payment of compensation may be ancillary or incidental to the power of acquisition. It is then in the realm of exercise of legislative power. A law made by the legislature may or may not provide for compensation for acquisition; but that will not affect its legislative competence. We are, therefore, not prepared to accept the contention of the counsel for the Petitioner that payment of compensation is implicit in the legislative power of acquisition. There was no lack of legislative competence to enact the impugned law.

Whether the impugned Act damages and destroys the basic structure of the Constitution:

43. The Act is challenged on the ground that it damages and destroys the basic structures of the Constitution. The majority of the Judges of the Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, held in favour of a limited power of amendment of the Constitution without damaging or destroying the basic Structure or frame work of the Constitution. The Judges were however not unanimous on the question whether the Fundamental Rights constitute generally the basic structure of the Constitution. The Observations of some of the learned Judges (a) on the applicability of the basic structure doctrine to ordinary legislative measures and (b) on the question whether right to property is a basic feature of the Constitution, are apposite for our purpose.

44. On the question whether the basic feature or the basic structure of the Constitution is a ground available to challenge legislative measures, the observations in the Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, are relevant.

Chief Justice Ray spoke thus:

The theory of basic structures or basic features is an exercise in imponderables. Basic structures or basic features are indefinable. The legislative entries are the fields of legislation. The pith and substance doctrine has been applied in order to find out legislative competency, and eliminate encroachment on legislative entries. If the theory of basic structures or basic features will be applied to legislative measures it will denude Parliament and State Legislatures of the power of legislation and deprive them of laying down legislative policies. This will be encroachment on the separation of powers.

The constitutional validity of a statute depends entirely on the existence of the legislative power and the express provision in Article 13. Apart from the limitation the legislature is not subject to any other prohibition.

The contentions of the Respondent that the Amendment Acts of 1974 and 1975 are subject to basic features or basic structure or basic framework fails on two grounds. First, legislative measures are not subject to the theory of basic features or basic structure or basic framework. Second, the majority view in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, is that the 29th Amendment which put the two statutes in the Ninth Schedule and Article 31B is not open to challenge on the ground of either damage to or destruction of basic features, basic structure or basic framework or on the ground of violation of fundamental rights.

Mathew, J. stated thus:

I think the inhibition to destory or damage the basic structure by an amendment of the constitution flows from the limitation of the power of amendment under Article 368 read into it by the majority in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, because of their assumption that there are certain fundamental features in the Constitution which its makers intended to remain there in perpetuity. But I do not find any such inhibition so far as the power of parliament or state legislatures to pass laws is concerned. Articles 245 and 246 give the power and also provide the limitation upon the power of these organs to pass laws. It is only the specific provisions enacted in the Constitution which could operate as limitation upon that power.

I do not think that an ordinary law can be declared invalid for the reason that it goes against the vague concepts of democracy; justice, political, economic and social; liberty of thought, belief and express ion; ot equality of status and opportunity, or some invisible radiation from them.

The doctrine of the ''spirit'' of the Constitution is a slippery slope. The courts are not at liberty to declare an act void, because, in their opinion, it is opposed to the spirit of dentocracy or republicanism supposed to pervade the Constitution but not

expressed in words. Warn the fundamental Law has not limited, either in terms or by necessary implication, the ge neral powers conferred upon-the ligislature, we cannot declare a limitation under the notion of having discovered some ideal norm: of free and fair election.

It is father strange that an Act which is put in the Ninth Schedule with a view to obtain immunity from attack on the ground that the provisions thereof, violate the fundamental rights should suddenly become vulnerable on the score that they damage or destory a basic structure of the Constitution resulting not from the taking away or abridgment of the fundamental rights but for some other reason.

Chandrachud, J. stated thus:

The Constitutional amendments may, on the ratio of the Fundamental Rights case, be tested on the anvil of basic structure. But apart from the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the Fundamental Rights case that ordinary legislation must also answer the same test as a constitutional amendment. Ordinary laws have to '' answer two tests for their validity: (I) The law must be within the legislative competence of the legislature as defind and specified in Chapter I, Part XI of the Constitution and (2) it must not offend against the provisions of Article 13(1) and (2) of the Constitution. ''Basic structure'', by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. ''The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features'' - this, in brief is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution.

45. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, Khanna, J. one of the majority Judges, supporting the Basic Structure theory summarised his conclusions at page 1550 of AIR The following extract is relevant:

(vii) The power of amendment under Article 368 does not include the power to abrogate the Constitution nor does it include the power to after the basic structure or framework of the Constitution. Subject to the retention of the basic structure or framework of the Constitution, the power of amendment is plenary and includes within itself the power to amend the various articles of the Constitution, including those relating to fundamental rights as well as those which may be said to relate to essential features. No part of a fundamental right can claim immunity from amendatory process by being described as the essence or core of that right. The power of amendment would also include within itself the power to add, alter or repeal the various articles.

(viii) Right to property does not pertain to basic structure or framework of the Constitution.

46. When a provision is embodied in the Constitution, it becomes a part of the Constitution, part of the paramount and fundamental law and this has inherent validity. It does not require for its validity the support of any other law. The ordinary laws, on the other hand, derive their validity from the constitution. It is the constitution that authorises the making of the laws and laws which do not have constitutional support or which offend the constitution, can have no validity. It is in the context pf amending the constitutional provision that the question arises whether the essential features or the basic structure of the constitution. can be damaged or destroyed. When once the constitution is amended, the amendment has the same validity as the Constitution itself. The law which is made thereafter, under the amended Constitution, is not tested with reference to the source of the amending power of the Constitution, but only with reference to the amended power.

47. It is only the majority decision in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, that imported the theory of basic structure as a limitation on the exercise of the amending power of the Constitution under Article 368, though there was no express provision to that effect in the constitution itself. The decision did not say that this principle is applicable to the amendment of ordinary laws. On the other hand, in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, , the observation of the learned Judges quoted above clearly indicate "the legislative measures are not subject to the theory of basic features or basic structures or basic framework". There is no inhibition in the constitution that the power of parliament or the State legislature can be exercised only if it conforms to the basic theory doctrine.

48. Constitution cannot be ultra vires. While the laws made under the Constitution may be ultra vires of the Constitution. The doctrine of ultra vires rests on the theory that voidability is predicated with reference to a superior law. The voidability of the ordinary law is thus with reference to the Constitution. There is thus no question of one part of the Constitution becoming ultra vires of Anr. part of the Constitution, because they are equal laws. The basic theory doctrine does not define the limits of legislative exercise; the Constitution does. It is the superior law that defines the limits of legislative exercise; not the principles that may govern the amendment of the superior law. The basic feature theory is an interpretative exercise to identify the parametres of the amendment to the Constitution, not intended to define the limits of legislative authority under the Constitution. When the exercise of legislative power is controlled by the provisions of the Constitution, it is not permissible to travel outside those provisions to decide about legislative competence.

49. Legislative measures are thus not amenable to challenge on the ground that they damage or destroy the basic structure of the Constitution. The impugned law cannot thus be challenged on the ground that it is opposed the basic theory doctrine. Moreover'', Justice Khanna has held, and with respect, we are bound by

those observations, that right to property is not a basic or essential feature of the Constitution. The third ground of attack does not survive.

50. Thus we come to the conclusion that a law under Article 300A giving authority to deprive a person of his property can be challenged on three grounds:

(a) legislative competency

(b) infringement of the fundamental rights and

(c) violation of any express provision of the Constitution. We are satisfied that Act 27 of 1979 is within the legislative competence under Entry 42 of List III and absence of a provision for payment of compensation does not affect its validity.

51. It is argued that this interpretation that the legislature can make a law regarding acquisition without providing for any compensation gives the legislature a very wide uncontrolled and arbitrary power and that Article 300A cannot admit of such interpretation. If the Constitution has not thought it fit to impose any legislative trammels in this regard, we can trust our legislature to act reasonably and not arbitrarily.

Article 31C, its scope and applicability.

52. We shall therefore, consider the next question as to whether the Amendment Act offends Article 14 of the Constitution. It has to be noted that the parent Act, Act I of 1964, has been included in the IX schedule and is protected under Article 31B and is immune from challenge as offending Articles 14 and 19. The Amendment Act is not included in the IX schedule and does not have protection of Article 31B. The fact that the parent Act has been included in the IX schedule does not give similar protection to a subsequent amendment Act not included in the schedule.

53. The contention of the Petitioner is that the Act plainly offends Article 14 of the Constitution and the main plank as defence is the decision in Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat, . The Advocate General resisted this claim and rested his defence on Article 31C. Article 31C reads thus:

31C. Saving of laws giving effect to certain directive principles.- Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in part IV shall be deemed to be void on the ground that it is inconsistent, with or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the president, has received his assent.

The submission is that the Amendment Act is a law giving effect to the policy of the State towards securing the principles laid down in Articles 39(b) and (c) in part IV of the Constitution and therefore, the impugned provisions are not amenable to challenge as violating Article 14 and Article 19. Article 39(b) and (c) read thus:

39. Certain principles of policy to be followed by the State.- The State shall, in particular, direct its policy towards securing-

(a) * * * *

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

* * * *

54. Article 31C was inserted by the Constitution (Twenty-Fifth Amendment) Act, 1971. It mainly consisted of two parts:

(a) no law giving effect to the policy of the State securing the principles specified in Clause (b) or Clause (e) of Article 39 shall be deemed to be void on the ground that it is inconsistent with Articles 14, 19, 31.

(b) no law containing a declaration that it is for giving effect to usch policy shall be called in question in any court on the ground that it does not give effect to such policy.

Parts III and IV of the Constitution have been described as "the conscience of the Constitution" and Article 31C attracts the Directive Principles in Article 39(b) and (c) to attain the constitutional goal of "social, economic and political justice for all". The validity of Article 31C came up for consideration in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . The judgment of the majority declared the second part of Article 31C void. It was held that the declaration made by the legislature precluded a party from agitating in a court of law the question as to whether the law enacted is really for the objects mentioned in Article 39(b) and (c), and that the second part of Article 31C goes beyond the permissible limits of Article 368.

55. Article 31C was amended by the Constitution (Forty-Second Amendment) Act, 1976 under which the words "the principles specified in Clause (b) or Clause (c), of Article 39" were substituted by the words "all or any of the principles laid down in Part IV". This amendment was struck down by the majority decision in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, By the Constitution (Forty Fourth Amendment) Act, 1978 for the words and figures Articles 14, 19 and 31, the words "Articles 14 or 19" shall be substituted. The original Article 31 is thus restored

except for the fact that the second part stands deleted and Article 19 is omitted.

56. Thus, Acts which have the protection of Article 31C are immune from challenge under Article 14 or Article 19. To attract Article 31C, an Act should give effect to the policy contained in Article 39(b) and (c) of the directive principles. Under Article 39(6) and (c), the policy of the State should be directed towards securing (A) the distribution of the material resources of the community to subserve the common good and (b) the operation of an economic system which does not result in the concentration of wealth and means of production to the common detriment. "Material resources of the community" have "been understood by the Supreme Court in the decision in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, thus:

The expression ''material resources of the community'' means all things which are capable of producing wealth for the community.

57. ''Distribution'' occurring in Article 39(b) has been construed broadly in State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others, "so that a court may give full and comprehensive effect to statutory intend contained in Article 39(6)". It was held thus:

It is obvious, therefore, that in view of the vast range of transactions contemplated by the word ''distribution''as mentioned in the dictionaries referred to above, it will not be correct to construe the word ''distribution'' in a purely literal sense so as to mean only division of a particular kind or to particular persons. The words, apportionment, allotment, allocation, classification, clearly fall within the broad sweep of the word ''distribution''. So construed, the word ''distribution'' as used in Article 39(b) will include various facts, aspects methods and terminology of a broad-based concept of distribution. In other words, the word ''distribution'' does not merely mean that property of one should be taken over and distributed to Ors. like land reforms where the lands from the big landlords are taken away and given to landless labourers or for that matter the various urban and rural ceiling Acts. That is only one of the modes of distribution but not the only mode.

58. The content of Article 39(b) and (c) came up for consideration in H.S. Srinivasa Raghavachar Vs. State of Karnataka and Others, where it is held thus:

It is too late in the day to contend that, in the existing system of economic relations, ownership of land to the tiller of the land is not the best way of securing the utmost utilisation of land, a material resources of fhe community for the common good of the entire community. It is now well recognised by leading economists everywhere that in the absence of common ownership of land and in the existing system of economic relations, the greatest incentive for maximum production is the feeling of identity and security which is possible only if the ownership of the land is with the tiller. It is obviously in recognition of this principle that ''landlordism'' was sought to be totally done away with by the amendment of Section 5 of the Act, by the omission

of Sections 14 and 16 and by the amendment of Section 44. If between a landlord who did riot himself personally cultivate the land and a tenant who so cultivated the land, the legislature preferred the cultivat''ng tenant, we are unable to hold that such preference is not part of a programme of agrarian reform pursuant to the Directive Principles contained in Article 39(b) and (c).

In the latest decision in Tinsukhia Electric Supply Company Ltd. v. State of Assam and Ors. 1989 (2) S.C. 217 the Supreme Court adverted to the earlier decisions and noted:

(1) that Article 31C does not give protection to a law ''which has merely some remote or tenuous connection with a directive principle'', and

(2) even where the dominant object of a law is to give effect to a directive principle, it is not every provision which is entitled to claim protection, but only those provisions which are basically and essentially necessary for giving effect to the directive principles in Article 39(6) and (c).

and then proceeded to consider whether the legislation impugned in that case had any direct nexus with the objects to be achieved or mentioned in Article 39(b) and (c).

59. The Kerala Land Reforms Act I of 1964, directed that the right, title and interest of the landowner in respect of holdings held by cultivating tenants, etc. shall vest in the Government on 1st January, 1970, and that the tenants are entitled to purchase the landowner''s rights on payment of purchase price as determined under the Act. The Act, empowered Land Tribunals constituted under the Act to decide about the disputes regarding the tenancy and fix the quantum of fair rent and the purchase price payable by the tenants. Detailed provisions are also made for fixing the ceiling area, and for, disposal of excess lands. It is common knowledge and it is the Petitioner''s case also that the Land Tribunals have fixed the fair rent in several cases and also determined the purchase price payable by the cultivating tenants. These orders have become final also. So also the Land Boards have ascertained the extent of excess lands and steps are a foot to secure possession of these excess lands and distribute them to the landless poor as enjoyed by the Act. In 1979, "the Government were convinced that most of the tenants would not be able to pay such big amounts as purchase price. Therefore, it was considered necessary to provide that for the purpose of determining fair rent, contract rent shall be the amount calculated after excluding interest on the amount advanced by the tenant and also land tax and land cess from the rent stipulated in the deed of demise". Explanation II to Section 27, (the provision relating to fair rent) was therefore added. This was given retrospective effect by the transitory provision Section 17, which enabled reopening of orders which have already become final and re-fixing the purchase price. The transfer of ownership to the tiller of the land, the fixation of fair rent payable by tenants, the distribution of surplus land to the landless, poor etc. are

distribution of the ownership and control of the material resources to subserve the common good. The objects of the parent Act and the amendment Act of 1979 are to give effect to these directive principles and both the provisions, Explanation II to Section 27 and Section 17 are basically and essentially necessary for giving effect to these directive principles. These provisions, as, indeed, the provisions of the parent Act, have a direct nexus to the objects sought to be achieved. The purchase price payable by the cultivating tenants is the crucial aspect in the transfer of ownership to the tenant of the holding. The impugned provisions are parts of a comprehensive legislation to effectuate the policy outlined in Clause (b) and (c) of Article 39 We have, therefore, no doubt that the impugned Act has the complete protection of Article 31C and is not amenable to challenge under Article 14 or Article 19 of the Constitution.

60. But, Shri Warriar, contended that the agrarian objects have already been achieved by the enactment of the Land Reforms Act, 1964 and the amendments made under Act 35 of 1969 and by the implementation of those provisions all these years and no distribution of material resources can now arise when the distribution is already complete and orders fixing the purchase price have become final. When the class of land owners ceased to exist from 1st January 1970, when their title statutorily vested in the Government, there was no longer any landlord tenant relationship; but only a debtor-creditor relationship. The present amendment, wipes off a substantial portion of the debt due by the quondam tenants and no question of distribution of material resources arises. These are the contentions.

61. It is difficult to accept these contentions. There is no factual foundation for the proposition that the distribution of excess lands in this State is complete and the object of the Land Reforms Act has been completely achieved. Moreover, we can take judicial notice of the fact that the Land Reforms Act is still in the process of implementation and disputes regarding fair rent, purchase price, excess lands and distribution of surplus lands are still pending final adjudication. The directive policy contained in Article 39(b) and (c) sought to be implemented under Act I of 1964 still remains to be achieved. If towards that end, an amendment is made, it cannot be held that the amendment does not have the protection of Article 31C.

62. The law giving effect to the policy of the State towards securing the objects mentioned in Clause (b) and (c) of Article 39 need not be confined to one statute or a particular legislative measure, but extends to all the legislations which may be required for achieving those objectives. The legislative authority to secure the objects of Article 39(b) and (c) does not get itself exhausted by the making of a single solitary law. If that law is insufficient, a second law can follow. There may be progressive evolution of the constitutional ethos through successive legislations. All the laws which are part of a integrated legislative scheme of constitutional policy to attain the objects mentioned in Article 39(b) and (c) have the same protection under Article 31C.

63. When an amendment to an Act is sought to be protected under Article 31C, the policy of the parent Act and its direct nexus with the objects sought to be achieved under Article 39(b) and (c) are very relevant factors. The object of the amendment Act may be thus intrinsically and directly connected with the objects of the parent Act. The fact that the parent Act is protected under Article 31C is thus a very relevant factor to ascertain whether the amendment deserves a similar protection. If the amendment seeks to achieve what was left undone by the parent Act or seeks to implement agrarian reforms more effectively for the benefit of the common good, the amendment, undoubtedly can claim protection of Article 31C, as in the present case.

64. As the impugned Act is protected under Article 31C, challenge under Article 14 cannot be entertained. The decision of the Supreme Court in Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat, prior to the insertion of Article 31C in the constitution can thus be of no assistance to the Petitioner. The Act does not offend any fundamental right. We, therefore, repel all contentions regarding the validity of the Act.

65. There are, however, some contentions on the merits of the claim under the Act.

66. It is necessary to understood the true scope and effect of Explanation II added to Section 27 of the parent Act. This explanation directs the calculation of the contract rent for the purpose of fixation of fair rent. It applies only to those cases (a) where the landlord had received loan/advance from the tenant and the contract of tenancy provides for payment of interest on that amount or (b) where the contract stipulates that the tenant shall pay land tax or land cess due to the Government or a local authority. In such cases, the contract rent shall be calculated after deducting such interest, revenue and cess. This provision does not state from where the deduction has to be made; but the objects and reasons state that the deduction has to be made from the rent stipulated in the deed. It seems to us, therefore, clear that the deductions contemplated under this explanation II to Section 27 are from the gross rent stipulated in the deed; as otherwise the provision may have no meaning. The decisions of this Court in Vasudevan Namboodtripad v. Mukammed Kutty 1975 KLT 727 and Mohammed v. Kesavan Bhattathiripad 1979 KLT 691 as to how the contract rent has to be calculated, have thus no relevance after the insertion of the explanation. When those decisions held how a contract rent can be determined in particular cases, by making certain deductions, it cannot be that the legislature intended deduction of the same amount twice over. The deduction that is required to be made under this provision is thus from the gross rent stipulated in the deed to arrive at the contract rent under the Act for the purpose of fixing fair rent. This provision thus stipulates that two deductions shall be made from the gross rent; (1) interest on the amount advanced and (2) land revenue/land cess payable to the Government/local authority. The Act does not contemplate any other deductions. When u/s 17, the Land Tribunals have been given the jurisdiction to reopen orders

which have become already final, find re-determine the purchase price after deducting interest, tax or cess as provided in the explanation, the jurisdiction u/s 17 cannot be extended for any other purpose or for making deductions of amounts not specified in explanation II. Orders can be reopened only to make the deductions of interest, tax or cess from the gross rent if it has not already been done and not for deducting any other amount. Of course, it is not known on whav basis the Act has directed the deduction of Land Revenue, because, under the Land Tax Act, applicable to the relevant periods, the liability to pay tax was on the cultivating tenant and not on the landlords. There is no justification to fasten this liability on the landlord, and allow a deduction of this amount from the gross rent payable to him. But that is not for us to decide as the Act cannot be challenged under Article 14 or Article 19.

67. With these preliminary observations on the scope of Explanation II to Section 27, we shall refer to the lease deed, Ext. P-2(1) produced in this case, and the orders passed by the Land Tribunal to find out whether the jurisdiction has been exercised correctly.

68. The Kanakychit (the counter part executed by the Kanomdar, the tenant), Ext. P-2, covers an extent of over 5.50 acres of land and is a renewal of an early deed of the year 1917. It recites that the landlord has taken an advance of Rs. 90 and stipulates that from out of the rent, interest towards the Kanartham (advance) and the land revenue due from time to time shall be deducted and 121 paras 8 edangazhi and 1 1/2 nazhi of paddy are reserved for this purpose. The tenant shall also conduct "Thiruvathira Uttu" for which 12 paras of paddy are set apart. The balance rent payable is fixed at 34 paras 1 edangazhi and nazhi (as per the 48 nazhi para) and 0.64 ps. If the rent is kept in arrears, and there is default in the payment of revenue, cess, etc., the tenant is liable to pay interest at 12 percent.

69. The Land Tribunal by its order dated 20th February 1979 in S.M. 44 of 1979 fixed the purchase price at Rs. 5,935.04 on the basis that the contract rent is 168 paras of paddy and 0.64 ps. and calculating fair rent u/s 27 of the Act. This order was reviewed in the light of Explanation II to Section 27 and Section 17 of Act 27 of 1979 by an order dated 28th March 1981 (Ext. P-3), fixing the purchase price at Rs. 1,212.16. The contract rent was fixed at 34 paras 1 edangazhi and nazhi of paddy (according to the 48 nazhi para) equivalent to 48 standard paras of paddy and the money rent of 0.65 ps. The Land Tribunal also deducted 12 paras of paddy reserved in the deed for "Thiruvathira Uttu" from out of the 34 paras and odd on the ground that this was only customary dues and was not rent as defined under the Act. Ext. P-3 is one of the orders passed by the Land Tribunal exercising the power of review u/s 17 of the Act. The Petitioner asserts that similar orders have been passed by the Land Tribunals, Respondents 2 to 4, in several other cases, in favour of other tenants of the Petitioner. Those tenants are impleaded in a representative capacity.

70. The jurisdiction to review an earlier order of the Land Tribunal is conferred u/s 17 of the Act. There is only a limited power of review. This power is conferred to refix the purchase price in conformity with Explanation II after making the deductions specified in the explanation. It, therefore follows that no deductions from the gross rent, not specified in the explanation can be made while exercising the power of review u/s 17. The gross rent fixed earlier, by orders which have become final, cannot also be altered, in the exercise of this review jurisdiction. Thus the gross rent, being already fixed and having become final, the deductions specified under the explanation have to be made and the contract rent determined accordingly and on that basis the fair rent has to be ascertained u/s 27 and the purchase price re-fixed. This alone is the jurisdiction u/s 17 of Act 27 of 1979.

71. The Land Tribunal exceeded its jurisdiction to deduct 12 paras of paddy from out of the gross rent towards ."Thiruvathira Uttu". This deduction is not contemplated under Explanation II. Moreover, there is no evidence that this was customary dues as found by the Land Tribunal. Even assuming it was customary dues, it could not be deducted, while exercising the power u/s 17 of the Act, as it is not a deductible item under Explanation II and the fixation of the gross rent earlier could not be the subject matter of review under this provision.

72. When the lease deed mentions the amount advanced by the tenant and recites that he is entitled to interest on that amount, and the gross rent is fixed in kind, it is necessary that the contract rent is ascertained in money as the purchase price is to be fixed only in money and not in kind. Explanation II to Section 72A of the Act corresponding to Section 36 reads thus:

For the purposes of this section, where the rent is payable in kind, the money value of the rent shall be commuted at the average prices of the commodity for the six years immediately preceding the year in which the right, title and interest of the landowner and the intermediaries have vested in the Government, in calculating the average of the prices, the prices, if any, published u/s 43 may also be taken into account.

The money value of the gross rent shall, therefore, be commuted at the average of the prices of the commodity for the six years preceding the year of vesting i.e. 1970. The average of the prices of the commodity from 1964-1970 has to be taken, note of for fixing the money value of the gross rent. Regarding deduction of land revenue, as the matter is governed by the Land Tax Act in force from 1964 onwards, the tax to be deducted has to be calculated with reference to the flat fate prescribed under that Act. There cannot be any deduction towards land revenue of anything more than what is statutorily fixed under the Land Tax Act. Regarding the interest on the amount advanced by the tenant, when the tenant is liable to pay on the arrear? of rent interest at the rate of 12 percent as specified in the document, it stands to reason that the tenant is entitled to claim from the landlord interest at that rate on the amount advanced by him. To ensure uniformity in all cases, even where the

document does not stipulate any specified interest for arrears of rent, it can be concluded, as a just and equitable proposition that the 12 percent interest on the amount advanced can be deducted from the gross rent commuted in money. Re-fixation of the purchase money u/s 17 can be done applying these principles. The Land Tribunals in passing Exts. P-3, P-4, and P-5 (P-4 and P-5 being similar to P-3) have thus committed patent errors of law in the exercise of jurisdiction u/s 17 of the Act. Exts. P-3, P-4 and P-5 are therefore quashed and the Land Tribunals are directed to refix the purchase price payable by the tenants of the Petitioners in accordance with the observations contained in this judgment and in accordance with law.

73. The purchase price under the Land Reforms Act is the most important surviving link between the landholders and their quondam tenants and its quantum affects both these classes. As the interpretation to Explanation II to Section 27 and the scope of the jurisdiction u/s 17 of Act 27 of 1979 are now clarified and declared in this judgment, it is necessary that the law as now interpreted and declared by us shall have uniform application. We, therefore, direct that the Land Tribunals in this State may, either suo motu, or on the application of the affected parties, review the decisions passed u/s 17 of Act 27 of 1979 and pass fresh orders regarding purchase price payable by tenants in accordance with the principles stated in this judgment and according to law. Respondents 2 to 4, the Land Tribunals, impleaded in this writ petition will issue fresh orders regarding purchase price payable by the Petitioners, reopening, if need be, orders passed after Act 27 of 1979, and to give effect to the principles stated and the formula adopted for calculation of contract rent.

74. Before we close, we shall advert to a minor point raised by the Petitioner. It is said that that there was, in any case, no necessity to order refund of any amount as the excess amount, if any, received by the land-holder could have been adjusted in future instalments. There is considerable force in this contention. Refund, under the circumstances was Uncalled for and recourse to revenue recovery proceedings under the circumstances, was unjustified" The excess amounts, if any, payable by the landholders towards refund of purchase price, after its final determination, shall be adjusted in the instalments remaining unpaid and revenue recovery proceedings can be initiated only for the balance, if any, after notice to the land-holder specifying the amounts so due.

75. We have been taken through the very learned and critical analysis of the constitutional questions with reference to Article 300A by the eminent jurist Shri Seervai in his monumental book, ''Constitutional Law of India'', and through the learned article Anr. professor and jurist of eminence, Pro. P.K. Tripathi, and an illuminating article by Justice Bhattacharya. We do not have the freedom available to jurists and academicians. We are bound by the law laid down by the Supreme Court, as the law of the land under Article 141. Our natural instincts cannot prevail over judicial propriety and precedence.

In the result, this Original Petition is allowed to the extent indicated and disposed of accordingly. No costs.