Asish Kumar Roy and Others Vs Union of India and Others

Court: Calcutta High Court

Date of Decision: April 16, 1999

Acts Referred: Constitution of India, 1950 â€" Article 226
West Bengal Land Reforms and Tenancy Tribunal Act, 1997 â€" Section 6

Citation: AIR 1999 Cal 242 : (1999) 3 CALLT 466 : 2 CWN 181

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Advocate: Samaraditya Pal, Ms. I. Banerjee, Mr. S. Mondal and Mr. B.K. Jain, for the Appellant; Balai Roy, Debashish Kar Gupta and M. Chakraborty for Respondent No. 2, Mr. S.C. Bose, S. Panda, J. Biswas and Mr. M. Bhattacharjee for Respondent No. 3, Mr. Soumen Dasgupta and P.S. Biswas for Advocate General, W.B., for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.
In this petition the petitioner being the learned member of the Bar Association (the respondent No. 3) has

challenged the vires of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, (hereinafter referred to as the said Act.)

2. In the petition it has been alleged amongst others that they being the regular practitioners of this court are seriously affected as they are having

substantial practice in litigations of land laws in the event the said Act comes in operation.

3. In the petition the sum and substance of the challenge as against the Act are given hereunder.

(i) It is not a Tribunal within the meaning of the provision of Article 323B(1) clause (d) as it lacks all the attributes of this Article.

(ii) The jurisdiction, power and authority of the Tribunal as mentioned in sections 6, 7, & 8 of the Act are ultra vires Constitution of India as it

intends to take away the power of judicial review of the High Court under Articles 226 & 227 of the Constitution of India, as a court of first

instance.

(iii) The provision of transfer of all the pending matters, proceedings, cases and appeals in this Hon"ble Court u/s 9 of the said Act also ultra vires

Constitution as it intends to take away jurisdiction and power of this court under Articles 226 & 227 of the Constitution of India, consequently it

hits basic structure of the Constitution.

4. Mr. Samaraditya Pal, learned senior Advocate, appearing for the writ petitioners, has amplified in his submission the aforesaid points in the

manner as follows :-

A. It is not a tribunal under Article 232B of the Constitution of India.

He urges the jurisdiction of the tribunal under Article 323B(1) must be confined to matters specified in clause (2) of that Article.

5. In order to qualify to be a tribunal under Article 232B(2) (d), it must have jurisdiction in respect of ""land reforms by way of acquisition by the

State of any estate as defined in Article 31A of any rights therein or the extinguishment or modification of any such right or by way of ceiling on

agricultural land or in any other way.

6. He argues, ""Land Reforms"", in its normal and ordinary significance in the Indian context means restructuring of the land tenure system in respect

of agricultural land. The most important feature of land reform is agrarian reform. The long title of West Bengal Land Reforms Act, 1955 as

originally enacted suggests the definition of land reforms is nothing but agrarian reforms.

7. Mr. Pal has laid emphasis on word ''estate'' which is the governing and/or tilting factor of sub-clause (d) of clause (2) of Article 323B. He

further submits that the word ''estate'' as defined in Article 31A of Constitution of India overlaps the words land reforms. Therefore, the meaning of

the word ''estate'' as defined in Article 31A is the only criteria to understand and comprehend the meaning of land reforms mentioned in the

aforesaid sub-clause (d). He argues, the word ''estate'' as defined in Article 31A of the Constitution of India confines to agricultural land since a

law under Article 31A (1) (a) must relate to agrarian reform. In support of his submission he relies on and cites two decisions of the Supreme

Court-one is reported in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, and another is reported in

Purushothaman Nambudiri Vs. The State of Kerala, .

8. It would appear from the definition of the word ''estate'' in clause(2) of Article 31A that the expression of which has a meaning in ""the existing

law relating to land tenures"" it will have the same meaning. In support of the aforesaid submission he relies on a decision of the Supreme Court

reported in Purushothaman Nambudiri Vs. The State of Kerala, .

9. The point of time for locating the existing law is 26th January, 1950. He has drawn reference in support of his above submission to a decision of

the Supreme Court reported in Karimbil Kunhikoman Vs. State of Kerala, . At that time, i.e. to say on 26th January 1950 the existing law relating

to the land tenures in West Bengal was the Bengal Tenancy Act, 1885. He submitted that the Bengal Tenancy Act, 1885 was exclusively confined

to agricultural lands and therefore the expression ""estates'' in that Act could only relate to agricultural lands. He relies on in this context a decision

of this Court reported in 1977(1) CLJ 695.

10. So, the word "" land reform"" used in Article 323B(2) (d) has got restricted meaning and the same cannot be stretched beyond the agrarian

reform. He relies on and cites two decisions of the Supreme Court-one is reported in State of Kerala and Another Vs. The Gwalior Rayon Silk

Manufacturing (Wvg.) Co. Ltd. etc., and another is State of Gujarat and Another Vs. Kamlaben Jivanbhai and Others, .

11. He submits the definition of the word "estate" mentioned in section 2(h) of the said Act completely deviates from the definition of the word

"estate" as defined in Article 31A(2) of the Constitution. Similarly, the definition of ""Land Reform"" mentioned in section 2(1) of the said Act is at

variance with the meaning of the expression in Article 323B(2)(d) of the Constitution.

12. He argues that so far as the specified Acts mentioned in the Act are concerned the scope and contents of the same are devoid of any attributes

of the definition of the estate qua land reforms as required under Article 323B(2)(d) of the Constitution. This would be apparent from the definition

of the land mentioned in section 2(7) of the West Bengal Land Reforms Act, 1955. The definition therein would explicitly be clear that the same

does not confine to matter of Land Reforms by acquisition of any-"estate" as defined in Article 31A(2). Similarly, another specified Act, the

Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 has no nexus with any "land reform" or any "estate" as defined in Article 31A(2).

The other two specified Acts mentioned in the aforesaid Act, viz., the West Bengal Acquisition of Homestead for Agricultural Labourers etc. Act,

1975 and the West Bengal Land Holding Revenue Act, 1979 have nothing to do worth the agricultural land so also agrarian reform.

13. He argues, the said tribunal at the highest can be termed as an ordinary tribunal constituted by the State legislature in exercise of its legislative

powers under Article 245 read with Article 246(3) read with Entry 18 of List-II of the 7th Schedule. Since, according to him, the aforesaid

tribunal as intended to be set up by the aforesaid Act cannot be said to have been constituted for the reasons and facts and circumstances as

above, under the provisions of Article 323B the ratio and/or decision rendered in L. Chandra Kumar Vs. Union of India and others, has no

application, therefore direction regarding approaching the tribunal-first and thereafter having failed to the Division Bench of the High Court in

exercise of writ jurisdiction is not applicable.

14. B. Mr. Pal submits in his alternative argument even if it is assumed that the said tribunal is validly formed under Article 323B still then the

decision rendered in L. Chandrakumar"s case prohibiting litigants to approach High Court under Article 226/227 as court of first instance is not

''law declared'' within Article 141 of the Constitution. He has amplified this portion of submission in the manner as follows:-

The Supreme Court is a creature of the Constitution.

A. Any declaration of law under Article 141 of the Constitution must be consistent with the provisions of the Constitution and cannot transgress,

modify, alter etc. any provision of the Constitution. So the direction given in paragraph 92 at page 308 (SCC) of the said decision that Article 136

will stand modified and no appeal from the decision of a tribunal will directly lie before the Supreme Court under the Article, if construed as law

declared, will directly violate Article 136.

B. Similarly, the direction in paragraph 93 at page 309(SCC) that it will not be open for the litigants to directly approach the High Court will be

violative of Article 226 since that Article confers a constitutional right to move the High Court for appropriate writs/directions against any authority

and for any purpose. Since it is not ''law declared'' it will not have any binding force. These directions would be considered as nothing more than a

reiteration of the principle that ordinarily the Supreme Court under Article 136 and the High Courts under Article 226 require the litigants to

exhaust the other available remedies. In support of his submission that these directions are not to be read as statute she relies on two decisions of

the Supreme Court reported in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and

Another, and Amar Nath Om Prakash and Others Vs. State of Punjab and Others, .

C. Mr. Pal argues on the provision of section 9 regarding transfer of pending cases in High Court is wholly discriminatory against the litigants who

have their cases pending in the High Courts as the litigants whose cases are pending before the sub-ordinate courts are not to be transferred by the

aforesaid section. This singling out of the High Court cases offends straightaway Article 14 of the Constitution of India besides section 9 of the said

Act affects the writ jurisdiction of the High Court under Articles 226 & 227, so it is unconstitutional.

D. He further argues that the scope and purport for setting up of the said Act is to take away the jurisdiction of this Civil Courts without having any

appropriate replacement as the tribunal only will be acting as reviewing bodies. This tribunal would be functioning as reviewing bodies would be

deduced from the principle decided in the cases by the Supreme Court and reported in Tharumal and Another Vs. Masjid Hajum Pharosan Va

Madrassa Talimul Islam, Mirza Izsmail Road, Jaipur, : 1995(1) SCC 332: 1998(2) SCC 394 and Union of India and Others Vs. S.L. Abbas, .

The removal of the Civil Court in the justice delivery system of the State with regard to land matters is also arbitrary and unreasonable, violative of

Article 14 of the Constitution of India.

E. His argument is also that the provisions mentioned in section 6 and 10(3) are totally inconsistent with each other and makes the 1997 Act

unworkable violating Article 14 of the Constitution.

F. His further argument is that the provision of section 23 is patently unconstitutional as it purports to delegate adjudicatory functions on any officer

of the State Government and allows ex-parte collection of materials to be treated as evidence.

15. Mr. Soumendra Chandra Bose, the learned senior Advocate, appearing for Bar Association High Court, Calcutta besides adopting the

arguments of Mr. Pal has supplemented in support of Challenge that the provision of section 9 of the Tribunal Act is discriminatory and the same is

also unconstitutional because it purports to oust jurisdiction of the High Court exercising power of Article 226/227 of the Constitution by a learned

single Judge. The State legislature has no legislative List for ousting the jurisdiction of the single Judge of the High Court exercising power under

Article 226/227 of the Constitution of India.

16. He also argues that right to sue or prefer Appeals or Revision are substantive rights and are creature of statutes and to that extent are also a

vested right. Such rights of the Court or Tribunals not having been interfered with by the Land Tribunal Act, courts and other authorities continue to

proceed with those pending cases notwithstanding the creation of Tribunal. Unless the provisions of the statutes so express, the pending cases are

not affected by a new law. He relies on : (i) Craies on Statute Law, 7th Edition pages 399, 400 & (ii) Justice G. P. Singh ""Interpretation of Statute

6th Edition 1996 page 347 - first paragraph.

17. He submits that by section 9, only proceedings pending in the High Court under Articles 226 & 227 before a single Bench are transferred to

the Tribunal but no such transfer of any other proceeding in relation to the specified Act pending before any other authorities or courts, is made.

On the principles relied on hereinabove those proceedings remain to be adjudicated as before. He also argues there is no rational nexus for making

such discrimination otherwise the provisions of Article 14 are infringed.

18. Mr. Bose further argues that the provision of section 9 is violative of the basic structure of the Constitution and in List - II of the 7th Schedule

there is no entry whereby the State Legislature can oust the jurisdiction of the High Court under Articles 226 & 227 of the Constitution; it has been

consistently held by the judicial decisions that even where the decision is said to be final, such decision is subject to the decision of the High Court

under Articles 226 & 227 of the Constitution.

19. In case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, a full Bench of 13 Judges of the Supreme Court declared

that the basic structure of the original Constitution cannot be taken away by the subsequent amendment of the Constitution. This was also followed

by the decision of the same Court in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, .

20. Mr. Bose argues that under the formation, power and authority as providing Articles 214 to 227 are part of the basic structure of the

Constitution and those powers cannot be interfered with by any authority. Mr. Bose further argues that the decision of L. Chandrakumar''s case so

far as it relates to ouster of initial jurisdiction of the High Court under Articles 226 & 227 are nothing but a direction in nature and the same cannot

be a declared law under Article 141 of the Constitution of India so as to incorporate in Entry in the legislative List-II of the 7th Schedule so as to

enable State legislature to exclude the jurisdiction of single Judge of the High Court in exercising power under Articles 226 & 227 of the

Constitution. He argues that it is not everything said by a Judge when giving judgment that constitute precedent ""Rupert Cross v. President in

English Law, First Edition, page 34.

21. Mr. Balai Chandra Roy, the learned senior Advocate, appearing on behalf of the State being the respondent No. 2 herein submits at the very

outset in answer to the point that the Act cannot be claimed to have been enacted in accordance with the provisions of Article 323B of the

Constitution of India, that the West Bengal Estates Acquisition Act, 1953 being one of the specified Acts defined in section 2(r) of the impugned

Act is admittedly undisputed and unchallenged. So, he submits the other specified Acts as defined in the aforesaid section are required to be

explained as being the laws relating to land reform as defined in Article 323B(2) (d).

22. While explaining the interpretation and connotation of the word ''estate'' in clause (a) of sub-Article (2) of Article 31A of the Constitution of

India he submits that the word ''estate'' not only means what are mentioned in clause (a) but also includes all those other categories of land

mentioned in sub-clauses (i), (ii), & (iii) of clause (a). The definition of the word cannot be given a restrictive meaning. He has relied on a decision

of the Supreme Court on this point, reported in AIR 1988 SCC 782 (para 65). He submits even one is to go by the argument made by Mr. Pal

the definition of the word ''estate'' is the same definition mentioned in sub-section (4) of section (3) of the Bengal Tenancy Act, 1885 then the word

estate has got exhaustive meaning opposite to restricted meaning.

23. Mr. Roy argues, hence land reforms by way of acquisition by the State of any holding of a raiyat or under - raiyat or of any right in such

holding or extinguishment or modification of any such right of a raiyat or under-raiyat amount to acquisition, extinguishment or modification of any

such right in an estate.

24. While distinguishing the judgment delivered in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, Mr. Roy

submits that the Supreme Court later on has distinguished the aforesaid Kochuni''s case while delivering in Ranjit Singh and Others Vs. State of

Punjab and Others, and held that ""the decision of the Kochuni''s case was special and we cannot apply it to cases where the general scheme of

legislature is definitely agrarian reform and under its provisions something ancillary thereto in the interest of the rural economy has to be undertaken

to give full effect to the reform."" Earlier in this decision it was further observed that there is reason to think that the Kouchuni''s case was regarded

on other occasions too, as one decided on its own fact. So the ratio of the Kochuni''s case cannot be made applicable here.

25. Mr. Roy further argues the expression ''estate'' appearing in Article 31A(2) (a) of the Constitution comprehends not only lands held by

Zamindars but also lands held by patnidar, darpatnidar, sepatnidar as well as lands held by raiyats and under-raiyats. The expression ''estate'' has

been given an inclusive definition. In sub clauses (ii) of clause (a) of sub-Article (2) of Article 31A of the Constitution any land held under

raiyatwari settlement is an ''estate''. So he submits that each and every specified Acts, excluding the undisputed Act as aforesaid, deals with such

kinds of land that must be categorised as estate or part of an estate within the meaning of Article 31A(2)(a) of the Constitution. It is thus apparent

that even if the definition of estate had not been expanded by including sub-clauses (i), (ii), & (iii) the holding of a raiyat or under-raiyat as also land

holding by a patnidar, darpatnidar or sepatnidar would be regarded as an estate and rights in their land holdings would be such rights in an estate.

26. Mr. Roy further argues in giving answer to the argument of Mr. Pal that specified Acts do not relate to agrarian reform and as such beyond the

scope of Article 323B(2)(d) of the Constitution. He submits the dominant provision of clause (d) of Article 323B of the Constitution is Land

Reforms to be achieved by-(i) acquisition by the State of any estate as defined in Article 31A, or (ii) any rights therein, or (iii) the extinguishment or

modification of any such right, or (vi) by way of ceiling of agricultural land, or (v) in any other way. He argues that the language of clause (d) is not

ambiguous. the provision plainly intends to convey that it relates to land reforms to be achieved by one or other modes indicated above. He argues

acquisition of estate or rights in an estate is one of such modes. The other modes being the second one is extinguishment of right in an estate and

the third is modification of any such right in an estate. He submits that land reforms may also be done by fixing ceiling area of agricultural land. If

laws are made providing for land reforms ""in any other way"" then also such law falls within clause (d) 323B(2) of the Constitution. He further

argues that extinguishment or modification of rights in an estate need not be by way of acquisition by the State. In support of this he relies on a

Supreme Court decision rendered in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, .

27. Mr. Roy further argues the expression land reforms mentioned in clause (d) of sub-Article (2) of that Article of 323B of the Constitution of

India cannot be equated with agrarian reform. The aforesaid words land reforms are not confined to legislation for agrarian reforms. This has been

held, according to Mr. Roy by a Supreme Court decision in support case of State of Haryana and Another Vs. Chanan Mal and Others, . The

meaning of land reforms must be understood in its plain grammatical sense. In interpreting the word ''land'' in Entry 49 of List-II of the 7th schedule

a Constitution Bench of the Supreme Court held in the case of Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, that the

word ''land, includes all lands whether agricultural or not. Again interpreting the meaning of the word ''land'' in Entry 18, List-II of 7th Schedule of

the Constitution, the Supreme Court held in case of Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., it has been held

that "" land in Entry 18 is not restricted to agricultural land alone but includes non-agricultural land, etc. He continues in his argument that settled

principle of construction of a statute shall have the same meaning unless the context otherwise requires. He relies on decision of Supreme Court

reported in Bhogilal Chunilal Pandya Vs. The State of Bombay, . In this connection reliance is placed upon several decisions of the Supreme Court

reported in N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, and Arvind Mohan Sinha Vs. Amulya Kumar Biswas and Others, . So,

according to Mr. Roy, the words ''land reforms'' shall have the meaning of reforms of all kinds of lands.

28. In answer to the argument of Mr. Pal that the real connotation and meaning of the word ''estate'' mentioned in Article 323B(2) (d) relates to

agrarian reform only, Mr. Roy submits the agrarian reform does not necessarily mean for agricultural purpose. He submits that the concept of

agrarian reform is a complex and dynamic one promoting wider interest than conventional reorganization of the land system or distribution of land.

He argues referring to a decision of Supreme Court reported in Ranjit Singh and Others Vs. State of Punjab and Others, that where the general

scheme of legislation is definitely agrarian reform and under its provisions something ancillary in the interest of rural economy has to be undertaken

to give full effect to the reforms, shall be contemplated to be within the scope of Article 31A of the Constitution. He submits relying on a decision

of Supreme Court reported in State of Gujarat and Another Vs. Kamlaben Jivanbhai and Others, that in order to treat a particular law as part of

an agrarian reform, it is not necessary that on the land which is the subject matter of the said law actual cultivation should be carried on. He argues

that in order to ascertain whether a statue is relating to agrarian reform or not it has been decided by the Supreme Court in a case of State of

Kerala v. G. R. Silk (AIR 1993 SC 2734) in paragraph 34 that this question has to be resolved by looking into the substance of the Act. He

seeks support, in this context, of another decision of Supreme Court reported in Prem Nath Raina and Others Vs. State of Jammu and Kashmir

and Others, .

29. Mr. Roy argues having applied the aforesaid test it would be crystal clear that all the disputed specified Acts are relating to land reforms and

within the expression as mentioned in the aforesaid Article 323B(2)(d). Mr. Roy submits that the decision in L. Chandrakumar''s case in

paragraphs 38 & 39 clearly indicate that what were the issues that the Supreme Court had in mind. He argues that the aforesaid decision is a

binding precedent and declared law under Article 141. So this impugned Act has been enacted as far as the ouster of the jurisdiction of the High

Court as a court of first instance under Articles 226 & 227 in the line and in compliance of the Supreme Court decision of L. Chandrakumar''s

case. Therefore, the said Act is constitutionally valid and the challenge which has been thrown by the petitioners are wholly unacceptable this Court

would not accept the same.

30. Mr. Dasgupta, appearing for the learned Advocate General, adopted the submission of Mr. Roy.

31. I have heard submissions of all the learned lawyers. It appears to me the submission made by Mr. Pal and Mr. Bose who are sailing in the

same boat while spearheading the attack against the vires of the said Act, are substantially three folds :

(i) The impugned Act has not been enacted in conformity with Article 323B clause 2(d). In other words, that Act does not come within the sweep

and/or purview of Article 323 clause(2)(d). It may at the highest be construed as a piece of legislation while exercising power under Article 245

read with Article 244 of the Constitution of India.

(ii) The jurisdiction of the High Court under Articles 226 & 227 of the Constitution of India cannot be taken away in view of the recent decision of

the apex court reported in L. Chandra Kumar Vs. Union of India and others, which held amongst other the power and jurisdiction under Article

226 & 227 of the Constitution of India is part of the basic structure of the Constitution and the same is inviolable by any ordinary legislation.

(iii) The provision for transfer of all the pending cases in this Hon''ble Court as mentioned in section 9 of the impugned Act is ultra vires and which

has been held by necessary implication in L. Chandra Kumar''s case. The decision and direction given in L. Chanrakumar''s case debarring the

litigants from approaching at the first instance the High Court under Article 226 & 227 is not a declared law within the meaning of Article 141 as

such the same cannot be binding upon this court while testing vires of the aforesaid Act.

32. In order to appreciate and decide the first question, I feel it necessary to analyse the scope, purport and purview of Article 323B(2)(d) as

admittedly the impugned legislation has been enacted in exercise of the aforesaid power.

33. It is no longer res integra that Article 323B in its entirety is unconstitutional and invalid. So, this question does not require any consideration at

all. Before analysing the scope and purport of Article 323B, it will be appropriate to reproduce the Article 323B(1) clause (2) (d) of the

Constitution of India.

The appropriate legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all

or any of the matters specified in clause (2) with respect to which such legislature has power to make clause.
sub-section (2)-The matters referred

to in clause (1) are the following. viz.,

(a) ....

(b) ....

(c) ....

(d) Land reforms by way of acquisition by the State of any estate as defined in Article 31A or any right therein or the extinguishment or

modification of any such right or by way of ceiling on agricultural land or in any other way.

34. It is settled position that List-II being the State List in Schedule 7 of the Constitution the State legislature is competent to frames and/or enact

any law relating to such power falls within Entry 18. It appears to me upon interpretation of Article 323B clauses (2)(d) that State legislature is

competent to enact any law providing for the adjudication or trial by a tribunal of all or any dispute, complaints or offences in relation to amongst

other land reforms.

35. Mr. Pal addressed me saying words ''land reforms'' necessarily mean agrarian reform and/or relate to agricultural land. I am unable to accept

this argument. He further argues that the words land reforms used in Article 323B are compendium words and the same cannot be spitted. I regret

to accept the submission which appears to me to be apparently absurd. It is meaningless if the two words land and reforms are spitted in the

context of the entire provision clause (2)(d) of Article 323B. The books cited and relied on by Mr. Pal, viz., Land Reforms in West Bengal written

by Basu and Bhattacharya Dutta & Sundaram - Indian Economy and long title of Land Reforms Act, 1955 as originally enacted are not the

authorities to hold the meaning of the land reform has restricted meaning and the same confined to agrarian reform only or for that matter the same

relate to agricultural land.

36. The decision of Supreme Court reported in State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.,

cited by Mr. Pal in this connection was rendered on the question whether forest land held under janmam right could be acquired by State under

Article 31A of the Constitution of India treating the same being estate as defined therein. In paragraph 17 therein it was held amongst other that all

the private forests described therein were held in janmam right and janmam right being an ''estate'' are liable to be acquired by the State under

Article 31A(1)(a) as a necessary step to the implementation of agrarian reform. Therefore, they would attract the protection of Article 31A(1). It

would not be, in such a case necessary to further examine if the land so vested in the Government are agricultural lands falling within sub-clause

(iii).

37. This decision did not lay down that land reform will necessarily mean and/or restrict to agrarian reform. In this judgment Justice Krishna Ayer

while concurring with majority view further added inter alia if the Act by which ''the estate'' as defined in Article 31A and is sought to be acquired

is not essentially meant for agrarian reform then no protection of the above Article in available. Rather in paragraph 31 of the same judgment it is

observed "" it is thus clear to those who understand developmental dialectic and rural planning that agratian reform is more humanist than mere ''land

reform'' and scientifically viewed, covers not merely abolition of intermediary tenures, zamindaries and the like restructuring of village life itself

taking in its broad embrace population.

38. Similarly, the decision of the Supreme Court cited by Mr. Pal in this context in State of Gujarat and Another Vs. Kamlaben Jivanbhai and

Others, was rendered while examining the object of enactment of Gujarat surviving Alienations Abolition Act, 1963 as being an act for agrarian

reform or not so as to bring within the purview of the Article 31A held that extinguishment of right of receiving a sum of Rs. 3500/- in lieu of right

of cutting and removal of forest wood is an estate within the meaning of the above Article and they are entitled to compensation.

39. The said decision does not lay down that land reform shall be restricted to agrarian reform or relate to agricultural land.

40. In a decision of Supreme Court reported in State of Haryana and Another Vs. Chanan Mal and Others, cited by Mr. Roy it has been held

amongst other that Article 31-A of the Constitution is not confined to legislation for agrarian reform. Agrarian reform is only one of the possible or

alternative objects of such acquisition.

41. In clause (2)(d) of Article 323B it has been provided illustratively ways of land reforms. One of the ways in my view is acquisition of any estate

as defined in Article 31-A as it is clear from the word ""or"" used in the above clause. Therefore, it is necessary to understand the purport and

meaning of the definition of ''estate'' as mentioned in Article 31A of the Constitution of India that is quoted hereunder:-

The expression of ""Estate"" shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law

relating to tenures in force in that area and shall also include -

(i) any Jagir, Inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any Janmam right;

(ii) any land held under Ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, for pasture or sites of

buildings and other structures occupied by cultivators of land agricultural labourers and village artisans.

42. Given the aforesaid definition, meaning of the word ''estate'' essentially or exclusively confined to agricultural land or relate to agrarian reform

only and not otherwise as submitted by Mr. Pal, cannot be accepted. It will appear from plain reading of Article 31A (2)(a) of the Constitution of

India that ''estate'' not only means what are mentioned in clause (a) but also includes all those other categories of land mentioned in sub-clauses (i),

(ii) & (iii) of clause (a). The purport of sub-clause (i) provides clearly for the lands of all classes, while sub-clauses (ii) & (iii) make room for

agricultural land and agrarian reform. I am in agreement with Mr. Roy that the word ''include'' expands the meaning of word ''estate'' as it has been

held by Apex court in two decisions reported in The Corporation of the City of Nagpur Vs. Its Employees, and Vasudev Ramchandra Shelat Vs.

Pranlal Jayanand Thakar and Others, and followed by another decision of the same court reported in Doypack Systems Pvt. Ltd. Vs. Union of

India (UOI) and Ors, .

43. Mr. Pal has rightly submitted that the definition of estate in clause (2) of Article 31A is having the same meaning as that of expression had in the

Bengal Tenancy Act, 1885, then being existing law in West Bengal relating to land tenures that was in force at the time of incorporation of Article

31A of the Constitution of India. The meaning and definition of estate in the aforesaid Act as mentioned in section (3) of sub-section(4) is as

follows :-

(4) ''estate'' means land included under one entry in any of the general registers of revenue paying lands and revenue free lands, prepared and

maintained under the law for the time being in force by the Collector of a district and includes Government kahs mahals and revenue free lands

entered in any register.

44. Thus, it is clear from the aforesaid definition that the word ''estate'' did or does not relate or confine to any specified class or nature of land not

to speak of agricultural land alone. In my view, estate means an interest and/or right in any kind of land whether it is revenue paying or revenue

free, having control over the land. My view is drawn from the ratio laid down in a decision cited by Mr. Roy, of Supreme Court reported in Atma

Ram Vs. The State of Punjab and Others, . It has been held therein amongst other that the word estate means an area of land which is an unit of

revenue or revenue free estate. The same view is also taken in the decision rendered by the same Court in another case reported in AIR 1959 SC

549. So, Mr. Roy''s painstaking effort to convince me for holding the ''estate'' does relate to any class of land, deserves recognition and

acceptance, so I do.

45. Mr. Pal of course wants me to give the meaning of the word ''estate'' otherwise, rather asks me to give restrictive meaning as being agricultural

land and/or agrarian reform by citing decisions of the Supreme Court reported in Kavalappara Kottarathil Kochuni and Others Vs. The State of

Madras and Others, and AIR 1960 SC 694 at page 704.

46. The decision of the Supreme Court reported in Purushothaman Nambudiri Vs. The State of Kerala, does not clearly lay down that the meaning

and connotation of the word estate in Article 31A exclusively relate or restrict to agricultural land qua agrarian reform. It appears to me reading

paragraph 19 that all the States have resorted to Article 31A for agrarian reform in different method. Kochuni''s case is also distinguishable and in

fact it has been distinguished by a later decision of the Supreme Court in Ranjit Singh and Others Vs. State of Punjab and Others, followed by

another decision of Supreme Court in case of Prem Nath Raina and Others Vs. State of Jammu and Kashmir and Others, . In both the cases

Supreme Court held that the decision in Kochuni''s case was treated in Ranjit Singh as a special case which cannot apply to cases where the

general scheme of legislation is agrarian reform and under its provisions, something ancillary thereto in the interests of rural economy has to be

undertaken to give full effect to those reforms. It is no doubt that the Bengal Tenancy Act, 1885 confined to agricultural land but I am unable to

endorse the submission of Mr. Pal that expression ''estate'' in the 1885 Act could only relate to agricultural lands as because the said Act was

meant for agrarian reform. The superficiality of this submission will appear from the plain reading of the definition of ''estate'' in the said Act. If the

scheme of the entire Act is read then definition of estate appears to have broader sense and meaning and do not relate to agricultural land alone.

The decision cited on this point by Mr. Pal reported in 1977(1) CLJ 695 is not at all applicable in this context. So, I do not apply the ratio laid

down therein. The scheme and object of Article 31-A of the Constitution of India is one thing, which may or may not be for agrarian reform or

relate to agricultural land, but the thing and/or subject by which the object of Article 31-A is to be achieved is another thing. Therefore, I have no

hesitation to hold that the word ""estate"" in Article 31-A connotes all classes of land. It does not restrict and confine to agricultural land not to speak

of agricultural reform.

47. Now it has to be examined and tested as to whether specified Acts mentioned in the said Act have attributes of the ''land reform'' as defined in

Article 323-B clause (2) (d) or not.

48. The lexicon meaning of land is solid part of the earth''s surface (New Webster''s Dictionary). In Black''s Law Dictionary (6th Edition) the

meaning of land is any ground, soil or earth whatsoever including fields, meadows, pastures, woods, moors, waters, marshes, and rock. The word

reform means restructuring and/or reorganisation for betterment of the people. There is no definition of combined words ''land reforms'' in the

Constitution. So, ordinary meaning reformation of land and/or land reform is to be applied. In Constitution I find the word land only. The

connotation of word ''land'' means all kinds of lands. This view of mine is supported by the decision of Supreme Court rendered in case of Raja

Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, and of the same court in case of Jilubhai Nanbhai Khachar, etc. etc. Vs.

State of Gujarat and another, etc. etc., .

49. In the impugned Act I find that there are five specified Acts, viz., (i) West Bengal Estate Acquisition Act, 1953, (ii) The West Bengal Land

Reforms Act, 1955, (iii) The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, (iv) The West Bengal Acquisition of Homestead

Land for Agricultural Labourers, Artisans and Fishermen Act, 1975 and (v) The West Bengal Land Holding Revenue Act, 1979.

50. I should mention that Mr. Pal, however, does not dispute that West Bengal Estate Acquisition Act, 1953 does have attribute of "land reform"

as mentioned in clause 2(d) of the said Article. According to him it is an Act which has got the trappings of agrarian reform. The challenge to that

extent against the said Act is not pressed. So remaining four specified Acts are to be examined on the anvil of the provision of Article 323B(2)(d) :

i) The West Bengal Land Reforms Act, 1955-This Act in my view has provided for land reform by way of acquisition by the State of any estate

and further right of a raiyats, extinguishment and modification of right of a raiyat and lastly by way of ceiling on agricultural land.

Chapter-V of the said Act which covers sections 39 to 48A, deals with the acquisition of the right of the raiyats. Section 39 specifically deals with

the acquisition of the right of raiyat upon payment of compensation. Section 40 of the said Act deals with redistribution of the land after acquisition.

So it purported creation and/or modification of the right of the raiyats.

Chapter-IIB of the aforesaid Act deals with fixation of ceiling on agricultural land and this fixation of ceiling on holding is directed towards

acquisition of the excess land by way of vesting.

Chapter-VI of the said Act deals with distribution of the excess land so vested under Chapter-IIB. This necessarily means modification of the right

of a raiyat. In the said Act a further right by way of Bargadar has been provided in Chapter-III.

ii) The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981-This Act has been enacted for extinguishment of right of the superior

landlord and further acquisition of such right. Moreover, the right of the Thika Tenant and that of Bharatia mentioned in the Calcutta Thika Tenancy

Act have been modified. So this has got also attributes of the aforesaid clause 2(d).

iii) The West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975-The scope and purport of the

aforesaid Act also relate to acquisition of the homestead land for Agricultural Labourers, Artisans and Fishermen Act and by the said Act

necessarily it means the extinguishment of the right of a class of a holder of the land and further creation of right in favour of some other class. This

Act also has trapping and attributes of the aforesaid clause 2(d).

iv) The West Bengal Land Holding Revenue Act, 1979-This Act comes within the purview of "any other way", as this Act is intended to be

brought into existence for rationalization and improvement of the system of revenue of land holdings in the interest of proper implementation of

comprehensive measures for land reform in the State with a view to providing incentives for increased production and ensuring proper distribution

of material resources for social and economic welfare. This Act may not have object or effect of land reforms by way of acquisition of any estate

or of any right therein or extinguishment or modification of any such right, but it has object or effect of land reform by ""any other way.

51. Therefore, I hold that by the said Act for resolution of all the disputes relating to and/or arising out of the aforesaid four Acts, a tribunal can be

established for adjudication thereof. Accordingly, I have no hesitation to accept the submission of Mr. Roy that the formation of the tribunal by the

said Act in relation to the aforesaid four (five) specified Acts is not ultra vires of Article 323B(2(d).

52. Now, I am to examine whether the formation of a tribunal by the said Act in exercise of power under Article 323B in any affects the basic

structure of the Constitution in taking away the power of judicial review of High Court under Articles 226 and 227 as a court of first instance or

not.

53. The Supreme Court had conflicting opinion before the judgment of the Supreme Court forming a Bench of seven Judges in L. Chandra Kumar

Vs. Union of India and others, , was rendered. In Sampath Kumar''s case (AIR 1987 SC 386) which held amongst other that it was possible to

set up an alternative institution in place of the High Court for providing judicial review. The formation of this kind of tribunal does not affect the

power of judicial review a fortiori affects the basic structure of the Constitution. The Full Bench decision of the Andhra Pradesh High Court,

however, did not follow the decision of Sampath Kumar''s case and held amongst other that the decision rendered in Sampath Kumar''s case is not

the declared law and the same cannot be a binding precedent and further held amongst other in setting up tribunal in exercise of Article 323A and

B the legislature is not competent to oust the power of judicial review of the Supreme Court and the High Court.

54. In the context of the aforesaid divergent views of the apex court and the High Court the decision in L. Chandra Kumar''s case was rendered

and the apex court has, however, set at rest all the disputes arising out of the divergent views of the various Courts.

55. After the decision rendered in L. Chandra Kumar''s case I am to examine how far the said Act is constitutionally valid so far as it affects power

of judicial review of High Court under Articles 226 & 227 as a court of first instance. In other words, whether the scope and purport of the said

Act in the context of decision of Supreme Court in L. Chandra Kumar''s case have affected basic structure of the Constitution by taking away

power of judicial review of High Court under Articles 226 and 227, as a court of first instance.

56. Mr. Pal and Mr. Bose strenuously attacked various sections of the said Act as not being constitutionally valid. It will appear from the preamble

of the impugned Act and the background of the farming of the Act that this Act has been framed following the decision of L. Chandra Kumar''s

case and this has been made amply clear in the preamble itself. It is quoted below.

Whereas it is expedient to provide for setting up of a land reforms and tenancy tribunal and for adjudication and trial by such tribunal of disputes,

claims objections and applications relating to or arising out of land reforms or tenancy in land and other matters under a specified Act and for the

exclusion of the jurisdiction of all courts except Division Bench of the High Court exercising writ jurisdiction under Articles 226 & 227 of the

Constitution of India and the Supreme Court of India in adjudication and trial of such disputes, claims, objections and applications and for matters

connected therewith or incidental thereto.

The statement of object and reasons also make it clear expressly that the said tribunal has been constituted following the decision of the Supreme

Court in L. Chandra Kumar''s case.

57. Therefore, it is imperative for me to analyse the ratio and decision of the Supreme Court in L. Chandrakumar''s case.

58. From very first paragraph of the said the judgment delivered by the then Hon''ble Chief Justice of India Mr. Justice Ahmedi (as His Lordship

then was) it would be clear that the said decision was necessitated to be rendered in view of the various earlier decisions of the Supreme Court

and that of different High Courts on several provisions in different Acts enacted under Articles 323A & 323B of Constitution. The questions

and/or issues which were formulated for decision are set out in paragraph 1 of the said judgment. The questions and/or issues are reproduced

hereunder.

i) Whether the power conferred upon Parliament or the Sate legislatures, as the case may be, by sub-clause (d) of clause(2) of Article 323A or by

sub-clause (d) of clause(3) of Article 323B of the Constitution to totally exclude jurisdiction of all courts excepting that of the Supreme Court

under Article 136 in respect of disputes and complaints referred to in clause(1) of Article 323A or with regard to all or any of the matters specified

in clause(2) of Article 323B, runs counter to the power of judicial review conferred on the High Court under Article 226/227 and on the Supreme

Court of Article 32 of the Constitution ?

ii) Whether the tribunals constituted either under Article 323A or under Article 323B of the Constitution possesses the competence to test the

constitutional validity of statutory provision/rule ?

iii) Whether these tribunals, as they are functioning at present can be said to be effective substitutes for the High Courts in discharging the power of

judicial review ? If not, what are the changes required to make them conform to their founding objects ?

59. In this case the questions and or issues in item No. (i) is a very exhaustive one and the decision and/or judgment rendered on clause(1) would

be relevant in this case.

60. L. Chandra Kumar''s case while examining the questions as to whether the power of judicial review of the High Court and the Supreme Court

under Articles 226 & 227 and Article 32 being one of the basic structures of the Constitution can be taken away by enacting laws by the

Parliament and the State under above Articles the Supreme Court considered various decisions. Their Lordships after analysing all the decisions of

this point starting from the first ever case State of Madras Vs. V.G. Row, , Bidi Supply Co. Vs. The Union of India (UOI) and Others, and the

decision of the Constitution Bench in Keshabananda Bharati''s case (AIR 1973 SC 1641) and up to L. Chandra Kumar Vs. Union of India and

others, have decided on this point as follows :-

61. In paragraphs 90 and 93 Their Lordships have been pleased to hold that power of judicial review, the jurisdiction of the High Courts under

Article 226/227 cannot be excluded. After holding this, Their Lordships, however, were pleased to add that the tribunal is competent to decide all

questions except the questions of constitutional validity of the parent Act by which it is formed and the decision of the tribunal should be made

judicially reviewed by the High Court under Articles 226 & 227.

62. In paragraph 99 it has been expressly held by Their Lordships in view of the reasoning adopted by us, we hold that clause (2) (d) of Article

323A, and clause(3) (d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Article

226/227 and 32 of the Constitution are unconstitutional. It has been further held that section 28 of the Act (Administrative Tribunal Act) and the

exclusion of jurisdiction clauses in all other legislation enacted under the aegis of Articles 323A & 323B would to the same extent be

unconstitutional. Their Lordships continue to add in paragraph 99 that the jurisdiction conferred upon the High Court under Articles 226 & 227

and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction

cannot be ousted other Courts or tribunals may perform a supplemental role in discharging the powers conferred by Articles 226 & 227 and

Article 32 of the Constitution.

63. Simultaneously holding the aforesaid manner Their Lordships, however, have also come to the opinion and/or views : ""The tribunals are

competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty they cannot act as substitute

for the High