In the High Court of Punjab and Haryana at Chandigarh

CWP No. 30195 of 2024 (O&M)
Reserved on: 7.2.2025
Date of Decision: 19.3.2025

Bhawar Singh and another .....Petitioners

Versus

State of Haryana and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Argued by: Mr. Sanjiv Kumar Aggarwal, Advocate with
Mr. Tejas Bansal, Advocate
for the petitioners.

Mr. Anupam Gupta, Senior Advocate (Amicus Curiae) with
Mr. Sukhpal Singh, Advocate,
Mr. Gautam Pathania, Advocate and
Mr. Himanshu Bindal, Advocate.

Mr. Ankur Mittal, Addl. A.G., Haryana,
Ms. Savneel Jaswal, Addl. A.G. Haryana,
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana,
Mr. Karan Jindal, AAG, Haryana,
Mr. Siddhanth Arora, Advocate,
Ms. Kushaldeep Kaur, Advocate and
Ms. Saanvi Singla, Advocate
for the respondent-State.

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners seek a writ in the nature of certiorari for declaring the notification No. Leg. 26/2022 dated 23.8.2022 issued vide Haryana Act No. 26 of 2022 under the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Amendment Act, 2018, to be null, void and ultra vires the

Constitution of India, as the said amendment has been affected retrospectively. Furthermore, the petitioners also sought the quashing of the letter dated 10.10.2022 issued by respondent No. 2, wherebys all the rights vested in the Dholidars have been declared illegal/*ab initio*.

2. It is averred in the instant petition that one Jamna Dutt and one Madan Gopal sons of Padam Nath were in possession of land measuring 82 kanals comprised in khewat No. 692, khata No. 895, khasra No. 141 min (82-0) situated in village Didwara, Tehsil Safidon, District Jind, since time immemorial, thus being recorded as Dholidars. It is further averred thereins that by virtue of Section 3 of the Haryana Act No. 1 of 2011 (for short 'the Act of 2011'), nomenclatured as Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010, the Dholidars, Butimars, Bhondedar and Muqararidars, who were in possession of the lands on the appointed day, were given the proprietary rights of the said lands. Subsequently upon the demise of Madan Lal, his sons Satpal, Dinesh, Vinod, Rakesh and daughter Kamla came in possession of ½ share of the land meausring 82 kanals. Mutation No. 2668 dated 22.12.2014 became sanctioned with regard to the above land in favour of Jamna Dutt and Satpal etc. (LRs of Madan Gopal). It is further averred that petitioner No. 1 purchased land measuring 20 kanals from Rakesh son of Madan Gopal and Kamla daughter of Madan Gopal vide registered sale deed No. 225 of 5.5.2017 for a sale consideration of Rs. 42,50,000/-, besides mutation No. 2924 was also sanctioned in favour of petitioner No. 1 on 22.5.2017. It is also averred in the instant petition that petitioner No. 1 also purchased land measuring 4 kanals from Vinod son of Madan Gopal vide registered sale

deed No. 3301 dated 2.2.2018, and, mutation in the said regard was also sanctioned in his favour. Resultantly, petitioner No. 1 became owner in possession of land measuring 24 kanals i.e. 12/41 share of 82 kanals land. It is further averred that Jamna Dutt had transferred his share in 82 kanals of land in favour of his sons Harish Kumar, Mahesh Kumar and in favour of his grandson Kapil Sharma respectively vide sale deed No. 6 dated 3.4.2015 and sale deed No. 898 dated 16.6.2015, and, mutation No. 2711 was entered in their favour on 30.6.2015. Subsequently, petitioner No. 2 purchased land measuring 8 kanals from above Harish Kumar, Mahesh Kumar and Kapil Sharma vide registered sale deed No. 111 of 10.4.2018, and, mutation in the said regard became entered in his favour.

3. It is further averred in the instant petition that respondent No. 1 through the Collector concerned, wrote a letter bearing No. 3013/Panchayat-LA/29.5.2020, wherebys the Block Development and Panchayat Officer was directed to cancel the ownership of the petitioners over 32 kanals of land. The petitioners preferred a civil suit bearing Civil Suit No. CS/271/2020 dated 15.6.2020, whereins stay was granted by the Civil Court concerned. Subsequently, vide gazetted notification No. LEG. 26/2022 dated 23.8.2022 the State Government passed the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Amendment Act, 2018, wherebys the Act of 2010 became amended retrospectively thus stipulating that it would not apply to the land owned or deemed to have been downed by any Government Department, Board or Corporation.

4. It is also averred in the instant petition, that though by virtue of the Act of 2010, the petitioners had become absolute owners in possession

of the lands mentioned in the writ petition (supra). However, yet the State of Haryana vide notification dated 23.8.2022, stated that the Act of 2010 became amended through Amending Act No. 26 of 2022, the assented to legislation becoming passed by the Haryana State Legislative Assembly, wherebys by making an amendment to Sub Section 4 of Section (1) w.e.f. 9.6.2011, the hereinafter extracted amendment thereto became made, wherebys the rights of owners, as became conferred upon the present petitioners became expropriated.

> *"(4) This Act shall be applicable to Dohlidar, Butimar, Bhondedar, Muqararidar or any other similar class or category of persons of land belonging to private individual/entity which the State Government may notify in the Official Gazette and shall not be applicable to land owned or deemed to have been vested in the Panchayat or Municipality or land owned by any Government Department, Board or Corporation."*

5. It is further averred in the instant petition, that subsequent to the aforesaid amendment, the respondent concerned issued letter dated 10.10.2022 to all the Divisional Commissioners and to all the Deputy Commissioners-cum-Collectors, wherebys it became directed, that on account of ambiguity in the principal act, some orders have been passed by the Courts of Collectors and Commissioners, rather leading to the vestment of panchayat deh lands in favour of Dholidars etc., which is illegal/*ab initio* in view of the amendment, therefore all the decisions made in the said regard are required to be reviewed. The notification (supra) as well as the subsequent thereto orders, which were given retrospective effect, were assailed by the petitioners. It is therefore prayed that the assented to legislation passed by the Haryana State Legislative Assembly be quashed and set aside.

Submissions of the learned counsel for the petitioners and of the learned Amicus Curiae

6. The learned counsels appearing for the petitioners as well as the learned Amicus Curiae make a joint submission-

(i) That the impugned amendment, which has been made applicable from 9.6.2011, and, has been given a retrospective effect, is liable to be struck down, as the same affects and disturbs the rights created in favour of the persons concerned, under the Act of 2010. Resultantly, after a lapse of about 10 years since its implementation, the rights bestowed upon the said class of persons are arbitrarily taken away, which is violative of the fundamental rights under Articles 14 and 21 of the Constitution of India.

(ii) That a retrospective amendment to a statute is void, and, illegal, and, that retrospective operation cannot be given to a statute so as to impair an existing right or obligation, as the norm of statutory interpretation mandates that the amendments affecting substantive rights, are always prospective in nature.

(iii) That yet through the impugned amendment, the previously vested proprietary rights in the persons concerned, qua the lands concerned, becoming illegally and arbitrarily withdrawn.

(iv) That since the proprietary rights qua the lands concerned, become vested in the land owners concerned, thus after following the due procedure, including granting of opportunity of hearing to the land owners, and, payment of compensation, therebys the said adopted procedure envisaged by law was not required to be interfered with, as has been done in the instant case.

(v) That through the impugned amendment, two distinct

classes of Dholidar, Butimar, Bhondedar and Muqararidar have been created, which is illegal and arbitrary, and, that the said amendment creates a disproportionate impact between the two classes of similarly situated persons, inasmuch as, the respective categories under the private landowners, and, those under the Government Departments, Boards or Corporations.

7. The learned Amicus Curiae has referred to a judgment rendered by the Apex Court in case titled as ***Raja Rajinder Chand versus Mst Sukhi and others***, reported in ***AIR 1957 SC 286.*** He refers to para 1, 4 and 16 of the judgment (supra), para whereof becomes extracted hereinafter.

> *"1. These are six appeals by the plaintiff Raja Rajinder Chand, the superior landlord (ala-malik) of Nedaun Jagir in the district of Kangra. He brought six suits in the Court of the Subordinate Judge of Kangra for a declaration that he was the owner of all pine (chil-pinus Iongifolia) trees standing on the lands of the defendants within the said Jagir and for a permanent injunction restraining the latter from interfering with his rights of ownership and extraction of resin from the said trees. He also claimed specified sums as damages for the loss caused to him from the tapping of pine trees by different defendants from March 24, 1940, up to the date when suits were brought. The defendants, who are the adna maliks (inferior landlords), pleaded that they were the owners in possession of the lands on which trees stood, that the trees were their property, and that the plaintiff had no right to the trees nor had he ever exercised any right of possession over them.*
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> *x x x x*
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> *4. The short but important question which arises in these appeals is whether the present appellant has been able to establish his right to all pine (chil) trees standing on the suit lands of the defendants. The question is of some importance, as it affects the rights of ala and adna maliks in Naduan Jagir. The respondents have not contested before us the correctness of the finding of two of the Courts below that the suits were not barred by time; therefore, the question of limitation is no longer a live question and need not be further referred to in this judgment.*
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> *x x x x*
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> *16. Before dealing with the actual entries made, it is necessary*

to refer to a few more matters arising out of the settlement operations of Messrs Barnes and Lyall. The expressions 'ala-malik' and 'adna-malik' have been used often in the course of this litigation. What do those expressions mean? In Mr. Douie's Punjab Settlement Manual (1930 edition) it is stated in para 143: "Where the proprietary right is divided the superior owner is known in settlement literature as ala malik or talukdar, and the inferior owner as adna- malik..... In cases of divided ownership the proprietary profits are shared between the two classes who have an interest in the soil". How this distinction arose, so far as the record-of-rights in the Jagirs are concerned, appears from para 105 at p. 60 of Mr. Anderson's report. Mr. Anderson said:

> *"The first great question for decision was the status of the Raja and of the people with respect to the land, which was actually in the occupancy of the people, and next with respect to the land not in their actual occupancy, but over which they were accustomed to graze and to do certain other acts. Mr. O'Brien decided that the Raja was superior proprietor or Talukdar of all lands in his Jagir, and the occupants were constituted inferior proprietors of their own holdings and of the waste land comprised within their holdings as will be shown hereafter; be never fully considered the rights in waste outside holdings. The general grounds fir the decision may be gathered from Mr. Lyall's Settlement Report and from the orders on the Siba Summary Settlement Report, but I quote at length the principles on which Mr. O'Brien determined the status of occupants of land, not merely because it is necessary to explain here the action that he took, but also in order that the Civil Courts which have to decide questions as to proprietary rights may know on what grounds the present record was based".*

Mr. Anderson then quoted the following extract from Mr. O'Brien's assessment report to explain the position:

> *"In places where the possession of the original occupants of land was undisturbed, they were classed as inferior proprietors; but where they had acquired their first possession on land already cultivated at a recent date, or where the cultivators had admitted the Raja's title to proprietorship during the preparation and attestation of the Jamabandis, they were recorded as tenants with or without right of occupancy as the circumstances of the case suggested.... In deciding the question old possession was respected. Where the ryots had been proved to be in undisturbed possession of the soil they have been recorded as inferior proprietors".*

The same principles were followed in Nadaun: long possession with or without a patta or lease from the Raja was the test for recording the ryot as an inferior proprietor (adna- malik).”

8. The learned Amicus Curiae has referred to a decision rendered by the Apex Court in case titled as ***Sri Ram Ram Narain Medhi versus The State of Bombay***, reported in ***AIR 1959 Supreme Court 459 (V 46 C 57)***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"1. These six petitions under Article 32 of the Constitution challenge the vires of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 (Bom. XIII of 1956) (hereinafter referred to as the "Impugned Act"). It was an Act further to amend the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948) (hereinafter called the "1948 Act".)*
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> *x x x x*
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> *7. With a view to achieve the objective of establishing a socialistic pattern of society in the State within the meaning of Articles 38 and 39 of the Constitution, a further measure of agrarian reform was enacted by the State Legislature being the impugned Act, hereinbefore referred to, which was designed to bring about such distribution of the ownership and control of agricultural lands as best to sub-serve the common good thus eliminating concentration of wealth and means of production to the common detriment. The said Act received the assent of the President on March 16, 1956, was published in the Bombay Government Gazette on March 29, 1956 and came into force throughout the State on August 1, 1956.*
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> *x x x x*
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> *18. Before we launch upon that enquiry it would perhaps be of help to note how the various land tenures originated. Baden Powell in his Land-Systems of British India (1892 Ed.) Vol. I dealing with the general view of land tenures traced the origin and growth of different tenures in the manner following at pp. 97-99 (Chapter IV) :*
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> > *"4. Effects of Land-Revenue Administration and Revenue-farming. Then again, the greater Oriental governments which preceded ours, have always, in one form or another, derived the bulk of their State-revenues and Royal property from the land. In one system known to us, "Royal lands" were allotted in the principal villages, and this fact may have suggested to the Mughals their plan of allotting special farms and villages to furnish the privy purse, and has had other survivals. But speaking generally, the universal plan of taking revenue was by taking a share of the actual grain heap on the threshing-flour from each holding. Afterwards this was commuted for a money payment levied on each estate or each field as the case might be.....To collect this revenue, the ruler appointed or recognised not only a headman and accountant in each village, but also a hierarchy of graded officials in districts and minor divisions*

of territory formed for administrative purposes. These officers were often remunerated by holdings of land and a class of land tenures will be found in some parts of India owning its origin to these hereditary official holdings. Not only so, but during the decline which Oriental Governments have usually undergone, the Revenue officials have been commonly found to merge in, or be superseded, by revenue farmers persons who contracted for a certain sum of revenue to be paid into the Treasury from a given area, as representing the State dues exigible from the land-holdings within that area. Such revenue farmers, or officials, whatever their origin, have always tended to absorb the interests of the landholders and to become in time the virtual landlords over them.

Nor is it only, that landlord tenures arise in this way. No sooner does the superior right take shape than we find many curious new tenures created by the landlord or arising out of his attempts to conciliate or provide for certain eminent claims in the grade below him.

Section 5. Effects of Assignment or Remission of Land-Revenue.

Yet another class of tenures arises in connection with the State Revenue-administration; and that is when the ruler either excuses an existing land-holder from paying his revenue, either wholly or in part; or "alienates" or assigns the revenue of a certain estate or tract of country in favour of some chief, or other person of importance, or to provide funds for some special objects, or to serve as a recompense for services to be rendered.

At first such grants are carefully regulated are for life only, and strictly kept to their purpose, and to the amount fixed. But as matters go on, and the ruler is a bad or unscrupulous one, his treasury is empty, and he makes such grants to avoid the difficulty of finding a cash salary. The grants become permanent and hereditary; they are also issued by officials who have no right to make them, and not only do they then result in landlord tenures and other curious rights, but area burden to after times, and have furnished a most troublesome legacy to our own Government when it found the revenues eaten up by grantees whose titles were invalid and whose pretensions, though grown old in times of disorder, were inadmissible.

Such grants may have begun with no title to the land but only a right to the revenue, but want of supervision and control has resulted in the grantee seizing the landed right also."

x x x x

22. So far as the area within the State of Bombay was concerned the position is thus summed up in Dandekar's Law of Land Tenures Vol. 1 at page 12 :-

Section III, Classification of land according to the interest of the holder :

"Land is either Government land or not Government land; that is, it is either unalienated or alienated. The expression

> *for unalienated land is khalsa or ryatwari in some parts as opposed to dumala or inam lands, that is alienated lands. In Gujrat Government lands are called "sarkari" is opposed to "baharkhali" lands meaning alienated lands-lands the produce of which had not to be brought to the common threshing ground. In some parts of Gujrat there are, "talpad" (Government) lands as opposed to "Wanta" lands. In old Regulations two kinds of land have been referred to, namely, malguzarry land and lakhiraj land. The former meant land paying assessment to Government, whereas the latter meant land free from payment of assessment. Khalsa land in the permanent occupation of holders was denominated, before the survey-settlements, in the different parts of the Presidency by the expressions mirasi, dhara, suti and muli. Government arable land not in the permanent occupation of an occupant was and is described by the name sheri. In alienated villages, lands corresponding to Government "sheri" lands are denominated by the expressions "sheri" "Khas Kamath" and "Ghar Khedu." Lands in leasehold or farmed villages are called khoti lands. Lands which are given under leases and the assessment of which is regulated by the terms thereof are called kauli lands."*

x x x x

28. It was vehemently urged before us by learned Counsel for the petitioners that the expression "estate" aptly applied only to lands held by the various tenure holders of alienated lands above referred to, and that it could not apply to the holdings of occupants who had merely a right of occupancy in specific pieces of unalienated lands. The word "estate" had been defined in the Bombay Land Revenue Code, 1879 in Section 2(5) to mean :

> *"any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same,"*

and would prima facie cover not only an interest in alienated lands but also in unalienated lands. It was however urged that the expression "estate" should be construed in a narrower sense having regard to the legislative history and particularly to the fact that the lands held by the tenure holders of alienated lands only had prior to 1879 been recognised as estates and the holding of an occupant was not treated as such. The distinction thus sought to be made between holders of unalienated lands and holders of alienated lands is not of much consequence because even in regard to unalienated lands besides the occupants there were tenure holders called Bhagdars and Narwadars and Khotes who had interests in lands held by them under those several tenures which lands were unalienated lands. The interest which these tenure holders enjoyed in the lands held by them were "estates" and it could not therefore be predicated of the

*expression "estate" that it could only be used in connection with alienated lands. If this distinction was therefore of no avail, we have only got to consider if there is any reason why a narrow interpretation should be put upon the expression "estate" as suggested by the petitioners. Reliance was placed by the learned Counsel for the petitioners on a decision of this Court in '**Hariprasad Shivshankar Shukla v. A.D. Divelkar, 1957 SCR 121 at p. 132** where the word "retrenchment as defined in Section 2 (oo) and the word "retrenchment' in Section 25F of the Industrial Disputes Act, 1947, as amended by Act XLIII of 1953 were held to have no wider meaning than the ordinary accepted connotation of those words and were held to mean the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and did not include termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof. Even though the word "retrenchment" was defined as meaning the termination of services by an employer of the workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, which words were capable of including within their scope the termination of services of all workmen on bona fide closure of industry or on change of ownership or management thereof, the word "retrenchment" was construed in a narrow sense because the word "retrenchment" connoted in its ordinary acceptance that the business itself was being conducted and a portion of the staff or labour force was discharged as surplusage. This Court observed in the course of the judgment at page 132 (of SCR) :*

> *"In the absence at any compelling words to indicate that the intention was even to include a bona fide closure at the whole business it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned Counsel for the respondent. What is being defined is retrenchment and that is the context at the definition. It is true that an artificial definition may include it meaning different from or in excess at the ordinary acceptation at the word which is the subject at definition but there must then be compelling words to show that such a meaning different from or in excess at the ordinary meaning is intended. Where with in the framework of the ordinary acceptation of the word every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning at the word defined."*

Reliance was also placed on a decision of the Court of Appeal in England in Re Vexatious Actions Act, 1896; In re Bernard Boaler, (1915) 1 KB 21 where the words "legal proceedings" were held not

to include criminal proceedings, in spite of the words being prima facie capable of including the same. Kennedy C.J. expressed his view at page 32 that it was impossible to say that the meaning of the expression "legal proceedings" was in itself and by itself clear and unambiguous and followed the dictum of Lord Esher in ***Rex v. City of London Court, (1892) 1 QB 273 at p. 290*** *:*

> *"If the words of an Act admit of two interpretations then they are not clear; and if one interpretation leads to an absurdity and the other does not the Court will conclude that the Legislature did nor intend to lead to an absurdity and will adopt the other interpretation."*

Scrutton, J. also expressed the same opinion at p. 41 :

> *I find general words used in the Act capable or two meanings, a wider and a narrower one. On the whole I think the language is more suited to the narrower than the wider meaning. The narrower meaning will affect the liberties at the subject to some extent; the wider meaning will most seriously affect the liberties of the subject in a matter his personal liberty and safety which I see no reason in the Act to believe was in the contemplation of the Legislature. I decline to make this more serious interference with the liberty of the subject unless the Legislature uses language clear enough to convince me that that was its intention and I think amble meaning is provided for its words and ample remedy is provided for the grievance in respect of which Parliament was legislating by putting the narrower construction on the general words it has used."*

x x x x

32. It was however contended on behalf of the petitioners that the Bombay Land Revenue Code was not a law relating to land tenures in force in the State of Bombay and therefore the definition of the expression "estate" contained therein would not avail the respondent. It was urged that the Code was passed by the State Legislature in order to consolidate and amend the law relating to Revenue Officers and to the assessment and recovery of Land Revenue, and to other matters connected with the Land Revenue Administration in the Presidency of Bombay and was merely concerned with the collection of land revenue by the State and had nothing to do with land tenures as such. This argument, however, ignores the various provisions of the Code which define the status as also the rights and obligations of the occupant who has been define in Section 2(16) of the Code to mean the holder in actual possession of unalienated lands other than a tenant provided that where the holder in actual possession is a tenant, the landholder or superior landlord, as the case may be, shall be deemed to be the occupant. Chapter VI deals with the Grant, Use and Relinquishment of unalienated lands and Section 65 thereof prescribes the uses to which an occupant of and for purposes of agriculture may put his land. Under Section 68 an occupant is entitled to the use and occupation of his land for the period therein prescribed on fulfilling the conditions therein mentioned and under Section 73 occupancy is

stated to be transferable and heritable. Section 73 as it was enacted in 1879 read as follows :

> *"The right of occupancy shall subject to the provisions contained in section 56, and to any conditions lawfully annexed to the occupancy and save as otherwise prescribed by law, be deemed an heritable and transferable property."*

Certain amendments have been made in this section by various Bombay Land Revenue Amendment Acts, (Bom. VI of 1901 and Bom. IV of 1913) and the section as it stands at present reads :

> *"An occupancy shall, subject to the provisions contained in section 56, and to any conditions lawfully annexed to the tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property."*

This goes to show that an occupant holds the land under a tenure and occupancy is a species of land tenures. The provisions contained in Section 73 (A) relating to the power of the State Government to restrict the right of transfer and the provisions in regard to relinquishments contained in Sections 74, 75 and 76 also point to the same conclusion. These and similar provisions go to show that occupancy is one of the varieties of land tenures and the Bombay Land Revenue Code, 1879 comes within the description of "existing laws relating to land tenures in force" in the State of Bombay within the meaning of Article 31A(2)(a). Baden-Powell has similar observations to make in regard to these provisions in his Land Systems in British India, Vol. 1 at p. 321 :

> *"Nothing whatever is said in the Revenue Code about the person in possession (on his own account) being "owner" in the Western sense. He is simply called the "occupant," and the Code says what he can do and what he cannot. The occupant may do anything be pleases to improve the land, but may not without permission do anything which diverts the holding from agricultural purposes. He has no right to mines or minerals.*
>
> *These are the facts of the tenure; you may theorise on them as you please; you may say this amounts to proprietorship, or this is a dominium minus plenum; or anything else."*

9. The learned Amicus Curiae has also referred to a decision rendered by the Apex Court in a case titled as ***Atma Ram versus State of Punjab***, reported in ***AIR 1959 SC 519***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"1. These petitions under Article 32 of the Constitution impugn the constitutionality of the Punjab Security of Land Tenure Act (Punj X of 1953) (which will be referred to hereinafter as the Act), as amended by Act XI of 1955. The petitioners are land-owners of the lands affected by the provisions of the impugned Act. The State of Punjab and its officers, besides persons claiming benefits under the*

Act, are the respondents in these several petitions.

x x x x

10. Having dealt with the question of legislative competence, we have to deal with the several contentions raised on behalf of the petitioners, with reference to the provisions of Articles 14, 19 and 31 of the Constitution. On this part of the case, it has rightly been conceded on behalf of the petitioners that if the impugned Act comes within the purview of any of the clauses of Article 31A, the law will be immune from attack on any of the grounds based on the provisions of Articles 14, 19 and 31. But it has been argued that the provisions of Article 31A (1) (a), which are admittedly the only portions of the Article, which are relevant to the present inquiry, are not attracted to the impugned Act. It has been conceded on behalf of the respondents that the Act does not provide for the acquisition by the State of any estate or of any rights in any estate. Hence, the crucial words which must govern this part of the controversy, are the words "the extinguishment or modification of any such rights"; that is to say, we have to determine whether or not the impugned Act provides for the extinguishment or modification of any rights in "estates". Article 31A (2) defines what the expression "estate" used in Article 31A means. According to that definition,

> *"the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or Muafi or other similar grant and in the States of Madras and Kerala, any janmam right."*

It is common ground that we have to turn to the definition of an estate, as contained in the Punjab Land Revenue Act, XVII of 1887. Section 3(1) of that Act has the following definition :

"(1) "estate" means any area

(a) for which a separate record-of-rights has been made ; or

(b) which has been separately assessed to land revenue or would have been so assessed if the land revenue had not been released, compounded for or redeemed ; or

(c) which the (State) Government may, by general rule or special order, declare to be an estate."

Clause (c) of the definition is out of the way, because it has not been claimed that the State Government has made any declaration within the meaning of that clause. Estate, therefore, for the purposes of the present controversy, means any area for which a separate record-of-rights has been made, or which has been separately assessed to land revenue (omitting the unnecessary words). In this connection, it is also necessary to refer to the definition of a holding in Section 3(3) in the following terms :

"(3) "holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners. "

x x x x

In Punjab, as there was no permanent settlement of Revenue as in Bengal, Bihar, Orissa and other parts of Eastern India, the unit of revenue assessment has been the village. Thus, a holding in Punjab means a portion of a village either big or small. That portion may be in the direct possession of the land-owner himself, or he may have inducted tenants on a portion or the whole of his holding. The interest of the tenant in Punjab, appears to have been a precarious tenure, even more precarious than that of an under-raiyat in Eastern India. The Punjab Legislature, realising that the interest of a tenant was much too precarious for him to invest his available labour and capital to the fullest extent so as to raise the maximum quality and quantity of money crops or other crops, naturally, in the interest of the community as a whole, and in implementation of the Directive Principles of State Policy, thought of granting longer tenures, and as we have seen above, the period has been progressively increased until we arrive at the stage of the legislation now impugned, which proposes to create a large body of small land-owners who have a comparatively larger stake in the land, and consequently, have greater impetus to invest their labour and capital with a view to raising the maximum usufruct out of the land in their possession.

11. 11. Keeping in view the background of the summary of land tenures in Punjab and elsewhere, we have to construe, the amplitude of the crucial words "any estate or of any rights therein" in Article 31A (1)(a). Soon after the coming into effect of the Constitution, the different States in India embarked upon a scheme of legislation for reforming the system of land-holding, so as (1) to eliminate the intermediaries, that is to say, those who hold interest in land in between the State at the apex and the actual tillers of the soil-in other words, to abolish the class of rent-receivers, and (2) to create a large body of small landholders who have a permanent stake in the land, and who are, therefore, interested in making the best use of it. As the connotation of the term "estate" was different in different parts of the country, the expression "estate" described in clause (2) of Article 31A, has been so broadly defined as to cover all estates in the country, and to cover all possible kinds of rights in estates, as shown by sub-clause (b) of clause (2) of Article 31A, which is in these terms :-

> *"(b) the expression 'rights,' in relation to estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder (raiyat, under-raiyat) or other intermediary and any rights or privileges in respect of land revenue."*

The expression "rights" in relation to an estate has been given an all inclusive meaning, comprising both what we have called, for the sake of brevity, the "horizontal" and "vertical" divisions of an estate. A proprietor in an estate may be the proprietor holding the entire interest in a single estate, or only a co-sharer proprietor. The

> *provisions aforesaid of Article 31A, bearing on the construction of the expression "estate" or "rights" in an estate, have been deliberately made as wide as they could be, in order to take in all kinds of rights-quantitative and qualitative-in an area co-extensive with an estate or only a portion thereof. But it has been suggested that the several interests indicated in sub-clause (b), quoted above, have been used with reference to the area of an entire estate, but knowing as we do, that a raiyat's or an under-raiyat's holding generally is not coextensive with the area of an entire estate but only small portions thereof, it would, in ouropinion, be unreasonable to hold that the makers of the Constitution were using the expression "estate" or "rights" in an estate, in such a restricted sense. Keeping in view the fact that Article 31A was enacted by two successive amendments-one in 1951 (First Amendment), and the second in 1955 (Fourth Amendment)-with retrospective effect, in order to save legislation effecting agrarian reforms, we have every reason to hold that those expressions have been used in their widest amplitude, consistent with the purpose behind those amendments. A piece of validating enactment purposely introduced into the Constitution with a view to saving that kind of legislation from attacks on the ground of constitutional invalidity, based on Articles 14, 19 and 31, should not be construed in a narrow sense. On the other hand, such a constitutional enactment should be given its fullest and widest effect, consistently with the purpose behind the enactment, provided, however, that such a construction does not involve any violence to the language actually used."*

10. The learned Amicus Curiae has also relied upon a decision rendered by the Apex Court in case titled as ***The Deputy Commissioner and Collector, Kamrup and others versus Durganath Sarma***, reported in ***AIR 1968 Supreme Court 394***. The relevant paragraph of the judgment (supra) becomes extracted hereinafter.

> *"7. Counsel for the appellants submitted that Act No. 6 of 1955 is a law providing for the acquisition of estates and is protected by Article 31A (1) (a). We are unable to accept this contention. It is now well settled that Article 31A (1) (a) envisages only laws concerning agrarian reform. In Kochuni's case, (1960) 3 SCR 887 at pp. 897-905, the Court by a majority decision held that the Madras Marumakkachayam (Removal of Doubts) Act, 1955 which deprived a sthanee of his properties and vested them in the tarwad contravened Article 19(1) (f) and was not protected by Article 31A and that Article 31A saved laws for agrarian reform only and did not enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. In* ***Ranjit Singh***

> ***v. State of Punjab, (1965) 1 SCR 82****, the Court held that the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as amended by Act No. 27 of 1960 was protected by Article 31A as the general scheme of the Act was definitely agrarian reform and under its provisions something ancillary thereto in the interest of rural economy had to be undertaken to give full effect to the reforms. In* ***P.V. Mudaliar v. Special Deputy Collector, Madras, (1965) 1 SCR 614****, the Court held that the Land Acquisition (Madras Amendment) Act, 1961 providing for the acquisition of lands for housing scheme was not a law with reference to any agrarian reform and was not protected by Article 31A. In the light of these decisions,we must hold that Act No. 6 of 1955 is not a law concerning agrarian reform and is not protected by Article 31A. The Act is a purely expropriatory measure. It provides for acquisition of lands both urban and agricultural for executing works in connection with flood control or prevention of erosion. A piece of land acquired under the Act need not be an estate or part of an estate. It has no relation to agrarian reform, land tenures or the elimination of intermediaries. We may add that there is nothing on the record to show that the respondent's lands are estate or parts of estates."*

11. The learned Amicus Curiae has further made a reference to a decision rendered by the Apex Court in case titled as ***Balmadies Plantations Ltd. and another versus State of Tamil Nadu***, reported in ***(1972) 2 Supreme Court Cases 133***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"16. The next question which arises for consideration is whether the acquisition of the lands in question is for agrarian reform. It is well established that in order to invoke the protection of Article 31-A, it has to be shown that the acquisition of the estate was with a view to implement agrarian reform. The said article is confined only to agrarian reform and its provisions would apply only to a law made for the acquisition by the State of any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian reform.*
>
> *x x x x*
>
> *18. It has been submitted on behalf of the appellants that whatever might be the position in respect of other janmam lands, so far as forests in janmam estates are concerned, the acquisition of those forests is not in furtherance of the objective of agrarian reform, and as such, is not protected by Article 31-A. This submission,in our opinion, is well founded. According to Section 11 of the Act no ryotwari Patta would be issued in respect of forests in janmam estates after those estates stand transferred to the Government. There is nothing in the Act to indicate as to what could*

> *be the purpose for which the said forests would be used after the transfer of janmam land containing forests to the Government. All that Section 16 states is that, except where the Government otherwise directs, no person admitted by a janmi into possession of any such forest shall be entitled to any rights in or remain in possession of such land. Sub-section (2) of that section specifies the directions which the Government may issue while allowing any person to remain in possession of any such land. In the absence of anything in the Act to show the purpose for which the forests are to be used by the Government, it cannot be said that the acquisition of the forests in janmam land would be for a purpose related to agrarian reform. The mere fact that the ownership of forests would stand transferred to the State would not show that the object of the transfer is to bring about agrarian reform. Augmenting the resources of the State by itself and in the absence of anything more regarding the purpose of utilisation of those resources, cannot be held to be a measure of agrarian reform. There is no material on the record to indicate, that the transfer of forests from the janmi to the Government is linked in any way with a scheme of agrarian reform or betterment of village economy."*

12. Furthermore, the learned Amicus Curiae has made a reference to a decision rendered by the Apex Court in case titled as ***State of Kerala and another versus The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.***, reported in ***(1973) 2 Supreme Court Cases 713***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"14. Section 10 Assignment of Private forests -*
> *(l) The Government shall after reserving such extent of the private forests vested in the Government under sub-section (l) of Section 3 or of the lands comprised in such private forests as may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population or for purposes ancillary thereto assign on registry or lease to -*
> *(a) agriculturists:*
> *(b) agricultural labourers;*
> *(c) Members of Scheduled Castes and Scheduled Tribes who are willing to take up agriculture as means of their livelihood;*
> *(d) unemployed young persons belonging to families of agriculturists and agricultural labourers, who have no sufficient means of livelihood and who are willing to take up agriculture so means of their livelihood;*
> *(e) labourers belonging to families of agriculturists and agricultural labourers, whose principal means of livelihood before the appointed day was the income they obtained as wages for work in connection with or relate to private forests and who are willing to take up agriculture as means of their livelihood.*

the remaining private forests or the lands comprised in the private forests on such terms and subject to such conditions and restrictions as may be prescribed "

"(2) The Government may, by notification in the Gazette, delegate their power under sub-section (l) to any officer of the Government or any class of officers of Government, subject to such restrictions and control as may be specified in the notification."

"(3) The extent of private forests or lands comprised in private forests which may be assigned to each of the categories of persons specified in Sub-section (l) and the order of preference in which assignment may be made shall be such as may be prescribed."

x x x x

44. Any law providing for the acquisition by the State of an 'estate' is saved by Article 31A subject to certain conditions, violation of Articles 14, 19 and 31 notwithstanding. Sub-article (2) explains the concept of 'estate' and includes therein janmam rights. Although Article 31A is worded widely enough to rope in acquisition of any estate by the State regardless of purpose, the Supreme Court has cut back on this amplitude by limiting entitlement to constitutional protection to agrarian reform legislation only. Subba Rao, J., in Kochuni's case, speaking for the Court, reviewed the earlier decisions under Article 31A and interpreted the provision against the back-drop of the objects of the Constitution (Fourth Amendment) Act, 1955 and the earlier Constitution (First Amendment) Act, 1951, to arrive at the conclusion that Article 31A was meant "to facilitate agrarian reforms". This Court in the aforesaid decision struck down the Madras Marumakkathayam (Removal of Doubts) Act, 1955, because "the impugned Act does not effectuate any agrarian reforms and regulate the rights inter se between landlords and tenants." Article 31A deprives citizens of their fundamental rights and such an article cannot be extended, by interpretation, to overreach the object implicit in the article, observed Subba Rao, J., and this judicial gloss has come to stay. Forensic debate has since centered round what is agrarian reform, and counsel here have joined issue on the claim of the Forest Act to wear this protective mantle.

x x x x

52. We may, however, point out here that in ascertaining whether the impugned enactment outlines a blue-print for agrarian reform the Court will look to the substance of the statutory proposal and not its mere outward form. The Court will closely study to see if the legislation merely wears the mask of agrarian reform or it is in reality such. A label cannot salvage a statute from the clutches of constitutional limitations if the agrarian reform envisaged by it is "a teasing illusion or promise of unreality". The Court should not be too gullible to accept a scheme of agrarian reform when it is nothing but a verbal subterfuge, but at the same time the Court

should not be too astute to reject such a scheme because it is not satisfied with the wisdom of the scheme or its technical soundness. Can the State take over an industrial unit or a business undertaking without payment of compensation and claim the protection of Article 31A by stating that the profit arising from such industrial unit or business undertaking would be utilised for purposes directed to agriculture or welfare of the rural population? Such an acquisition would obviously not be an acquisition for carrying out a scheme of agrarian reform because there will be no direct nexus between the subject-matter acquired and its utilisation for agrarian reform. It would not be enough merely to say that the income of the property acquired is to be utilised for purposes of agrarian reform. The property itself must be acquired for carrying out such a reform. This requirement is satisfied in the present case because forest lands reserved under Section 10 are to be utilised "for purposes directed to the promotion of agriculture or for the welfare of the agricultural population or for purposes ancillary thereto."We do not think it would have been sufficient merely to provide that the income from the produce of the forests shall be utilised for promotion of agriculture or the welfare of the agricultural population, but the forest lands need not be so utilised. That would have been merely a devise for augmenting the revenues of the State though with a direction that such addition to the revenue shall be expended only on purposes of promotion of agriculture or the welfare of the agricultural population. But here it is clear on a reading of Section 10 that the forests and not merely the income are to be devoted to or directed towards the promotion of agriculture or the welfare of the agricultural population or for ancillary uses closely related to agrarian reform. The details of the scheme of agrarian reform to which the acquired forests would be subjected cannot obviously be embodied in the statute and they are left to be provided by rules which are to be made under Section 17 for the purpose of carrying out the provisions of the statute. No rules could so far be made by the State Government, it is said, because there was a stay against the implementation of the Act when the petition was pending in the Kerala High Court and thereafter the Act was declared to be ultra vires and void by the judgment of the Kerala High Court which is under appeal before us. Now that the Act is being declared by us as constitutionally valid, the State Government will have to make rules setting out the precise programme of agrarian reform which is intended to be carried out. Counsel for the forest owners has expressed an apprehension before us that the State Government may keep the forests as they are for a long number of years and merely go on augmenting the revenues of the State by cutting and selling timber growing on them and thereby defeat the rationale of Article 31A itself. But there is no basis or justification for this apprehension because we are of the view that the agrarian project would have to

be spelt out concretely by the State Government within the prescribed period of two years or at any rate within a reasonable time thereafter. If the State Government merely goes on making money by cutting and selling the timber grown on the forests without implementing the definite proposals of agrarian reform contemplated in Section 10 within a reasonable period of time, it would be a subversion of the statute and in such a case it would be competent to the aggrieved parties to take legal action compelling the State to make good the statutory promise and to act in terms of Section 10, and if the forests are diverted for uses outside the scope of Section 10 the court could restrain the State from such illegitimate adventures.

x x x x

54. Considered in this light it is not possible to hold that Section 10 has no nexus with agrarian settlement ofcourse, the programme held out in the provision, if not implemented within a reasonable time or otherwise perverted to non-agrarian purposes, may give' rise to judicial scepticism about the Government's bona fides and induce consequent remedial action. As we see it, the Forest Act is calculated to bring benefit to landless labourers, tribals and other proletarian groups in the over-populated State of Kerala. The fear that the executive will dawdle and delay unreasonably or act obliquely to defeat the agrarian welfare content of the measure may gain credibility when the scheme is not legislatively time-bound. In the present case a two-year period for reserving forests and distributing the rest is written into the statute itself. If the State, for ulterior ends, prevaricates or betrays the scheme by non-implementation or mix-implementation, an aggrieved party may seek relief through a judicial post-audit. The Court is not altogether powerless in such a case, in the light of the observations made by Sikri, C. J., in Kannan Devan's case, that:

"If the State were to use lands for purposes which have no direct connection with the promotion of agriculture or welfare of agricultural population the State could be restrained from using the lands for those purposes. Any fanciful connection with these purposes would not be enough."

Moreover, the Executive is not wholly unaccountable to the nation merely because the law has been judicially cleared once."

13. The learned Amicus Curiae has also made a reference to a decision rendered by the Apex Court in case titled as ***Kh. Fida Ali and others versus State of Jammu and Kashmir***, reported in ***(1974) 2 Supreme Court Cases 253***. The relevant paragraphs of the judgment (supra) are

extracted hereinafter.

> *"1. This writ application under Article 32 of the Constitution raises the question of the constitutional validity of the Jammu and Kashmir Agrarian Reforms Act, 1972 (Act No. XXVI of 1972), briefly called the Act, and the rules framed thereunder. The petitioners are landowners in the State of Jammu and Kashmir and their grievance is that by the impugned Act they along with a large number of similar land-owners have been rendered landless. They further allege that the amount intended to be paid as compensation is illusory and the Act is, therefore, of a confiscatory nature. They also allege that conclusion of an 'orchard' from the definition of 'land' under Section 2(4) of the Act is motivated and designed in the interests of highly placed influential persons in the State who own such orchards. By taking an additional ground, they also aver that the Act is not saved by the provisions of Article 31A of the Constitution as applicable to the State of Jammu and Kashmir since it is not a piece of legislation bearing on agrarian reform.*
>
> *x x x x*
>
> *3. The short question that arises for consideration in whether the Act is protected under Article 31A of the Constitution as applicable to the State of Jammu and Kashmir providing as claimed by the State, for a scheme of agrarian reforms. If the answer in the affirmative, all objections under Articles 14, 19 and 31 would be of no avail. This legal position is conceded by the learned counsel for the petitioners and indeed is well-settled by several decisions of this Court.*
>
> *4. We may now, therefore, turn to the Act to determine whether the impugned legislation can come under the canopy of protection of Article 31A of the Constitution. The Act itself carries the appellation "Agrarian Reforms Act". These words, themselves, may not be decisive in the absence of provisions in the Act disclosing a genuine scheme of agrarian reform. We will, therefore, examine the material provisions of the Act with that end in view.*
>
> *x x x x*
>
> *12. The golden web, throughout the warp and woof of the Act, is the feature of personal cultivation of the land. The expression 'personal cultivation' which runs through Sections 3, 4, 5, 7 and 8 is defined with care under Section 2(7) in a detailed manner with a proviso and six explanations.*
>
> *13. From a review of the foregoing provisions it is obvious that the Act contains a clear programme of agrarian reforms in taking stock of the land in the State which is not in personal cultivation (section 3) and which though in personal cultivation is in excess of the ceiling area (section 4). A ceiling area is fixed for land or orchards or both measuring 12½ standard acres. After the land vests in the State, in accordance with the provisions of the Act, a*

provision is made for disposal of the surplus land in accordance with the rules.

14. The main focus of the act is to see that the tillers, who form the back-bone of the agricultural economy, are provided with land for the purpose of personal cultivation subject to the ceiling provision even in their case. The Act makes effective provisions for creating a granary of land at the disposal of the State for equitable distribution, subject to the limit, amongst the tillers of the soil and even the owners who would make 'personal cultivation' of the same within the meaning of the Act. In the nature of things it is imperative that a ceiling area has to be fixed and those who have so far enjoyed land in large tracks mostly without personally cultivating the same, are required to share with others who have no land of their own but are genuine tillers of the soil. Even so, no one is allowed to own more than the ceiling area."

14. In addition, the learned Amicus Curiae has also made a reference to the decisions rendered by the three Judges Benches of the Apex Court in cases titled as (i) ***State of Punjab (now Haryana) and others versus Amar Singh and another***, reported in ***(1974) 2 Supreme Court Cases 70***, and, (ii) ***The Godavari Sugar Mills Ltd. versus S.B.Kamble and others*** reported in ***(1975) 1 Supreme Court Cases 696***. The relevant paragraphs of the judgments (supra) are extracted hereinafter.

"***(i) State of Punjab (now Haryana) and others versus Amar Singh and another, (1974) 2 Supreme Court Cases 70***,

1. These two appeals by the State of Haryana challenged the High Court's approach to an interpretation of two crucial provisions of a land reforms law, namely, Sections 10-A and 18 of the Punjab Security of Land Tenures Act (X of 1953) 1953 (for short called "the Act"). Counsel for the appellants complains that if the view upheld by the High Court of subordinating Sections 10-A to 18 were not upset by this Court, large landholders may extricate their surplus lands in excess of the ceiling set, through legal loopholes, such as have been practised in the present case. If make-believe deals and collusive proceedings, he argues, may maneouvre through the legal net cast by Section 10-A of the Act interdicting alienations and orders which diminish the surplus pool intended for re-settlement by the State of ejected tenants, the agrarian reform measure would be reduced to a paper tiger or socio-economic eyewash. Certainly, land reforms are no basic to the national reconstruction of the new order

envisaged by the Constitution that the issue raised in this case deserves our anxious attention. We have to bear in mind the activist, though inarticulate, major premise of statutory construction that the rule of law must run close to the rule of life and the court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute on imputed legislative presumptions and assumed social values valid in a prior era. An aware court, informed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compelled by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up.

x x x x

6. The triple objects of the agrarian reform projected by the Act appear to be (a) to impart security of tenure (b) to make the tiller the owner, and (c) to trim large land holdings, setting sober ceilings. To convert these political slogans into legal realities, to combat the evil of mass evictions, to create peasant proprietorships and to ensure even distribution of land ownerships a statutory scheme was fashioned, the cornerstone of which was the building up of a reservoir of land carved out of the large land-holdings and made available for utilisation by the State for re-settling ejected tenants."

(ii) The Godavari Sugar Mills Ltd. versus S.B.Kamble and others, (1975) 1 Supreme Court Cases 696

21. It is now well established that before the protection of Article 31A can be afforded to the acquisition of any land by the State, the acquisition should be for the purpose of agrarian reform. As observed by Subba Rao J. (as he then was) speaking for the majority in the case of ***Kavalappara Kottarathil Kochuni v. State of Madras, (1960)3 SCR 887*** *the object of inserting Article 31A in the Constitution and of subsequently amending it was to facilitate agrarian reforms. It was held in that case that an enactment which sought to regulate the rights of sthanees and the junior members of a tarwad by depriving the sthanee of its properties and vesting them in the tarwad under the Madras Marumakkathayam (Removal of Doubts) Act 1955 was not a measure of agrarian reform.*

22. In ***Vairavelu Mudaliar v. Special Deputy Collector, (1965)1 SCR 614*** *Subba Rao J. speaking for the Court while reiterating that the object of Article 31A was to enable the State to implement pressing agrarian reforms held that the purpose of slum clearance for which the land was sought to be acquired under the Land Acquisition (Madras Amendment) Act, 1961 could not be related to agrarian reform. It is significant that this Court in that case dealt with the acquisition of land for development of the area as "neighbourhood" in the city of Madras for housing schemes.*

23. In the case of ***Ranjit Singh v. State of Punjab, (1965)1 SCR 82*** *this Court dealt with the validity of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, the Punjab Gram Panchayat Act and the Punjab Village Common Lands (Regulation) Act and the proceedings taken under these enactments as a result of which proprietor's interest was acquired by the State without compensation. It was held that the impugned provisions as also the provisions of the Punjab Security of Land Tenures Act were all a part of a general scheme of agrarian reform and the modifications of rights envisaged by them had the protection of Article 31A. Hidayatullah J. (as he then was) Speaking for the Court observed :*

> *"The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions, Provisions for the assignment of lands to village Panchayat for the use of the general community, for hospitals, schools, manure pits, tanning grounds etc. enure for the benefit of rural population must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands."*

24. In the case of ***Balmadies Plantations Ltd. v. State of Tamil Nadu, (1973)1 SCR 258*** *it was held while dealing with the provisions of Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act that the object and general scheme of the Act was to abolish intermediaries between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State. The Act, as such, in its broad outlines was held to be a measure of agrarian reform and protected by Article 31A. The acquisition of forests in Janmam estates was held to be not in furtherance of the objective of agrarian reform and consequently not protected by Article 31A. This Court in that context observed :*

> *"In the absence of anything in the Act to show the purpose for which the forests are to be used by the Government it cannot be said that the acquisition of the forests in Janmam land would be for a purpose related to agrarian reform. The mere fact that the ownership of forests would stand transferred to the State would not show that the object of the transfer is to bring about agrarian reform. Augmenting the resources of the State by itself and in the absence of anything more regarding the purpose of utilisation of those resources, cannot be held to be a measure of agrarian reform. There is no material on the record to indicate that the transfer of forests from the Janmi to the Government is linked in any way with a scheme of agrarian reform or betterment of village economy."*

25. In the case of ***Kanan Devan Hills Produce Co. Ltd. v. State of Kerala, (1973)1 SCR 356*** *this Court dealt with the provisions of*

Kanan Devan Hills (Resumption of Lands) Act. One of the questions which arose for determination in that case was whether the three purposes mentioned in Section 9 of the Act, namely :

(1) reservation of lands for promotion of agriculture;

(2) reservation of land for the welfare of agricultural population;

(3) assignment of remaining lands to agriculturists and agricultural labourers;

were covered by the expression "agrarian reform" and as such the aforesaid provision was protected by Article 31A of the Constitution. Sikri, C.J. while holding that the above objects were covered by the expression "agrarian reform" observed :

"It is urged that the wording of the first two purposes in Section 9 is too wide. But if we look at the definition of common purpose', which was sustained by this Court in Ranjit Singh's case (supra), it shows that the purposes sustained thereby would come under either the expression 'promotion of agriculture' or 'welfare of agricultural population' in Section 9. Indeed some would fall under both. For instance, reservation of lands for manure pits, waterworks or wells, village water courses or water channels and grazing grounds would promote agriculture; schools and Playgrounds, dispensaries, public latrines etc. would be for the welfare of agriculturists.

If the State were to use lands for purposes which have no direct connection with the promotion of agriculture or welfare of agricultural population the State could be restrained from using the lands for those purposes. Any fanciful connection with these purpose would not be enough.

It seems to us that if we read these two purposes to mean that these include only common purposes' which were sustained by this Court and purposes similar thereto it would be difficult to say that they are not for agrarian reform. In a sense agrarian reform is wider than land reform. It includes besides land reform something more and that something more is illustrated by the definition of common purpose', which was sustained by this Court in Ranjit Singh's case."

26. In the case of ***State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., (1973)2 SCC 713*** *this Court dealt with the provisions of the Kerala Private Forests (Vesting and Assignment) Act, under which private forest lands situated in the former Malabar district stood transferred to the State. The Act was held to be a measure of agrarian reform and as such protected by Article 31A. Palekar J. speaking for the majority in that case observed :*

"The objectives of increasing the agricultural production and the promotion of the welfare of the agricultural population are clearly a predominant element in agrarian reform. How these objectives are to be implemented are generally stated in Sections 10 and 11. All the private forests, after certain reservations, are to be assigned to agriculturists or agricultural labourers and to the poorer classes of the rural population desiring bona fide to take up agriculture as a means of their livelihood. The reservation in respect of certain portions of the forests is also made in the interest of the agricultural population because the section says that the reservations will be such as may be necessary for purposes directed towards the promotion of agriculture

or welfare of the agricultural population or for purposes ancillary thereto."

Krishna Iyer J. speaking for himself and Bhagwati J, agreed with the conclusions o f the majority and observed :

"Once we accept the thesis that development orientation and distributive justice are part of and inspire activist agrarian reform, its sweep and reach must extend to cover the needs of the village community as well. What programme of agrarian reform should be initiated to satisfy the requirement of rural uplift in a particular community under the prevailing circumstances is a matter for legislative judgment."

27. In ***Kh. Fida Ali v. State of Jammu and Kashmir, (1974)2 SCC 253,*** *this Court held that the provisions of the Jammu and Kashmir Agrarian Reforms Act were protected by Article 31A One of us (Goswami J.) observed :*

"From, a review of the foregoing provisions it is obvious that the Act contains a clear programme of agrarian reforms in taking stock of the land in the State which is not in personal cultivation (Section 3) and which though in personal cultivation is in excess of the ceiling area (Section 4). A ceiling area is fixed for land or orchards or both measuring 12½ standard acres. After the land vests in the State, in accordance with the provisions of the Act, a provision is made for disposal of the surplus land in accordance with the rules."

28. The following principles can be inferred from the decided cases in order to find whether an impugned enactment for acquisition of land is protected by Article 31A :

1) Acquisition of land by the State in order to enjoy the protection of Article 31A should be for the purpose of agrarian reform. '

2) Acquisition of land by taking it from a senior member of the family and giving it to a junior member is not a measure of agrarian reform.

3) Acquisition of land for urban slum clearance or for a housing scheme in neighbourhood of a big city is not a measure of a agrarian reform.

4) Acquisition of land by the State without specifying the purpose for which land is to be used is not a measure of agrarian reform.

5) Scheme of rural development envisages not only equitable distribution of land but also raising of economic standards and bettering of rural health and social conditions in the villages.

Provision for the assignment of land to a Panchayat for the use of the general community or for hospitals, schools, manure pits, tanning grounds enure for the benefit of the rural population and as such constitute a measure of agrarian reform.

6) Provision for reservation of land for promotion of agriculture and for the welfare of agricultural population constitutes a measure of agrarian reform. Agrarian reform is wider than land reform.

7) If the dominant and general purpose of the scheme is agrarian reform, the scheme may provide for ancillary provisions to give full effect to the scheme.

8) A provision fixing ceiling area and providing for the disposal of surplus land in accordance with the rules is a measure of agrarian reform.

x x x x

32. It has been argued by Mr. Sen that distribution of acquired land among landless persons or poor peasants is an essential

attribute of agrarian reform and that as the lands of the industrial undertakings are not to be distributed but have to be cultivated by the Farming Corporation owned by the State, the acquisition cannot be considered to be a measure of agrarian reform. We are not impressed by this argument. Acquisition of land held by industrial undertakings is not to be taken in isolation but as a part of the general scheme and object of the Act that there should be a ceiling on private holdings. While surplus lands of individuals are to be distributed, the legislature has made special provision in respect of land held by an industrial undertaking which had been cultivated for supplying raw material to the industrial undertaking. It has been provided in the case of such land that it should be cultivated by the Farming Corporation in an efficient manner so that the supply of raw material to the Industrial undertaking might not be affected. It is no doubt, true that distribution of acquired land among landless persons and poor peasants in a vast majority of cases is a part of the scheme of agrarian reform; the fact that in the case of some huge tract of land which is used for a particular purpose the statute in order to prevent its fragmentation and to subserve that purpose provides that it should be cultivated by a State owned farming corporation would not justify the inference that the statutory requirement in this respect is not a part of a general scheme of agrarian reform. Section 281AA does not operate in a vacuum. The Section has to be taken in its context and setting with the other provisions of the Act. If the provisions of the Act seek to remove economic imbalance by taking the surplus lands of holders in excess of a ceiling and if the provisions of the Act further contemplate that most of the lands after acquisition be distributed to poor peasants and landless persons, the fact that a few blocks of land because of their size and past use for cultivation of raw material for industrial undertakings are required under the provisions of the Act to be not fragmented, which would inevitably be the result if they were to be distributed like other lands acquired under the Act, but to be retained as compact blocks for being cultivated by, the farming corporation so that the industrial undertakings are not starved of the raw material, the last mentioned provision cannot be detached from the rest of the Act and struck down as being not a measure of agrarian reform. It is no doubt true that acquisition simpliciter of the land by the State to augment its resources and without specifying the purpose for which it is to be used after acquisition would not get the protection of Article 31A. To decide the question of protection we must look at the general scheme of the statute containing provision for the acquisition, the object of the acquisition and the reasons which weigh for retaining the land with the State or its corporation and not distributing it among the landless persons and the poor peasants.

The concept of agrarian reform, it needs to be emphasised, is

> *not static and cannot always be put in a strait-jacket with the change of times under the impact of fresh ideas and in the context of fresh situations, the concept of agrarian reform is bound to acquire new dimensions. A measure which has the effect of improving the rural economy or promoting rural welfare would be a part of agrarian reform Although in most of the cases, as already mentioned the agrarian reform would require distribution of surplus land among the poor peasants and landless persons living in the villages, situations might well arise where it would be in the interest of rural economy that any compact area of land instead of being fragmented by distribution should be preserved as one compact block and be cultivated by a State owned farming corporation. The fact that part of the acquired land would remain vested in the State Government or State-owned farming corporation would not militate against the object of agrarian reform if the continued vesting of the land in the Government or the Corporation is a part of a general of agrarian reform and there is no oblique deviation from the avowed purpose. In the case of Ranjit Singh v. State of Punjab (supra), part of the acquired land was to vest in the State Government for schools, playgrounds, dispensaries, hospitals, waterworks, tubewells and as the above vesting was a part of a general scheme of rural welfare, the statute providing for that vesting was upheld and afforded the protection of article 31A. Ancillary provisions to give full effect to a scheme of agrarian reform, it may be stressed, would also have the protection of Article 31A."*
>
> ***Submissions of the learned State counsel***

15. The learned State counsel submits, that the submission of the learned Amicus Curiae, inasmuch as, the impugned amendment is violative of Article 31-A of the Constitution of India, is not founded on a correct foundation, as by virtue of the Amendment Act, only the 'limit' and 'applicability' of the Act of 2011 has been defined. He further submits, that the amendment only implies, that there will be no vesting of the proprietary rights by virtue of Section 3 of the Act of 2011 in Dholidar, Butemar, Bhondedars etc. rather on the lands, owned by the Panchayats, Munipalities, Government Departments, Boards or Corporations. Resultantly, since by way of the said amendment, there is no extinguishment, modification or vestment of any right, therefore, Article 31-A is not applicable to the said

amendment. The learned counsel further submits, that the impugned amendment alone has to be tested on competence of State Legislature to define the applicability of the Act and intent to not to apply the Act of 2011 on the lands, which are being owned or vested or managed as "public trust".

In support of his submissions, the learned State counsel has placed reliance upon (i) ***Mahant Ajudhya Nath versus Gram Panchayat Ramnagar*** reported in ***1972 PLJ 570***, (ii) ***Mamala versus ISA*** reported in ***1983 PLJ 231***, (iii) ***Durga Dass alias Dawarka Dass Chela versus Commissioner, Hissar Division*** reported in ***2013(2) PLR 3945*** and (iv) ***Om Parkash versus Commissioner, Ambala Division, Ambala*** reported in ***2015(4) PLR 333***. The relevant paragraphs of the judgments (supra) become extracted hereinafter.

> ***(i) Mahant Ajudhya Nath versus Gram Panchayat Ramnagar, 1972 PLJ 570,***
>
> *"7. It is on clause (ii) of sub-section (3) of Section 4 that Mr. H.L. Sarin relies and contends that this clearly applies to the suit property in the appellant's possession and this property must be considered to have been taken out of the general provision relating to the vesting of shamlat deh land contained in sub-section (1)(a) of Section 4. It is true that if this provision had not existed then even the property held by the appellant would have vested in the village Panchayat under sub-section (1)(a) or Section 4, leaving no right or interest in the appellant. The legislature in its wisdom, however, does not appear to have considered it necessary of expedient to oust from possession such persons who have been in cultivating possession of the shamlat land for more than 12 years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon. Clause (ii) of sub-section (3) of Section 4, which has safeguarded the interests of such persons, cannot be read to mean that it was intended to confer upon them rights which they did not possess on the day this provision was made. If the argument of Mr. Sarin is accepted, it will have to be held that though on the day this provision was enacted the persons in cultivating possession of the shamlat land for more than 12 years without any payment of rent etc. had no right to the ownership of the land, they acquired such right under the law which was enacted to*

transfer all interests and rights in respect of the shamlat land, except those which were specifically excluded to the village Panchayat. The object of the Act, as stated in its preamble was to consolidate and amend the law regulating the rights in shamlat deh and abadi deh. It was never the intention of the legislature nor the object of this enactment to confer more rights on those persons who were in possession of any part of the shamlat land. On the other hand, the scheme of the Act leaves no doubt that the legislature intended that the village common land should not remain with the persons who had taken possession of its various parcels, but it should vest in the Panchayat for proper utilisation and management. Exceptions were, however, made to avoid hardships and to safeguard the interests of certain categories of persons and those exceptions are contained in sub-section (3) of Section 4. Under Clause (iii) of this sub-section one of the categories of persons whose rights have been safeguarded are mortgagees to whom such land is mortgaged with possession before the 26th January, 1950. If Mr. Sarin's argument is accepted that the land in possession of the persons mentioned in sub-section (3) of the Section 4 is not affected by the vesting provision contain in Section 4(1) of the Act and such land may be deemed to have been excluded from vesting in the Gram Panchayat, it will have to be held that even a mortgagee, who has been in possession before the 26th January, 1950, acquired the right of ownership to the property mortgaged with him. This conclusion in my opinion, will be absurd and it cannot be imagined even for a moment that while attempting to save the shamlat deh land and making a provision for its better management and utilisation through the village Panchayat the legislature intended to confer larger rights on a mortgagee by making him owner of the property. In any case, the wording of clause (ii) of sub-section (3) of Section 4 is clear and unambiguous. It says that nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have effected the rights of persons in cultivating possession of shamlat deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and ceases payable thereon. In other words, what is saved from the operation of the general vesting provision contained in sub-section (1) of Section 4 under sub-clause (ii) of sub-section (3) is the right of the persons in cultivating possession of shamlat deh for more than 12 years without payment of rent, etc. I have not the least hesitation in holding that it merely means that if a person has been in possession of the shamlat deh for more than 12 years without any interference, his possession cannot be disturbed nor can he be called upon to pay any rent and charges. It is true that because of these rights guaranteed under this provision the appellant will be entitled to continue in possession without being required to pay any rent to the

village Panchayat and the village Panchayat will not be able to evict him or to claim any rent from him. It is also true that the village Panchayat under these circumstances will have merely the satisfaction of being recorded as an owner of this property and that right of ownership may not confer any real advantage on it for years together so long as the appellant remains in possession and does not abandon the land. On this premises it can be argued that if the right of ownership does not confer any immediate or tangible advantage on the village Panchayat, it will be nothing but an illusory right. That would, however, not furnish any ground for holding that the right of ownership should be considered to have been abrogated or taken away from the village Panchayat and conferred on the appellant because of his long possession of the shamlat property without payment of any rent."

(ii) Mamala versus ISA, 1983 PLJ 231.

4. Before I proceed further, I may quote here a passage from the District Gazetteer, Volume IV-A of Gurgaon District compiled and published on 1910 under the authority of the Punjab Government. That passage will illustrate as to what is Bhonda tenure and in what respect it differs from the Dohli tenure. At page 177, it is remarked:-

> *"It is very common for an individual proprietor, and still more so for a whole village community to set apart a small piece of land, usually two or three Bighas, to be held rent-free for the benefit of some temple, mosque or shrine, or to give a piece of land, on similar favourable terms to a pandit or other person of a religious order. Such a grant is called a dohli, and the holder a dholidar. So long as the purposes for which the grant was made are carried out, it cannot be resumed, but should the holder grossly fail to carry out the duties of his office, the proprietors can eject him and put in some one else under a like tenure.*
>
> *The bhonda is like the dholi a grant of a few Bighas of land rent-free. The principal difference is that, while the service for which the dholi is granted is something directly connected with religion, the bhonda is given for some secular service, such as the duties of the village watchman (chaukidar) or messenger (bulahar). The bhondedar may be ejected on failure to fulfil the conditions of his tenure and perhaps in some cases at the will of the proprietors. It is simply an old-fashioned mode of paying for services."*

From the above passage, it is clear that Bhondadari tenure is not necessarily heritable because in some cases it can be terminated at will. Inference of mine finds support from Exhibit D-3 which is a copy of sharat wazib-ul-araz relating to this village. It is mentioned in the entry that appointment and removal of the Bhondedar rested with the proprietors of the village."

(iii) Durga Dass alias Dawarka Dass Chela versus Commissioner,

Hissar Division, 2013(2) PLR 3945

"11. Before proceeding further, it would be relevant to refer to the meaning of the aforesaid terms.
*'**Dholidar**' - is a person to whom rent free grant is given by the village community for benefit of temple, mosque and shrine or for rendering any requisite service. The Dholi rights are extinguished after his service is over and the property reverts to its original proprietors. In case, it is shown to be gift of land then sharat wajib-ul arz or any other cogent evidence in support is required.*
*'**Bhondedar**' - is a person to whom a rent free land is given for some secular service such as duty of the village watchman (chowkidar) messenger (bulahar). It is an old fashioned mode of paying for services.*
*'**Butimar**' - is a tenant, who clear jungles and brings land under cultivation.*
*"**Basikhopahus**" - are tenants, who are settled down on the land and build as a basik or homestead or of near it for the purpose on a implied contract that they shall hold the land so long as they farm well and pay their stipulated rent. They may be evicted from land but cannot be turned out from basik or homesteads.*
*"**Saunjidars**" - the persons having dome right, as per the Jamabandi, similar to occupancy tenant, but with some limitations according to the wajib-ul-arz of a particular revenue estate.*
*"**Muqarrirdars**" - is interfere in degree to a Malik Makboza, who is recorded as having heritable estate in the land which he occupies and from which he cannot be ousted so long as he pays equal rent to the proprietors.*

(iv) Om Parkash versus Commissioner, Ambala Division, Ambala, 2015(4) PLR 333

34. A perusal of Section 4(3)(i) of the 1961 Act, reveals that nothing contained in clause (a) of sub section (1) and in sub section (2) of section 4 shall apply to Dholidars, Bhondedars etc., clarifying that existing rights, title or interests of a Dholidar in the Shamilat Deh of a village shall be protected. The question that must necessarily arise, at this stage, is the nature and extent of the protection, envisaged by Section 4(3)(i) of the 1961 Act, namely, whether it is absolute protection or dependent upon the Dholidar continuing to perform his obligation, in this case, the obligation to serve drinking water?
35. A perusal of Section 4(3)(i) of the 1961 Act reveals that all that it protects is the existing rights, title or interest in a Dholi, thereby indicating that all that legislature intended to protect were subsisting rights but did not intend to confer any right beyond the rights and obligations conferred by the Dholi. Section 4(3)(i) of the 1961 Act, therefore, does not protect the rights of a Dholidar who has stopped performing his obligation, under the Dholi. To hold

> *otherwise, would absolve the Dholidar of his obligation and in essence, alter the Dholi into an absolute dedication of property. Consequently, if a Dholidar ceases to perform his obligation, the protection provided by Section 4(3)(i) of the 1961 Act shall no - longer be available and the settler of the Dholi, in this case, the Gram Panchayat, which has stepped into the shoes of the original proprietors of the Shamilat Deh of the village, may legitimately maintain a petition for restitution of the land.*

Inference of this Court

16. The summarization of the expositions of law, laid in the judgments (supra), are that (i) the immunity to laws passed in terms of Article 31A of the Constitution of India, especially appertaining to acquisition of any estate or of any rights thereins or the extinguishment or modification of such rights, but when is heading towards agrarian reform, thus thereupons, the said passed law acquiring immunity from challenge or therebys, the validity of such a passed law being unquestionable in Courts of law. (ii) Furthermore, since clause (a) of sub-Article (2) of Article 31-A of the Constitution of India, provisions whereof become extracted hereinafter, provides that with the meaning imparted to the expression acquirable 'estate', when includes any local area, besides thus is to have the same meaning, as that expression or its local equivalent has, in the existing law relating to land tenures in force in that area and shall also include any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right, besides any land held under ryotwari settlement; and also includes any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans.

17. In addition, when clause (b) of sub-Article (2) of Article 31-A

of the Constitution of India, whereins, to the stated thereins statutory expression 'rights' as is to be also employed, vis-a-vis an estate, qua an estate whereof, thus a concomitant leverage becomes bestowed upon the legislature to extinguish or modify rather such rights enjoyed over the acquirable estates, thus have been declared to include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. The provisions of Article 31A of the Constitution of India become extracted hereafter.

> ***"31A. Saving of laws providing for acquisition of estates, etc.***
> *(1) Notwithstanding anything contained in article 13, no law providing for-*
>
> *(a) the acquisition by the State of any estate or of any rights therein or the extinguishments or modification of any such rights, or*
>
> *(b) the taking over of the management of any property by the Stale for a limited period either in the public interest or in order to secure the proper management of the property, or*
>
> *(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or*
>
> *(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or*
>
> *(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,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:*
>
> *Provided that where such law is a law 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:*

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

2. In this article-

(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-

(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, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

18. The cumulative effect of clause (a) and of clause (b) of sub-Article (2) of Article 31A of the Constitution of India, naturally is that, the constitutional intent thereof, thus is to erase or efface, the rights of intermediaries over the acquirable estates, as become declared in the supra constitutional provisions, whereby the rights of intermediaries over the subject lands concerned, become amenable to be vested vis-a-vis the tillers thereovers. The intent of the constitution is clear, and, candid to the fullest amplitude, that than to the intermediaries, rather to the tillers or to the occupancy tenants, who till the lands, thus laws becoming enacted by the respective State Legislatures, wheretos constitutional immunity in terms of the supra Article becomes

endowable.

19. Bearing in mind the above employed connotation(s) to the supra enclosed constitutional mandates, thus this Court is required to be deciding whether given the amplitude of the meaning imparted to the expression ‘estate’, thus covering all the supra detailed genres of holdings in the subject lands concerned, whether thereins also the instant categories becoming covered, and, whether therebys the impugned legislation rather is to be declared to become clothed with or not being clothed with the constitutional immunity, as enshrined in Article 31A of the Constitution of India.

20. Moreover, this Court is also required to be mindful to the striking fact, (I) whether the instant categories of land holdings, were in terms of expostulations of law, made in the judgments (supra), thus respectively enveloped with the cover of heritable rights, but as occupancy tenants over the disputed lands. (II) In addition, whether therebys, the said conferred status over the present petitioners, thus over the disputed lands, but was unamenable for becoming expropriated or snatched from them, but essentially on the premise, that they were not to be construed to be intermediaries over the subject lands, rather were tillers over the subject lands, (III) whether thereupon theirs tillings of the subject lands but required, that they be permitted to till the subject lands, irrespective of the lands so tilled by them, were under the land-lordship of private land owners or under the land-lordship of the panchayat deh or under the land-lordship of the statutory bodies/entities owned and controlled by the Government of Haryana.

21. In addition, it is to be also determined whether in terms of the

expostulations of law, made in the judgments (supra), wherebys it has been declared, that unless the acquisition of the instant estates, as made through the instant legislation becoming purportedly passed, in terms of Article 31-A of the Constitution of India, thus is in purported furtherance of achieving the constitutional goal, wherebys agrarian reforms become forwarded, thereupon the acquisition of the instant estates, thus would be constitutionally void.

22. **For the reasons to be advanced hereinafter, the impugned legislation is constitutionally void, nor it enjoys the constitutional immunity, as embodied in Article 31-A of the Constitution of India, nor also the snatching of the rights of the occupancy tenants, which is a statutory status enjoyed even by the present petitioners over the disputed lands, was ever amenable to become modified or snatched, as has been done through the extant expropriatory legislation.**

23. Before proceeding to fortify the said inference, it is but imperative to extract the relevant provisions, as embodied in the Punjab Settlement Manual, 1899, provisions whereof as embodied in Section 142 thereof become extracted hereinafter.

> *"**142. Malik kabza**.—Owners are sometimes found in village communities who do not belong to the brotherhood and are not sharers in the joint eights, profits, and responsibilities of its members. Their proprietary title is a complete or undivided one, but it is confined to certain fields and does not include any share in the village waste. The name by which this tenure is officially known in the Punjab is milkiyat makbuza, and the holder of it is called malik kabza. These terms indicate that the interest of the proprietor is limited to the land actually in his own possession. This land he can let, mortgage, or sell as he pleases, and he is responsible for the payment of its revenue. A familiar instance of this form of landholding is the right acquired by a Brahman, who receives a dohli or death-bed gift of a small plot of land from a landowner. The tenure is also created whenever a landowner sells a part of his holding without the appurtenant share of the village common land. The malik kabza tenure is common in the districts of Gujrat,*

> *Rawalpindi, Jhelum, Attock and Hazara, where it was introduced at the first regular settlement under circumstances which will he described in a later paragraph. In some cases the status of malik kabza is combined with that of an inferior proprietor. The status of an assignee, or the heir of an assignee, who is recognized as owner of the plot which is, or was, held free of revenue, subject to the payment of a proprietary fee in recognition of the superior title of the village community, is of this description (see paragraphs 182—185). This mixed form of tenure is common in the Jhelum district.*
> *x x x x*

24. The supra extracted Section 142, as embodied in the Punjab Settlement Manual, 1899, does substantially enclose the genre of divided ownership in Punjab. In other words, the hereinabove clause speaks, about the apposite division being created, and, the same thus becoming confined to certain fields, inasmuch as, through the said divisions, a duo of genres of land holdings, rather come into being, thus respectively nomenclatured as *milkiyat makbuza* i.e. the de jure milkiyat makbuza and the *de facto* holder of such a tenure being called the *malik kabza.* The said appears to be the foundational fact qua the concept of occupancy tenants, thus within whose genre the present petitioners fall.

25. Illustratively insofar as apposite to the instant disputed lands is concerned, the de facto holder of the divisions' of the apposite land holdings, thus under the de jure *milkiyat makbuza*, when thus becomes spoken as *malik kabza*, which is further spoken to be the right acquired by a Brahman, who receives a dohli or death-bed gift of a small plot of land from a landowner. Furthermore, when such a malik kabza is also stated thereins, to acquire a perfect or absolute right over the lands, over which he holds de facto right, as a *malik kabza,* under the de jure landlord, who is stated to be *milikiyat makbuza,* (IV) whether thereupon, the instant categories are to be construed to be the de facto holders of the subject lands, irrespective of the

fact, that the lands on theirs being transited onto the territories of the Municipal Corporation or onto the territories of local self bodies or being brought under the dominion of the Boards or Corporations, thus owned by the State, whether thereupons, yet the otherwise thus perfect title assumed over the subject lands by the instant categories, thus was amenable for being snatched or modified purportedly in the garb of employment of Article 31A of the Constitution of India. Paramountly especially when therebys prima facie evidence emerges, that they were tillers over the subject lands, whereupons the constitutional protection, as espoused to be accordable to the impugned legislation, but was to be so endowed only in case agrarian reforms were therebys, thus evidently forwarded, especially to the tillers rather as also becomes exposited in the judgments (supra).

26. Furthermore, reiteratedly it is also got to be determined, (V) whether the provisions embodied in Sections 5 to 8, 11, 53 to 58-A and 59 of the Punjab Tenancy Act, 1887 (for short '*the Act of 1887*'), provisions whereof become extracted hereinafter, wherebys a statutory recognition, with concomitant thereto statutory rights become conferred upon an occupancy tenant, thus are applicable to the instant categories, (VI) besides whether therebys they are to be construed to be occupancy tenants over the subject lands, and, whether therebys when they are tillers over the subject lands, wherebys when vis-a-vis them absolute rights, as owners thereovers becomes conferred, (VII) thereupon whether such absolute rights can be expropriated in the garb of the impugned legislation purportedly stated to achieve agrarian reforms. Now the said conferred rights upon an occupancy tenants, are expansive to the extent, that they confer upon an occupancy

tenant, the right to transfer by sale, gift or mortgage the lands, which are held as occupancy tenants, thus by the recorded occupancy tenants concerned.

> *"**5. Tenants having right of occupancy**.—(1) A tenant—*
>
> *(a) who at the commencement of this Act has for more than two generations in the male line of descent through a grandfather or grand-uncle and for a period of not less than twenty years been occupying land paying no rent thereof beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, or*
>
> *(b) who having owned land, and having ceased to be landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be landowner, continuously occupied the land, or*
>
> *(c) who, in a village or estate in which he settled along with, or was settled by, the founder thereof as a cultivator therein, occupied land on the twenty-first day of October, 1868, and has continuously occupied the land since that date, or*
>
> *(d) who, being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or, having been such jagirdar, occupied the land while he was jagirdar and has continuously occupied it for not less than twenty years,*
>
> *has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in clause (c), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.*
>
> *(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent there for beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).*
>
> *(3) the words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir, and relationship by the usage of a religious community.*
>
> ***6. Right of occupancy of other tenants recorded as having the right before passing of Punjab Tenancy Act, 1868**.—A tenant recorded in a record-of-rights sanctioned by the Local Government before the twenty first day of October, 1868, as a tenant having a right of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a*

right of occupancy in that land unless the contrary has been established by a decree of a competent Court in a suit instituted before the passing of this Act.

***7. Right of occupancy in land taken in exchange.**— If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall be held to be subject to the same right of occupancy as that to which the land given in exchange would have been subject if the exchange had not taken place.*

***8. Establishment of right of occupancy on grounds other than those expressly stated in Act**.—Nothing in the foregoing sections of this Chapter shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those sections.*

x x x x

***11. Continuance of exciting occupancy rights.**— Notwithstanding anything in the foregoing sections of this Chapter, a tenant who immediately before the commencement of this Act has a right of occupancy in any land under an enactment specified in any line of the first column of the following table shall, when this Act comes into force, be held to have, for all the purposes of this Act, a right of occupancy in that land under the enactment specified in the same line of the second column of the table :—*

PUNJAB TENANCY ACT 1868 (XXVII of 1868)		**THIS ACT**		
First Column		***Second Column***		
Section	***Clause***	***Section***	***Sub-section***	***Clause***
5	*(1)*	*5*	*(1)*	*(a)*
5	*(2)*	*5*	*(1)*	*(b)*
5	*(3)*	*5*	*(1)*	*(c)*
5	*(4)*	*5*	*(1)*	*(d)*
6		*6*		
8		*8*		

x x x x

***53. Private transfer of right of occupancy under section 5 by tenant.**—*

(1) A tenant having a right of occupancy under section 5 may transfer that right by sale, gift or mortgage, subject to the conditions mentioned in this section.

(2) If he intends to transfer the right by sale, gift, mortgage by conditional sale or usufructuary mortgage, he shall cause notice of his intention to be served on his landlord through a Revenue-officer,

and shall defer proceeding with the transfer for a period of one month from the date on which the notice is served.

(3) Within that period of one month the landlord may claim to purchase the right at such value as a Revenue-officer may, on application made to him in this behalf, fix.

(4) when the application to the Revenue-officer is to fix the value of a right of occupancy which is already mortgaged, he shall fix the value of the right as if it were not mortgaged.

(5) The landlord shall be deemed to have purchased the right if he pays the value to the revenue-officer within such time as that officer appoints.

(6) On the value being so paid, the right of occupancy shall be extinct, and the Revenue-officer shall, on the application of the landlord, put the landlord in possession of the tenancy.

(7) If the right of occupancy was already mortgaged, the tenancy shall pass to the landlord, unencumbered by the mortgage, but the mortgage-debt shall be a charge on the purchase-money.

(8) If there is no such charge as aforesaid, the Revenue-officer shall, subject to any directions which he may receive from any Court, pay the purchase-money to the tenant.

(9) If there is such a charge, the Revenue-officer shall, subject as aforesaid, either apply in discharge of the purchase-money as the mortgage-debt so much of the purchase-money as is required for that purpose and pay the balance, if any, to the tenant, or retain the purchase-money pending the decision of a Civil Court as to the person or persons entitled thereto.

(10) Where there are several landlords of a tenancy, any one of them pay be deemed to be the landlord for the purposes of this section.

(11) No suit or other preceding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Revenue-officer under the two last foregoing sub-sections, but nothing in this sub-section shall prevent any person entitled to receive the whole or any part of the purchase-money from recovering it from a person to whom it has been paid by a Revenue-officer.

54. Procedure on foreclosure of mortgage of right of occupancy under section 5*.—Where a mortgagee of a right of occupancy under section 5 proposes to foreclose his mortgage, or otherwise enforce his lien on the land subject to the right, the provisions of the last foregoing section shall, so far as they can be made applicable, apply as if the mortgagee were the tenant.*

55. Sale of right of occupancy under section 5 in execution of decree.—

(1) A right of occupancy under section 5 may be sold in execution of a decree or order of a Court ;

(2) But notice of an intended sale of any such right shall be given by the Court to the landlord, and if at any time before the close of the day on which the sale takes place the landlord pays to the Court or to the officer conducting the sale a deposit of twenty-five per centum on the highest bid made at the sale, he shall be declared to be the purchaser instead of the person who made that bid.

56. Transfer of right of occupancy under any other section than section 5.*—A right of occupancy under any other section than section 5 shall not be attached or sold in execution of a decree or order of any Court or, without the previous consent in writing of the landlord, be transferred by private contract.*

57. Rights and liabilities of transferee of right of occupancy.*— When a right of occupancy has been transferred by sale, gift or usufructuary mortgage to a person other than the landlord, that person shall, in respect of the land in which the right subsists, have the same rights, and be subject to the same liabilities, as the tenant to whom before the transfer the right belonged had and was subject to.*

58. x x x x

58A. Transfer of right of occupancy under any section of the Act by exchange.

(1) Any tenant with a right of occupancy may, with the consent of his landlord, transfer his land to all the members of a Co-operative Society for the Consolidation of Holdings of which both he and his landlord are members and obtain from them any other land in exchange.

(2) Notwithstanding anything contained in this Act or any other enactment in force, any land obtained in exchange in pursuance of the provisions of sub- section (1) shall be deemed to be subject to the same right of occupancy as the land given for it in exchange.]

59. Succession to right of occupancy*.—(1) When a tenant having a right of occupancy in any land dies, the right shall devolve.—*

(a) on his male lineal descendants, if any, in the male line of descent, and,

(b) failing such descendants, on his widow, if any until she dies or re-marries or abandons the land or is under the provisions of this Act ejected therefrom, and,

(c) failing such descendants and widow, on his widowed mother, if any, until she dies or remarries or abandon the land or is under the provisions of this Act ejected therefrom.

(d) failing such descendants and widow, or widowed mother or if the deceased tenant left a widow or widowed mother, then when her interest terminates under clause (b) or (c) of this sub-section, on his

male collateral relative in the male line on descent from the common ancestor of the deceased tenant and those relatives].

Provided, with respect to clause (d) of this sub-section, that the common ancestor occupied the land.

(2) As among descendants and collateral relatives claiming under sub-section (1), the right shall, subject to the provisions of that sub-section, devolve as if it were land left by the deceased in the village in which the land subject to the right is situate.

(3) When the widow of a deceased tenant succeeds to a right of occupancy, she shall not transfer the right by sale, gift or mortgage, or by sub-lease for a term exceeding one year.

27. If so, since the said absolutness of conferment of right, title and interest vis-a-vis, any occupancy tenant, thus becomes embodied in the statutory provisions (supra), therebys it further appears that sub-Section (3) of Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short '*the Act of 1961*'), provisions whereof become extracted hereinafter, did also become engrafted, in alignment therewith, in the Act of 1961.

> **"*4. Vesting of rights in Panchayats and non-proprietors.***
>
> *"x x x x*
>
> *(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the-*
>
> *(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;*
>
> *(ii) rights of persons in cultivating possession of shamlat deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;*
>
> *(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."*

28. Now since irrespective of no entry becoming made, vis-a-vis, the instant class of land tenures or occupancy tenants, rather in the revenue records, wherebys they became voiced to be occupancy tenants, but when clause (i) of sub-Section (3) of Section 4 of the Act of 1961, through a

statutory declaration yet a similar status as occupancy tenants becomes conferred, vis-a-vis the present category, thus on account of custom or otherwise. Consequently, irrespective of the fact, that the present categories of the petitioners, may not be entered in the record of rights, as occupancy tenants, but when by a statutory declaration, as made in clause (i) of sub-Section (3) of Section 4 of the Act of 1961, they are accorded a similar thereto status, thus on account of theirs customarily tilling the subject lands. Resultantly when therebys, vis-a-vis the instant categories of tillers, who did customarily occupy the disputed lands, as occupancy tenants, whereupons with the said lands, as, appertaining to the instant categories, when become saved from vestment, in the panchayat deh or in the shamlat deh. Therefore, prima facie, the statutory declarations made vis-a-vis the instant categories, was but a recognition of therebys the tillers, as are the present categories of the petitioners, being accorded the right to continue to till the lands under their occupation, as occupancy tenants, wherebys but necessarily the constitutional scheme for forwarding the agrarian reforms was achieved. In sequel, the constitutional scheme for ensuring the forwarding of agrarian reform but neither could be tinkered with, nor the pursuance thereto rights conferred upon the tillers could be either expropriated or snatched.

29. Additionally also when the said conferred statutory status upon the instant petitioners over the disputed lands, does not concomitantly fall, within the ambit of an acquirable estate, as articulated in the supra extracted constitutional provision, therebys the extinguishment or effacement of rights of the tillers over the subject lands, thus was untenable, as becomes effected through the passing of the instant legislation. Predominantly also when

through the supra stated statutory declaration, the present categories are statutorily treated alike occupancy tenants. Moreover when, vis-a-vis occupancy tenants, through the provisions enclosed in Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (for short '*the Act of 1952*'), provisions whereof become extracted hereinafter, thus become conferred such absolute titles, wherebys they are permitted to create mortgage or sale of the lands, as held by them as occupancy tenants. In sequel, the perfect title enjoyed over the subject lands, as occupancy tenants by the present land owners, but could not be expropriated, unless the vires of the provisions of Section 3 of the Act of 1952, and, also the statutory declaration made in sub-Section (3) of Section 4 of the Act of 1961 became successfully challenged. Since the vires of the above remains not successfully challenged, therebys unless the acquisition of estates of the present petitioners, but was made through employment of the doctrine of *eminent domain*, wherebys just and fair compensation became assessed vis-a-vis the present categories, or upon their estates becoming acquired, thereupon in the garb of or in the guise of the instant legislation, the vestment of perfect rights of the present petitioners over the subject lands, thus as occupancy tenants thereovers, rather were unamenable to be expropriated, as has been untenably done in the instant case.

> ***"3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords-***
>
> *Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day-*
>
> *(a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and*

interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord :

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

(b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;

(c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;

(d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act."

30. The Statement of Objects and Reasons, as carried in the Act of 2011, becomes extracted hereinafter.

STATEMENT OF OBJECTS AND REASONS

The object and purpose of the Bill, is to vest proprietary rights in Dohlidars or Butimars or Bhondodars and Muqararidars or any other similar category of persons to be notified by the State Government at a later date. Even though these persons have been cultivating these lands for several generations, they are not able to sell, alienate, lease or mortgage such land or raise loans from financial institutions, resulting in undue hardship to their families. Persons belonging to these categories have been rendering services to their community and retaining the land for subsistence but they are not absolute owners of land, compounding their misery.

Most of these Dohlidars, Butimars, Bhondedars and Muqararidars are small or marginal farmers. In order to mitigate the misery of their indigent families, it has been thought fit to vest them with proprietary rights of land of which they are the actual tillers. These special category of persons have been retaining this land for many generations, so the land under their cultivation is in the form of grant in perpetuity. Since they had not been paying any rent to the landowners and they had made vast improvement to these holdings by clearing the jungles and levelling the undulated terrains, it has been felt that a token compensation would meet the ends of justice. To confer proprietary rights on Dohlidars, Butimars, Bhondedars and Muqararidars and to provide for payment of token compensation to the landowners whose rights are extinguished and for certain consequential and incidental matters, this legislative measure of agrarian reforms is being proposed.]

31. The Statement of Objects and Reasons, which becomes carried in the amended Act of 2011 bearing Amending Act No. 26 of 2022, becomes extracted hereinafter.

STATEMENT OF OBJECTS AND REASONS

"An Act namely, The Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 (Act No. 1 of 2011) was enacted for vesting of proprietary rights in Dohlidar, Butimar, Bhondedar and Muqararidar vide Haryana Government Gazette (Extra), dated 4.3.2011. The Rules on the said Act were also framed vide notification dated 16.06.2011 namely, the Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Rules, 2011.

In this Act, there was no specific provision about the applicability of the Act to the Govt. lands, Gram Panchayats lands and Urban Local Bodies Lands or to the land deemed to have been vested in these bodies. However, in Sub-Rule 5 of Rule 3 of the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Rules, 2011, it is mentioned that if the owner of land is the Gram Panchayat or Shamilat Deh, an opportunity of being heard shall be provided to the Gram Panchayat concerned. Further, in Sub-Rule 2 of Rule 4 of the said Rules of 2011, it is provided that compensation in respect of Shamilat Deh or Panchayat Land shall be payable to the Gram Panchayat concerned. Due to this ambiguity, claims have been made in respect of lands belonging to Government including Boards and Corporations, Gram Panchayat and Urban Local Bodies etc.

In view of the above and to safeguard the interest of Gram Panchayats and Local Bodies, amendment in sub-section (4) of Section 1 of Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 is required to the effect that the provisions of Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 would be applicable to Dholidar, Butimar, Bhondedar and Muqararidar or any other similar class or category of persons which the State Government may notify in the Official Gazette, of land belonging to private individuals/entities only and will not be applicable to lands owned or deemed to have vested in the Local Bodies i.e

Panchayat deh, Municipalities etc. & lands owned by any Government Department, Board or Corporation."

32. An additional fortification to the above inference, is garnered from the factum, that the Statement of Objects and Reasons, as carried in the Act of 2011, became harbored on the fact, that thereins there was no classification amongst the homogeneous class of occupancy tenants. In other words, the entire homogeneous class of occupancy tenants, which also includes the present petitioners, when are to be assigned co-equal rights over the lands tilled by them, irrespective of the fact, that they were holding rights as occupancy tenants either under the private land owners or respectively under the local bodies or government authorities. However, when vis-a-vis the same homogeneous class, thus through the making of the present impugned legislation, rather an invidious discrimination has been created, which is not founded upon any intelligible differentia, nor has any nexus with the object sought to be achieved, inasmuch as to forward agrarian reform. Resultantly, irrespective of the fact, that it has been enacted in the ill-guise of the constitutional immunity, as created under the Article 31A of the Constitution of India. Nonetheless, the said created invidious division amongst the same homogeneous class of occupancy tenants, but not only militates against the provisions of Article 31A of the Constitution of India, but also violates both Articles 14 and 16 of the Constitution of India, and, as such is required to be declared to be constitutionally void.

33. Since in pursuance to the Act of 2011, whereins, no classifications were made, thus certain alienations have taken place, yet it appears that through the making of the impugned legislation, which is not well founded upon the immunity created under Article 31A of the

Constitution of India, thus they have been erased, rather through the said made alienations, as made in the period intervening 2011 and 2022 becoming stated to be *non est,* even without an opportunity of hearing being granted to the aggrieved. Moreover, despite the said made alienations, upon the subject lands, stemming from the conferment of absolute title as owners, upon the present petitioners. Resultantly and moreover, in case the vendees from the present categories were ostensible owners, whereupons they were to be afforded an opportunity to raise the said plea, on a suit being filed before the Civil Court of competent jurisdiction. However, yet through the arbitrary, and constitutionally void apposite amendment, the sale deeds have been made completely ineffective, and that too without any compensation being assessed vis-a-vis the vendees concerned, wherebys there is an expropriation of the rights of the vendees concerned, wherebys also the present impugned legislation and the apposite circular, both are completely ineffective.

34. In addition, in the face of said snatchings, through the makings of retrospective application of the impugned legislation, thus begets an ex facie conflict with the salient norm appertaining to the factum, that upon substantial/vested rights becoming endowed through any former substantive legislation, therebys, the said endowed substantial/vested rights, rather cannot be snatched, through making the subsequent legislation, thus to be retrospective. Apparently in the instant case, through the makings of the present legislation to be retrospective, therebys the assigning of retrospectivity to the present legislation, but definitely militates against the norms (supra), wherebys there is a forbiddance against substantial/vested

rights, thus accomplished under the previous substantive legislation being unsnatchable, whereupons when there is also an unjust expropriation of substantial/vested rights, as acquired under the former substantive legislation.

35. Resultantly therebys, the said snatchings are violative of the Right to Property, as became conferred upon the occupancy tenants, under the previously passed legislation i.e. the Act of 2011. Furthermore therebys, the subsequently made assented to legislation appears to ill-deviate from the initially set-forth Statement of Objects and Reasons, as carried in the Act of 2011, despite the fact, that the initially set-forth Statement of Objects and Reasons, as carried in the Act of 2011, were evidently forwarding the constitutional goal of achieving agrarian reforms, wherebys this Court was led to validate the said amendment through the passing of a verdict on 19.3.2024 upon CWP No. 13864 of 2012 along with a bunch of petitions.

36. The set-forth Statements of Objects and Reasons in the subsequent assented to bill, when ill-maneuvers or ill-engineers towards stalling the constitutional purpose of achieving agrarian reforms, inasmuch as, therebys despite the present categories of the petitioners, though earlier through the Act of 2011, becoming conferred absolute rights over the lands concerned, irrespective of the factum, that the lands tilled by the present categories of petitioners, were so tilled by them, both under the private land owners, and, under the State Government or the local authorities, yet the said earlier conferred rights become arbitrarily snatched from them. Emphatically, the Statement of Objects and Reasons set-forth in the present impugned amendment, does not make any iota of speakings that, therebys

the constitutional purpose of bringing-forth, thus agrarian reforms would become achieved, whereas, striking declarations to the said effect, becoming made in the instant Statement of Objects and Reasons, rather was a dire constitutional necessity, thus for therebys the same becoming clothed with an aura of constitutional sanctity. The consequence thereof but naturally, is that, *ex facie* expropriatory provisions become embodied in the Amending Act of 2022.

37. Additionally unless an amendment, thus is made to clause (i) of sub-Section (3) of Section 4 of the Act of 1961, which however has not been made, therebys the amendment made to the Act of 2011, through the passing of the impugned amendment but was completely flawed. The reason for so stating emanates from the factum, that since the statutory provisions embodied in the Act of 1961, are for the supra stated reasons, banked upon the provisions embodied in Section 3 of the Act of 1952, wherebys, vis-a-vis any occupancy tenant's, thus rights as absolute owners have been conferred.

38. Resultantly therebys, the said rights were unsnatchable, especially when in terms of clause (i) of sub-Section (3) of Section 4 of the Act of 1961, the lands held by the instant categories under the panchayat deh or the shamlat deh rather become saved from vestment in the panchayt deh or the shamlat deh.

39. It appears that after the coming into force of the Act of 1961, some of the panchayat lands transited onto the territories of Municipal Corporations or on to the territories of other local bodies, and/or onto the dominion of the local authorities, thus under the control of the State of Haryana, especially on acquisition of lands being made in favour of the

beneficiary departments of the Government of Haryana. The said to the considered mind of this Court, became founded on the premise, that on occurrence of such transitions, thus the prior thereto conferment of absolute rights over the subject lands, thus as occupancy tenants, who are also the present petitioners, rather also suffering effacement. However, the said purported premise is completely ill founded. The reason being, that on the relevant transitions taking place or the relevant dominions becoming acquired over the subject lands, by the government departments concerned, or by the entities owned and controlled by the State of Haryana, but did not affect at all, the said detailings made in the record of rights, nor thereby became effaced the rights as held as occupancy tenants by the present petitioners over the disputed lands. The said ill-founded premise has ill led the State Legislature to pass the present constitutionally void amendment.

40. Reiteratedly since the instant legislation is not clothed with constitutional immunity, as it is not maneuvered towards bringing agrarian reforms, rather when it snatches the rights of the tillers, who are the present categories, which however could not be done. Therefore, the wants of makings of speakings in the Statement of Objects and Reasons, that it is intended to engineer agrarian reforms, but naturally reiteratedly also makes the impugned legislation to be completely arbitrary and constitutionally void.

41. Furthermore, as stated (supra), in the initially made Act of 2011, reiteratedly there was no classification amongst a homogeneous class of occupancy tenants, within whose domains, the present petitioners also fall, inasmuch as, thereins there was no separation(s) of their respective

status', thus erected on the ground, that they were holding occupancy rights respectively under the private land owners or under the panchayat or under the Boards and Corporations controlled by the State, but yet subsequently through the said amendment, the said classification has been created. The creation of the said classification is an invidious classification amongst the same homogeneous class of occupancy tenants, within whose domain the present petitioners fall, especially when as stated (supra), thus belong to a common genre of occupancy tenants, in whom absolute rights as owners are conferred, irrespective of theirs being tillers, either under the private landlords or under the panchayat/shamlat deh or under the Boards and Corporations owned by the Government of Haryana, who thus assume de jure ownership thereovers, on account of acquisition of rights of occupancy tenants being made. The said rights even on acquisitions thereofs being made, were not snatchable, except through the well employment of the doctrine of *eminent domain*. It appears that for shedding the supra constitutional responsibility, thus the respondents concerned, through the presently enacted legislation, have made the present expropriatory legislation, which reiteratedly is violative of the Right to Property.

42. Reiteratedly also even when qua the present categories of petitioners, who are not demonstrated to be not tilling the lands, rather therebys the status of occupancy tenants has been accorded, but irrespective of the fact that they are not recorded as occupancy tenants, rather when their statutory rights as occupancy tenants over the disputed lands accrue to them on customary norms. Resultantly therebys when by the apposite statutory declaration, they are deemed to be occupancy tenants, with all concomitant

rights, as are endowed to occupancy tenants as defined in the Act of 1952. Therefore, the said endowed status to the present categories of petitioners, wherebys the lands tilled by them become saved from vestment, rather could not be arbitrarily snatched from them, as has been done through the making of the present legislation.

43. Be that as it may, since there has been an evident truncation and snatching of the absolute rights conferred by the supra statutory declaration, vis-a-vis the present petitioners, therebys also the impugned amendment is constitutionally void. Moreover, reiteratedly it also remains unclothed with the constitutional immunity, as it is not maneuvered towards bringing agrarian reforms. Predominantly also when the present petitioners are the tillers over the subject lands, and, when qua such tillers, there are expositions of law that their rights, as tillers but being unamenable to be snatched, as they are directly linked to the soil, wherebys they are not intermediaries, nor when therebys they come within the expression of acquirable 'estate', as defined in clause (a) of sub-Article (2) of Article 31-A of the Constitution of India, nor when their rights as occupancy tenants upon the present petitioners are amenable to be snatched. Resultantly, the snatching of the said rights, and, also the executive declaration of voidness of sale deeds entered inter se the present petitioners and their vendees, rather is a concept unknown to the constitutional right of property, and, also is unknown to the norm, that the substantial/vested rights conferred under the previous legislation, but are unsnatchable, through the present legislation becoming assigned a retrospective effect.

44. The provisions of clauses (a) and (b) of Section 2 and the provisions of Section 3 of the Punjab Abolition of Ala Malikiyat and Talukdari Rights Act, 1952 become extracted hereinafter.

> *"**2. Definitions:** In this Act, unless the context otherwise requires-*
>
> *(a) adna malik means, in the case of land in which the proprietary rights are divided between superior and inferior owners, the inferior owner.*
>
> *"ala malik" means in the case of land in which the proprietary rights are divided between superior and inferior owners, the superior owner and includes talukdar; "*
>
> ***3. Abolition of rights of ala-maliks and vesting of full proprietary rights in adna maliks:***
>
> *Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, except as otherwise provided in this Act-*
>
> *(a) all rights, title an interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of an ala malik in the land held under him by an adna malik shall be deemed to have been extinguished as from 15th June 1952; and full proprietary rights shall be deemed to have vested in the adna malik free from all encumbrances,*
>
> *(b) the ala malik shall cease to have any right to collect or receive any rent or customary due in respect of such land; provided that the extinguishment of the right of the ala malik as aforesaid shall not affect his rights to receive compensation in accordance with this Act."*

45. On 19.3.2024, this Court made a decision on CWP No. 13864 of 2012 along with a bunch of petitions. The relevant paragraphs of the said judgment become extracted hereinafter.

> *" x x x x*
>
> ***Grounds of challenge***
>
> *3. The learned counsels appearing for the petitioners/land owners in the writ petitions (supra) make a joint submission, that the said Act is contrary to the provisions of Article 300-A of the Constitution of India. They fortified the said submission through canvassing, that unless adequate compensation thereunders became determined, therebys the Act (supra), thus breaches the mandate of Article 300-A of the Constitution of India, and, as such is required to be declared ultra vires the said constitutional provision. In other words they submit that, since the Act (supra), but snatches the right,*

title and interest of the landlords over the disputed lands, and, vests such rights in the respondents concerned, who become entered in the revenue records with status' (supra), thereby the Act (supra) rather is expropriatory, and, is required to be declared as ultra vires the Constitution. Therefore, the same is required to be quashed, and, set aside.

4. They further submit, that the Act (supra) when is not oriented towards therebys it making agrarian reforms, resultantly it also does not enjoy the constitutional immunity as enshrined in Article 31-A of the Constitution. It is further submitted, that despite the Statement of Objects and Reasons, which becomes extracted hereinafter, and, as becomes enunciated in the bill, which became introduced in the State Legislative Assembly concerned, and, which became successfully passed, whereafter it received assent from the constitutional authority concerned, yet it is argued, that the said Statement of Objects and Reasons are colorable, and, thereby they do not foist any constitutional immunity to the Act (supra) from the constitutional mandate, enshrined in Article 31-A of the Constitution, whereunders excepting those legislative mechanisms rather bringing agrarian reforms, thus the rights to property, but cannot be snatched by the State, except through makings assessment of adequate, and, reasonable compensation.

STATEMENT OF OBJECTS AND REASONS

The object and purpose of the Bill, is to vest proprietary rights in Dohlidars or Butimars or Bhondodars and Muqararidars or any other similar category of persons to be notified by the State Government at a later date. Even though these persons have been cultivating these lands for several generations, they are not able to sell, alienate, lease or mortgage such land or raise loans from financial institutions, resulting in undue hardship to their families. Persons belonging to these categories have been rendering services to their community and retaining the land for subsistence but they are not absolute owners of land, compounding their misery.

Most of these Dohlidars, Butimars, Bhondedars and Muqararidars are small or marginal farmers. In order to mitigate the misery of their indigent families, it has been thought fit to vest them with proprietary rights of land of which they are the actual tillers. These special category of persons have been retaining this land for many generations, so the land under their cultivation is in the form of grant in perpetuity. Since they had not been paying any rent to the landowners and they had made vast improvement to these holdings by clearing the jungles and levelling the undulated terrains, it has been felt that a token compensation would meet the ends of justice. To confer proprietary rights on Dohlidars, Butimars, Bhondedars and Muqararidars and to provide for payment of token compensation to the landowners whose rights are extinguished and

for certain consequential and incidental matters, this legislative measure of agrarian reforms is being proposed.]

5. The provisions of Articles 31-A and 300-A of the Constitution are extracted hereinafter.

31A. Saving of laws providing for acquisition of estates, etc.

(1)Notwithstanding anything contained in article 13, no law providing for

(a) the acquisition by the State of any estate or of any rights therein or the extinguishments or modification of any such rights, or

(b) the taking over of the management of any property by the Stale for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

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]:

Provided that where such law is a law 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:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article,-

(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has

in the existing law relating to land tenures in force in that area and shall also include-

(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, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

"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."

6. In CWP-13864-2012, there has been a reference to the definition of Dohildar, to the definition of Butemar, to the definition of Bhondedar, and, to the definition of Muqararidar. The said definitions, as become assigned to the terms (supra) are respectively extracted hereinafter.

Dholidar:- *It is a kind of tenant within the meaning of section 4 (5) of the Punjab Tenancy Act. His status does not differ from that of a tenant (Baba Nand Ram Chela Parag V. Gram Panchayat village Malkos 1976 PLJ 586: 1976 RLR 645). Section 4 (3) (a) of Punjab village Common Lands Act has saved the possession of dholidars over a part of shamlat deh and accorded a status similar to that of an occupancy tenant. Henceforth, a dholidar shall be an occupancy tenant of the shamlat deh vested or deemed to have vested in Panchayat "Amar Nath V. Gram Panchayat 1967 CurLJ 548. Dholidar is a trustee who is entitled to retain its possession but has no power to alienate by means of sale, mortgage or gift 1993 PLJ 437."*

BUTEMAR*:-Butemar is a kind of tenant who clears jungle and brings the land under cultivation and he exercises the followings rights:-*

(a) He cannot be ejected as long as he exercises to cultivate.

(b) His occupancy rights is pertitalle in the direct line.

(c) He can cut self agricultural purposes. timber grown for

(d) He can build houses, but if he vacates his holding he removes only the material he has paid for himself.

(e) He can generally sink kacha well but not a pucca well without his landlord's permission.

(f) He can temporarily but not permanently be some person who broke waste land are also called Butemars.

***Bhonda and Bhondedar**:-Bhondedar is a grant of few bighas of land for some secular service such as duties of village watchman or messenger. Bhondedar may be rejected on failure to fulfil conditions of his tenure, and perhaps in some cases at will of the proprietors. Bhonda is simply an old fashioned method of paying for services. Succession in Bhondedari tenancy is not heritable. The different Bhondedaries have different modes of succession.*

***Muqariridar**:- The person who is inferior in degree to a Malik Makbuza is a Muqarridar, who is regarded as having an inheritable estate in the land in the occupier from which he cannot be ousted so long as he pays the fixed quit rent to the proprietors."*

7. Consequently, it is submitted, that since the above persons who enjoy the above capacities over the disputed lands, thus make them to be not acquiring any permanent tenure over the lands in respect whereof they are entered in the relevant column of the jamabandi(s). Consequently, it is submitted, that right (supra) was a purely limited right, and, was extinguishable at the instance of the landlord, and, as such the landlord was required to be adequately compensated, thus qua his rights of reversion over the disputed lands, rather becoming extinguished by the instant statute, thus through conferment of right, title, and, interest thereovers, vis-a-vis the above categories. Therefore, it is argued, that when the said right has been snatched or expropriated, inasmuch as, without any reasonable, and, adequate compensation becoming assessed, vis-a-vis, the landlords concerned. Resultantly, it is contended, that the Act (supra) is cleverly camouflaged in the garb of Article 31-A of the Constitution.

Submissions on behalf of the learned counsels for the respondents

8. The learned counsels for the respondent have submitted, that the proprietary rights vested in the aforesaid Act are not contrary to the basic principles of the Constitution, because these persons have been cultivating these land for several generations, yet they are not able to sell, alienate, lease or mortgage such land or raise loans from financial institutions and most of these Dohlidars etc. are small or marginal farmers. In order to mitigate the misery of their indigent families, it has been thought fit to vest them with proprietary rights over those lands whereovers they are making cultivations. These special category of persons have been retaining this land for many generations, so the land under their cultivation is in the form of grant in perpetuity. It is further contended, that since they had not been paying any rent to the landowners, and, had made vast improvements over their cultivating holdings, thus by clearing the jungles and leveling the undulated terrains, thereby it has been felt that a token compensation would meet the ends of justice. To confer proprietary rights on Dohlidars etc., and, to provide for payment of token compensation to the landowners whose rights are extinguished and for certain consequential and incidental matters,

this legislative measure by agrarian reforms, thus being made.

9. The learned counsels have further submitted, that the provisions of the Act are not contrary to the mandate of law. The owners are being given an opportunity to contest the claim reared in the petitions submitted by the respondents. It is further contended, that the provisions of the said Act are not in contravention to the fundamental right of the petitioners as contained in Article 31A of the Constitution of India. They further submit, that the provisions of the said Act are not contrary to Article 300-A of the Constitution of India, and, that the action of the Government also is not in violation of Article 300 A of the Constitution of India. It is further submitted, that these special categories of persons have been retaining those lands, for many years and they had not been paying any rent to the land owners concerned.

10. For appreciating the submissions (supra), as became addressed before this Court by the learned counsels for the petitioners, and, by the learned counsels for the respondents, it is but imperative to extract the provisions of the Act of 2011, provisions whereof are extracted hereinafter.

"1. (1) This Act may be called Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010.

(2) It extends to the whole of the State of Haryana.

(3) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint.

(4) This Act shall be applicable to Dohlidar, Butimar, Bhondedar, Muqararidar or any other similar class or category of persons which the State Government may notify in the Official Gazette.

2. In this Act, unless the context otherwise requires,-

(a) "appointed day" means in relation to Dohlidar, Butimar, Bhondedar or Muqararidar, recorded as such in revenue record for more than twenty years, the day on which this Act comes into force and in other cases where twenty years have not yet been completed and such person is recorded as Dohlidar, Butimar, Bhondedar or Muqararidar on or before the date of commencement of this Act, the day on which the person fulfils the condition of twenty years;

(b) "Collector" means the Collector of the district in which the land, in respect of which such rights are vested in a Dohlidar, Butimar, Bhondedar or Muqararidar under this Act, is situated and includes any officer not below the rank of an Assistant Collector of the First Grade specially empowered by the State Government to perform the duties of a Collector under this Act;

(c) "Commissioner" means the Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);

(d) "Dohlidar, Butimar, Bhondedar or Muqararidar" means a

person who has been recorded as such in the revenue record and includes his predecessor and successor in interest;

(e) "Financial Commissioner" means the Financial Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);

(f) "land" means land which is occupied by a Dohlidar, Butimar, Bhondedar or Muqararidar and given to him by landlord in lieu of services rendered and includes the sites of buildings and other structures on such land;

(g) "landowner" means a person under whom a Dohlidar, Butimar,· Bhondedar or Muqararidar holds land and includes his predecessors and successors;

(h) "State Government" means the Government of the State of Haryana the Administrative Department.

3. Notwithstanding anything to the contrary contained in any other law, custom, usage or deed for the time being in force, on and from the appointed day-

(a) all rights, title and interest including the contingent interest, if any, recognized by any law, custom, usage or deed for the time being in force with respect to the land and vested in the landowner shall be extinguished, and such rights, title and interest shall vest in the Dohlidar, Butimar, Bhondedar or Muqararidar or any other similar class or category of persons, which the State Government has notified in the official Gazette, under whose occupation the land is, free from all encumbrances, if any, created by the landowner;

(b) the landowner shall cease to have any right to collect or receive any rent or service in respect of such land.

4. (1) Any landowner whose rights have been extinguished under section 3 may, within twelve months from the appointed day, apply to the Collector, in such form, as may be prescribed, for the compensation payable to the landowner by the Dohlidar, Butimar, Bhondedar or Muqararidar:

Provided that the Collector may entertain the application after the expiry of the said period of twelve months if he is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

(2) On receipt of an application under Sub-section (1), the Collector shall issue notice to the parties concerned and after giving the parties an opportunity of being beard and after making such enquiry, as may be prescribed, shall make an awltd,for compensation payable at the rate of Five hundred rupees per acre by the Dohlidat, Butimar, Bhondedar or Muqararidar to the landowner.

(3) Where there is any dispute as to the person or persons who are entitled to the compensation, the Collector shall decide such

dispute and if the, collector finds that more than one person is entitled to compensation, he shall' apportion the, amount thereof amongst such persons.

(4) Where the compensation is payable to a minor or to a person having a limited interest the Collector may make such arrangements as may be equitable having regard to the interest of the minor or the person concerned.

(5) The Dohlidar, Butimar, Bhondedar or Muqararidar shall be liable to pay the compensation in lump sum.

(6) If the Dohlidar, Butimar, Bhondedar or Muqararidar fails to deposit the compensation within two months of the receipt of the award announced by the collector, the land shall vest in the landowner.

(7) If the land is subject to a mortgage at the time of payment of compensation, the land shall pass to the Dohlidar, Butimar, Bhondedar or Muqararidar unencumbered by the mortgage or charge but the mortgage debt shall be a charge on the compensation payable.

(8) If there is no such charge as aforesaid, the Collector, shall subject to any directions which he may receive from any court, pay the compensation to the landowner.

(9) If there is such a charge, the Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the compensation as is required for the purpose and pay the balance, if any, to the landowner, or retain the compensation pending the decision of civil court as to the person or persons entitled thereto.

5. An appeal shall lie from an original or appellate order made under this Act as follows, namely:-

(a) any order made by the Collector to the Commissioner; and

(b) any order of the Commissioner to the Financial Commissioner:

Provided that when an original order is confirmed on first appeal, a further appeal shall not lie.

6. The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against and shall be as follows, namely:-

(a) when the appeal lies to the Commissioner sixty days; and

(b) when the appeal lies to the Financial Commissioner ninety days.

7. (1) The Collector, Commissioner or Financial Commissioner may either on his own motion or on the application made within ninety days by the party interested, review and on such review. modify, reverse or confirm any order passed by himself or by any of his predecessors in office:

(a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, he shall first obtain the

sanction of the officer under whose control he is immediately subject to;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the concerned officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed,

(2) An appeal shall not lie from an order refusing to review, or conforming on review, a previous order.

8. (1) The Financial Commissioner may at any time call for the record of any case pending before ,or disposed of by any officer subordinate to him.

(2) A Commissioner may call for the record of any case pending before, or disposed of by the Collector under his control.

(3) If in any case in which a Commissioner has called for a record and he is of opinion that the proceedings taken or the order made should be modified or reversed, he shall submit the record with his opinion on the case for the orders of the Financial Commissioner.

(4) If, after examining the record called for by him under Sub-section (1) or submitted to him under Sub-section (3), the Financial Commissioner is of opinion that it is inexpedient to interfere with the proceedings or the order, he shall pass an order accordingly.

(5) If, after examining the record, the Financial Commissioner is of opinion that it is expedient to interfere with the proceedings or the order on any ground on which the High Court in the exercise of its revisional jurisdiction may under the law for the time being in force interfere with the proceedings or an order or decree of a civil court, he shall fix a day for hearing the case, and may, on that or any subsequent day to which he may adjourn the hearing or which he may appoint in this behalf, pass such order as he thinks fit in the case.

(6) Except when the Financial Commissioner fixes, under Sub-section (5), a day for hearing the case, no party has any right to be heard before the Financial Commissioner while exercising his powers under this section.

9. Notwithstanding anything contained in any contract or in any law for the time being in force ,no claim or liability whether under any decree or order of a civil court or otherwise, enforceable against a landowner for any money which is charged on, or is secured by a

mortgage of, any land held by a Dohlidar, Butimar, Bhondedar or Muqararidar, shall be enforceable against the said land.

10. Save as otherwise expressly provided in this Act, every order made by the Collector, Commissioner or Financial Commissioner shall be final and no proceeding or order taken or made under this Act, shall be called in question by any court or before any officer or authority.

11. No prosecution, suit or other legal proceeding shall lie against the State Government or any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

12. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions or give such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

13. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form and manner in which an application for compensation may be made by the landowner;

(b) the form of notice and the manner in which notices may be served under this Act;

(c) the manner in which inquiries may be held under this Act;

(d) the manner in which appeals and applications for review and revision may be filed; .

(e) any other matter which has to be or may be prescribed under this Act."

<u>Submissions on behalf of the learned Amicus Curiae</u>

11. Moreover, the learned Amicus Curiae with his insightful, and, proven wisdom, has made a valiant attempt to validate the constitutional vires of the Act (supra). The learned Amicus Curiae has drawn the attention of this Court to the Punjab Act No. X1 of 1925, whereby the Punjab Tenancy Act, 1887 became amended. He submits, that thereins the term Muqararidar has been defined, as follows:-

> *'Muqarraridar' means any person who holds land in the Attock District and who, on the date of the commencement of the Punjab Tenancy (Amendment) Act, 1925, was recorded in the revenue records as muqarraridar in respect of such land or who, after the said date was so recorded with his consent and the consent of the proprietor of such land and includes the successors in interest of a muqarraridar."*

12. He further submits, that when therebys after sub-Section 3 of said Act, Section 4 became added with the hereafter coinage.

"For the purposes of this section a muqarraridar shall be deemed to be a tenant having a right of occupancy"

13. Consequently, he submits, that when a Muqararidar has been stated thereins to be a tenant having the right of occupancy. Resultantly, he argues that when thereby in undivided Punjab, thus pre reorganization of States, taking place, the territories which now fall within the domain of the State of Haryana, also became included thereins. Therefore, the provisions (supra) did also hold operation in those parts of the said undivided Punjab, which now fall within the jurisdictional domain of the newly carved therefrom State of Haryana. In sequel, when a Muqararidar thereunders, thus has been conferred the status of an occupancy tenant. Resultantly, he submits, that since the apposite legislation, but irrespective of any descriptions being made in the relevant columns of the relevant revenue records, thus declaring a Muqararidar to be holding a limited extinguishable tenancy under his landlord, are purposeless, and, thereby the Act of 2011, only recognizes the previously conferred rights of occupancy, in a Muqararidar, and, thereby the said conferment of right, title and interest over the lands concerned, thus upon the Muqararidars, rather is neither expropriatory, nor invites theretos the mandate of Article 300-A of the Constitution.

14. The learned Amicus Curiae has also drawn the attention of this Court to the Punjab Act No. IX of 1953, which also then covering the territorial areas of the newly created therefrom State of Haryana. Resultantly, he submits, that since the Punjab Act No. IX of 1953, was introduced with the object, as stated thereins, objects whereof becomes extracted hereinafter.

> *"In March, 1949, Government appointed Land Reforms Committee to examine the tenancy legislation in force in the Punjab and to suggest ways and means to ameliorate the economic condition of tenants. One of the recommendations of that Committee was that the rights of Ala Maliks and Talukdars should, on payment of compensation, be extinguished. This recommendation was accepted by Government on the ground that Ala Maliks and Talukdars had no real connection with the land. As the Constitution in the State was under suspension last year for sometime the President enacted the Punjab Abolition of Ala Malikiyat and Talukdari Rights Act, 1951, in order to give effect to the recommendation made by the Land Reforms Committee. This Act came into force with effect from 15th June, 1952, and seeks to extinguish the rights of Ala Maliks and Talukdars on payment to them of compensation at eight times the amount of annual rent or other dues, if any, by the Adna Maliks or whether partly by the Adna Maliks or whether partly by Adna Malik and partly by Government, and vest these rights in the Adna Maliks."*

15. Moreover, when in Section 2 thereof, the term adna malik becomes defined as under:-

"(a) adna malik means, in the case of land in which the proprietary rights are divided between superior and inferior owners, the inferior owner."

16. Further, when through Section 3 thereof, there is abolition of rights of ala maliks, and, vestings of full proprietary rights in adna maliks, and, when vis-a-vis the adna maliks, there are beneficient statutory provisions engrafted respectively in Sections 4, 5 and 7 of the Act (supra). Consequently, he argues, that the Dholidars, Butimars, Bhondedars and Muqararidars, thus can be taken to be adna maliks, and, therebys the Haryana Act No. 1 of 2011 but is in furtherance of recognition of the right of "adna malik", inhering respectively in the Dholidars, Butimars, Bhondedars and Muqararidars. The learned Amicus Curiae has continued to thus submit, that the landlords if are ala maliks, and, the Dholidars, Butimars, Bhondedars and Muqararidars, rather are adna maliks, therebys when in terms of the Statement of Objects and Reasons, which becomes extracted hereinabove, the Haryana Act No. 1 of 2011, when confers proprietary rights upon the said categories, thus on the plank of theirs being adna malik, and, consequently, extinguishes the rights of the landlords, who are ala maliks, thereby when the said statute also alike the unimpugned Punjab Act No. IX of 1953, stipulates the compensatory mechanisms, vis-a-vis the ala maliks/landowners, In consequence, he submits, that when the instant Act, is thus parametria to the Punjab Act of 1953, as such, when the constitutionality of the Punjab Act of 1953 has remained unchallenged, thereupon when the said Act is constitutionally valid. Resultantly, the instant Act which is parameteria to the Punjab Act 1953, likewise also cannot be challenged, on the touchstone of its breaching, the mandate of Article 300-A of the Constitution of India, nor it can be challenged on the ground, that it is not oriented towards its bringing agrarian reforms, wherebys alone it enjoys the constitutional immunity, as enshrined in Article 31-A of the Constitution of India.

17. The learned Amicus Curiae has referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***Raja Rajinder Chand versus Mst Sukhi and others****, reported in* ***AIR 1957 SC 286.*** *He refers to para 16 of the judgment (supra), para whereof becomes extracted hereinafter. He submits, that after the Hon'ble Apex Court, drawing the distinction inter se the adna malik and ala malik, ultimately in paragraph 24, para whereof becomes extracted hereinafter, concluded that the cultivated and proprietary lands of adna maliks, as became entered in the relevant wajib-ul-arz, thus did not result in the adna malik surrendering or forfeiting his recorded rights either vis-a-vis sovereign or qua his predecessor.*

"16. Before dealing with the actual entries made, it is necessary to refer to a few more matters arising out of the settlement operations of Messrs Barnes and Lyall. The expressions 'ala-malik' and 'adna-malik' have been used often in the course of this litigation. What do those expressions mean? In Mr. Douie's Punjab Settlement Manual (1930 edition) it is stated in para 143: "Where the proprietary right is divided the superior owner is known in settlement literature as ala malik or talukdar, and the inferior owner as adna- malik..... In cases of divided ownership the proprietary profits are shared between the two classes who have an interest in the soil". How this distinction arose, so far as the record-of-rights in the Jagirs are concerned, appears from para 105 at p. 60 of Mr. Anderson's report. Mr. Anderson said:

"The first great question for decision was the status of the Raja and of the people with respect to the land, which was actually in the occupancy of the people, and next with respect to the land not in their actual occupancy, but over which they were accustomed to graze and to do certain other acts. Mr. O'Brien decided that the Raja was superior proprietor or Talukdar of all lands in his Jagir, and the occupants were constituted inferior proprietors of their own holdings and of the waste land comprised within their holdings as will be shown hereafter; be never fully considered the rights in waste outside holdings. The general grounds fir the decision may be gathered from Mr. Lyall's Settlement Report and from the orders on the Siba Summary Settlement Report, but I quote at length the principles on which Mr. O'Brien determined the status of occupants of land, not merely because it is necessary to explain here the action that he took, but also in order that the Civil Courts which have to decide questions as to proprietary rights may know on what grounds the present record was based".

Mr. Anderson then quoted the following extract from Mr. O'Brien's assessment report to explain the position:

"In places where the possession of the original occupants of land was undisturbed, they were classed as inferior proprietors; but where they had acquired their first possession on land already cultivated at a recent date, or where the cultivators had admitted the Raja's title to proprietorship during the preparation and attestation of the Jamabandis, they were recorded as tenants with or without right of occupancy as the circumstances of the case suggested.... In deciding the question old possession was respected. Where the ryots had been proved to be in undisturbed possession of the soil they have been recorded as inferior proprietors".

The same principles were followed in Nadaun: long possession with or without a patta or lease from the Raja was the test for recording the ryot as an inferior proprietor (adna- malik).

x x x x

24. We have assumed that the entries in the Wajib-ul-arz of 1899-1900 and of 1910-15 related to cultivated and proprietary lands of adna-maliks, though they were entered in a paragraph which dealt

with the rights of Government in respect of ownership of the nazul lands, jungles, unclaimed property, etc. Even on that assumption, we have come to the conclusion that the entries in the Wajib-ul-arz do not establish the claim of the appellant that there was a surrender or relinquishment of a sovereign right in favour of his predecessor."

18. He further submits, that when the claim of the appellant thereins, as ala malik over the disputed lands in the said decision, were made to succumb to the rights of adna malik (inferior landlords). Therefore, he submits, that Dholidars, Butimars, Bhondedars and Muqararidars, who were entered as cultivators over the disputed lands, and/or as adna maliks, thus were inferior land owners vis-a-vis the superior land owners, who became so declared in the column of ownership, therebys through the making of the impugned legislation, there is a recognition of said right of adna maliks over the disputed lands. Resultantly, he submits, that the said rights of adna maliks over the disputed lands, who he submits are the Dholidars, Butimars, Bhondedars and Muqararidars, thus cannot be said to succumb to the rights of the superior landlords i.e. the ala maliks, who are entered in the jamabandis, as owners of the disputed lands, nor the ala maliks have any right to resume the disputed lands. If so, he submits, that the challenged Haryana Act of 2011, is thus a measure of agrarian reforms, and, thus only countenances the rights of inferior landlords, who are the above persons, and, thereby the Haryana Act of 2011, is protected by the constitutional immunity conferred, vis-a-vis it, thus by Article 31-A of the Constitution of India.

19. The learned Amicus Curiae has referred to a decision rendered by the Hon'ble Apex Court in case titled as ***Sri Ram Ram Narain Medhi versus The State of Bombay****, reported in* ***AIR 1959 Supreme Court 459 (V 46 C 57)****. The relevant paragraphs of the judgment (supra) are extracted hereinafter.*

"31. We are, therefore, of opinion that the expression estate " had the meaning of any interest in land and it was not confined merely to the holdings of landholders of alienated lands. The expression applied not only to such " estate " holders but also to land holders and occupants of unalienated lands.

x x x x

This goes to show that an occupant holds the land under a tenure and occupancy is a species of land tenures. The provisions contained in s. 73(A) relating to the power of the State Government to restrict the right of transfer and the provisions in regard to relinquishments contained in SS. 74, 75 and 76 also point to the same conclusion. These and similar provisions go to show that occupancy is one of the varieties of land tenures and the Bombay Land Revenue Code, 1879, comes within the description of " existing laws relating to land tenures in force" in the State of Bombay within the meaning of Art. 31A (2)(a). Baden Powell has

similar observations to make in regard to these provisions in his Land Systems in British India, Vol. 1 at p. 321:-

"Nothing whatever is said in the Revenue Code about the person in possession (on his own account) being " owner " in the Western sense. He is simply called the " occupant ", and the Code says what he can do and what he cannot. The occupant may do anything he pleases to improve the land, but may not without permission do anything which diverts the holding from agricultural purposes. He has no right to mines or minerals.

These are the facts of the tenure; you may theorize on them as you please; you may say this amounts to proprietorship, or this is a dominium minus plenum; or anything else."

33. There is no doubt therefore that the Bombay Land Revenue Code, 1879, was an existing law relating to land tenures in force in Bombay at the time when the Constitution (Fourth Amendment) Act, 1955, was passed and Art. 31A in its amended form was introduced therein and the expression "estate " had a meaning given to it under s. 2(10) there, viz., " any interest in land " which comprised within its scope alienated as well as unalienated lands and covered the holdings of occupants within the meaning thereof.

x x x x

35. These instances culled out from some of the provisions of the 1948 Act go to show that the agrarian reform which was initiated by that Act was designed to achieve the very same purpose of distribution of the ownership and control of agricultural lands so as to subserve the common good and eliminate the concentration of wealth to the common detriment which purpose became more prominent when the Constitution was ushered in on January 26, 1950, and the directive principles of State Policy were enacted inter alia in Arts. 38 and 39 of the Constitution. With the advent of the Constitution these provisions contained in the 1948 Act required to be tested on the touch-stone of the fundamental rights enshrined in Part III thereof and when the Constitution (First Amendment) Act, 1951, was passed introducing Arts. 31A and 31B in the Constitution, care was taken to specify the 1948 Act in the Ninth Schedule so as to make it immune from attack on the score of any provision thereof being violative of the fundamental rights enacted in Part III of the Constitution. The 1948 Act was the second item in that schedule and was expressly saved from any attack against the constitutionality thereof by the express terms of Art. 31B.

36. The impugned Act which was passed by the State Legislature in 1956 was a further measure of agrarian reform carrying forward the intentions which had their roots in the 1948 Act. Having regard to the comparision of the various provisions of the 1948 Act and the impugned Act referred to above it could be legitimately urged that if the cognate provisions of the 1948 Act were immune from attack in regard to their constitutionality, on a parity of reasoning similar provisions contained in the impugned Act, though they made further

strides in the achievement of the objective of a socialistic pattern of society would be similarly saved. That position, however, could not obtain because whatever amendments were made by the impugned Act in the 1948 Act were future laws within the meaning of Art. 13(2) of the Constitution and required to be tested on the self-same touchstone. They would not be in terms saved by Art. 31B and would have to be scrutinized on their own merits before the courts came to the conclusion that they were enacted within the constitutional limitations. The very terms of Art. 31B envisaged that any competent legislature would have the power to repeal or amend the Acts and the Regulations specified in the 9th Schedule thereof and if any such amendment was ever made the vires of that would have to be tested. Vide Abdul Rahiman v. Vithal Arjun 59 Bom LR 579 : (AIR 1958 Bom 94)

37. That brings us back to the provisions of Art. 31A and to a consideration as to whether the impugned Act was a legislation for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights within, the meaning of sub- article (1)(a) thereof We have already held that the Bombay Land Revenue Code, 1879, was an existing law relating to land tenures in force in the State of Bombay and that the interests of occupants amongst others fell within the expression " estate " contained therein. That, however, was not enough for the petitioners and it was further contended on their behalf that even though the impugned Act may be a law in regard to an "estate" within the meaning of the definition contained in Art. 31A(2)(a) it was not law providing for the acquisition by the State of any estate or any rights therein or for the extinguishment or modification of any such rights. The impugned Act was certainly not a law for the acquisition by the State of any estate or of any rights therein because even the provisions with regard to the compulsory purchase by tenants of the land on the specified date transferred the title in those lands to the respective tenants and not to the State. There was no compulsory acquisition of any "estate " or any rights therein by the State itself and this provision could not help the respondent. The respondent, however, urged that the provisions contained in the impugned Act were enacted for the extinguishment or modification of rights in " estates " and were, therefore, saved by Art. 31A(1)(a). It was on the other hand urged by the petitioners (1) that the extinguishment or modification of any such, rights should only be in the process of the acquisition by the ,State of any estate or of any rights therein and (2) that the provisions in the impugned Act amounted to a suspension of those rights but not to an extinguishment or modification thereof We shall now proceed to examine these contentions of the petitioners.

38. Art. 31A(1)(a) talks of two distinct objects of legislation; one being the acquisition by the State of any estate or of any rights therein and the other being the extinguishment or modification of any such., rights. If the State acquires an estate or any rights

therein that acquisition would have to be a compulsory acquisition within the meaning of Art. 31(2)(A) which was also introduced in the Constitution by the Constitution (Fourth Amendment) Act, 1955, simultaneously with Art. 31A(1) thereof. There was no provision made for the transfer of the ownership of any property to the State or a Corporation owned or controlled by 'the State with the result that even though, these provisions deprived the landholders of their property they did not amount to a compulsory acquisition of the property by the State. If this part of Art. 31A(1)(a) is thus eliminated what we are left with is whether these provisions of the impugned Act provided for an extinguishment or modification of any rights in " estates ". That is a distinct concept altogether and could not be in the process of acquisition by the State of any " estate " or of any rights therein. Acceptance of the interpretation which is sought to be put upon these words by the petitioners would involve the addition of words " in the process of the acquisition by the State of any estate or of any rights therein " or " in the process of such acquisition " which according to the well known canons of construction cannot be done. If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature. There is no warrant at all, in our opinion,' for adding these words to the plain terms of Art. 31A (1)(a) and the words extinguishment or modification of any such rights must be understood in their plain grammatical sense without any limitation of the type suggested by the petitioners."

*20. The learned Amicus Curiae has thereafter referred to a judgment rendered by this Court in **CWP No. 1196 of 1980**, titled as **Baba Badri Dass versus Sh. Dharma and others.** The relevant paragraphs of the judgment (supra) are extracted hereinafter.*

"13. In Baba Nand Ram's case (1976 Pun LJ 586) (supra) the special contract conceived of by A. D. Koshal, J. in which the dohlidar undertakes not to pay any rent to the landowner but binds himself to perform certain other obligations to others, as it appears to us, is not 'a special contract' but for which he would be liable to pay rent for that land to 'that other person'. It appears to us that the service rendered by a dohlidar to institutions or persons other than the creator of the dohli, strictly speaking does not fall either within the concept of rent or within that of a tenant. The liability to pay rent to the creator of the dohli, or the latter's right to claim rent in the event of the terms of dohli not being faithfully observed, is altogether missing in the nature of the creation of the tenure. It is equally inconceivable how a validly created trust in the event of the trustee or his successors-in-interest failing or refusing to perform their duties could warrant the abolition of the trust causing

extinguishment of dohli rights or that the property reverts to the original proprietors. The observations of the Bench in Dharma's case (1976 Rev LR 641) (supra) are in the nature of obiter dicta and do not seem to have arisen on the facts of that case. We, therefore, hold that though a dohlidar is not an owner of the land as the term is well understood yet he is otherwise a landowner for the purposes of the Act. The other questions whether he is trustee or that his alienation are void ab initio do not arise in the present case, though we have our doubts about the correctness of the view in that regard taken by the Lahore High Court in Sewa Ram's case (AIR 1922 Lah 126) (supra)

14. A passing reference need be made that out of the four classes of owners mentioned to have emerged in para 175 of Douie's Settlement Manual, the ala malikan have ceased to exist and the adna malikan have come to be full proprietor. That instance of dual ownership was abolished by the Punjab Abolition of Ala Malikiyat and Talukdari Act, 1950. This obliterates classes of owners mentioned at serial numbers (a) and (c) and merged in class mentioned at serial number (b). Just two kinds of owners are prevalent now--(i) who are owners of land or their heirs and (ii) landowners on the basis of possession.

15. The concept of perpetual tenancy as conceived of in S. 8 of the Punjab Tenancy Act in the light of Ss. 5, 6 and 7 has also become non-existent on account of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. Occupancy or perpetual tenants have been made owners of the land. This Act came about to carry out agrarian reforms and to remove the intermediaries. And if the dohlidar is a perpetual tenant as conceived of in Sewa Ram's (AIR 1922 Lah 126) and Khema Nand's cases (AIR 1937 Lah 805) (supra) of the Lahore High Court followed in the cases of Bharat Dass (1973 Rev LR 280) and Baba Nand Ram (1976 Pun LJ 586) by this Court, then there is no reason why such like tenure should be allowed to exist in the fact of the aforementioned statute. The reason is obvious. The succession to occupancy tenancy was governed by S. 59 of the Punjab Tenancy Act, whereas succession to the dohli tenure is either natural or traditional. The occupancy tenure is capable of sale carrying with it a peremptory obligation to offer it in the first instance to the land-owner. There is no such obligation in the dohli tenure treating it for the moment, though no holding, that it is transferable. The occupancy tenancy rights are capable of being sold in execution of a decree against the occupancy tenant but the rights of a dohlidar are not subject to such permissible process of Court under the law as understood. Alienations made by occupancy tenants are voidable at the instances of the landowner. For these reasons, which are only some of them, we differ from the view that the dohli tenure is of a perpetual tenancy or is ever covered by the concept of tenancy at all. The view to the contrary taken by above referred to two decisions of the Lahore High Court does not appear to us to be

correct. We do not expressly follow the decisions of the Lahore High Court in Sewa Ram's case (AIR 1922 Lah 126) and Khema Nand's case (AIR 1937 Lah 805) and overrule the single Bench decisions afore-quoted taking the view based thereon on this aspect.

16. Now when the dohlidar is not a purpetual tenant as held by us, typification of the dohli tenure in Douie's Settlement Manual as an instance of malik kabza and hence that of a landowner for the purposes of the Land Revenue Act and derivatively for the purposes of the Act, appears to us crystal clear. He is a landowner because he is in possession of the land. We take the view as taken by H. R. Sodhi, J. in Mahant Sirya Nath's case (1969 Pun LJ 27) (supra) and hold that a dohli tenure is an instance of malik kabza and a dohlidar, a landowner for the purposes of the Act."

21. The learned Amicus Curiae has also referred to a decision rendered by the Hon'ble Apex Court in case titled as ***State of Kerala and another versus The Gwalior Rayon Silk Manufacturing (WVG.) Co. Ltd. etc.****, reported in* ***(1973) 2 Supreme Court Cases 713****. The relevant paragraphs of the judgment (supra) are extracted hereinafter.*

"45. Article 31A having been read down to relate to agrarian reform,rightly, if we may say so-in the feudal context of the country and the founding faith in modernisation of agriculture informed by distributive justice, the controversy in the present case demands a study of the anatomy and cardiology of the statute, not its formal structure but it-, heart beats.

46. What do we mean by agrarian reform? The genesis of the concerned constitutional amendments, and the current economic thinking must legitimately illumine the meaning, along with lexicographic aids and judicial precedents. "We must never forget it is a Constitution we are expounding." The seventies of our century pour new life into old concepts and judges must have the feel of it. So viewed, the technology of agrarian reform for a developing country which traditionally lives in its villages envisages the national programmes of transmuting rural life from feudal medievalism into equal, affluent modernism-a wide canvass overflowing mere improvement of agriculture and reform of the land system.

47. The concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganisation of the land system or distribution of land. It is intended to realise the social function of the land and includes we are merely giving, by way of illustration, a few familiar proposals of agrarian reform-creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, construction of irrigation systems and adequate drainage, making available fertilizers, fungicides and other methods of intensifying and increasing agricultural production, providing readily available means of communication and transportation, to

facilitate proper marketing of the village produce, putting up of silos, ware- houses etc. to the extent necessary for preserving produce and handling it so as to bring it conveniently within the reach of the consumers when they need it, training of village youth in modern agricultural practices with a view to maximising production and help solve social problems that are found in relation to the life of the agricultural community.The village man, his welfare, is the target.

48. Moving the first constitution Amendment Bill, the then Prime Minister, who was in a large sense the protagonist of constitution framing for the country, observed :

"Now apart from our commitment, a survey of the world today, a survey of Asia today will lead any intelligent person to see that the basic and the primary problem is the land problem today in Asia, as in India. And every day of delay adds to the. difficulties and dangers, apart from being an injustice in itself."

"..... But inevitably, in big social changes some people have to suffer. We have too think in terms of large schemes of social engineering, not petty reforms but of big schemes like that."

At the end of an extensive debate he again emphasized

"May I remind the House that this question of land reform is most intimately connected with food production. We talk about food production and grow-more-food and if there is agrarian trouble and insecurity of land tenure nobody knows what is to happen. Neither the zamindar nor the tenant can devote his energies to food production because there is instability."

This reference to the apposite parliamentary debate reveals the special significance and extensive connotation of 'agrarian reform' in its application to Indian conditions. Indeed, art. 31A(2)(iii) itself by referring to land for pasture and sites of buildings and other structures occupied by cultivators, agricultural laborers and village artisans gives clear hints of agrarian well-being being pivotal to land reform in its larger legitimate connotation. Agricultural economists have focussed attention on the need of under-developed countries to upgrade the standard of living of village communities by resort to schemes for increasing food production and reorganising the land system. The main features of the agrarian situation in India and in other like countries are the gross inequality in land ownership, the disincentives to production and the desperate backwardness of rural life. As one Latin American has stated:

"Agrarian reform ought to be an inseparable part of an agricultural policy which furthers the advance of that aspect of economic activity in harmony with overall economic development. Agrarian reform likewise pursues social and political ends congruent with economic goals, such as the cultural elevation of the peasants, their liberation from a vestiges of feudalism, their well-being, their group solidarity, and their participation in public life through the mechanism of democracy."

It is thus clear to those, who understand developmental dialectic and rural planning that agrarian reform is more humanist than mere land reform and, scientifically viewed, covers not merely abolition of intermediary tenures, zamindaris and the like but restructuring of village life itself taking in its broad embrace the socioeconomic regeneration of the rural population. The Indian Constitution is a social instrument with an economic mission and the sense and sweep of its provisions must be gathered by judicial statesmen on that seminal footing."

22. The learned Amicus Curiae has further made a reference to a decision rendered by the Hon'ble Apex Court in case titled as ***Dattatraya Govind Mahajan and others versus State of Maharashtra and another****, reported in* ***(1977) 2 Supreme Court Cases 548****. The relevant paragraphs of the judgment (supra) are extracted hereinafter.*

23. We must realise the vital role in Indian economic inde- pendence that the land question plays before approaching the constitutional issues urged before us. The caste system and religious bigotry seek sanctuary in the land system. Social status syndrome, resisting the egalitarian recipe of the Constitution, is the result of the hierarchi- cal agrarian organisation. The harijan serfdom or dalit proletarianism can never be dissolved without a radical redistribution of land ownership. Development strategies, income diffusion programmes and employment opportunities, why, even the full realisation of the social and economic potential of the 'green revolution' demand agrarian reform.

x x x x

The intimate bond between poverty and hierarchy in agrarian societies, the impact of the social framework of agriculture on the castesystem, the inhibition of feudal tenures on the productive energies of the peasantry, are subjects which have been studied by cultural anthropologists, sociologists and economists and, in consequence, the Constitution has included agrarian reform as a crucial component of the New Order.

x x x x

26. Small wonder that the framers of the Constitution were stirred by the proposition that freedom in village India become's 'free' only when the agrarian community comes into its own and this necessitates radically re-drawing the rural real estate map. A sensitized awareness of this background is essential while assessing the legal merit of the submissions made by Shri Tarkunde which has fatal potential vis-a-vis the three impugned legislations in question.

x x x x

29. I have, right at the outset, hammered home the strategic significance of land reforms in the planned development .of our resources, the restoration of the dignity and equality of the individual and the consolidation of our economic freedom. No land reforms, no social justice. And so, the framers of the Constitution, finding the fearful prospect of agrarian re-structuring being

threatened by fundamental rights' archery, decided to armour such reform programmes with the sheath of invulnerability viz., the Ninth Schedule plus Art. 3lB. Once included in this Schedule, no land reform law shall be arrowed down by use of Part III. A complete protection was the object of the 1st Amendment, and to blunt the edge of this purpose by interpretative tinker- ing with legalistic skills is to cave in or assist unwit- tingly the slowing down of the process which is the key to social transformation. The listening posts of the constitu- tional court are located, not in little grammar nor in lexicography nor even in pedantic reading of Provisos and Explanations based on vintage rules but in the profound forces which have led to the provision and in the comprehensive concern expressed in the wide language used. While any argument in Court has to be decided on a study of the meaning of the words of the statute vis-a-vis the constitutional provisions, the very great stakes of the country in agrarian legislation, which we have been at pains to emphasize, enjoin upon the Judges the need to bestow the closest circumspection in evaluating invalidatory contentions. Every presumption in favour of validity, semantics permitting, every interpretation upholding vires, possibility existing, must meet with the approval of the Court. Of course, if any of the provisions of the Act, tested by the relevant constitutional clause, admits of no reconciliation, the Act must fail though, since the Court has its functional limitation in rescuing a legislature out of its linguistic folly."

23. The learned Amicus Curiae has also referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***Indra Sawhney versus Union of India and others****, reported in* ***(2000) 1 Supreme Court Cases 168****. The relevant paragraphs of the judgment (supra) are extracted hereinafter.*

36. It is now fairly well settled, that legislative declarations of facts are not beyond judicial scrutiny in the Constitutional context of Articles 14 and 16. In Keshavananda Bharati Vs. State of Kerala [1973 (4) SCC 225], the question arose - in the context of legislative declarations made for purposes of Article 31-C whether the court was precluded from lifting the veil, examining the facts and holding such legislative declarations as invalid. The said issue was dealt with in various judgments in that case, e.g. Judgments of Ray, J. (as he then was), Palekar, Khanna, Mathew, Dwivedi,JJ, and Beg, J. and Chandrachud, J. (as they then were) (see summary at PP. 304-L to O in SCC). The learned Judges held that the Courts could lift the veil and examine the position in spite of a legislative declaration. Ray, J. (as he then was) observed:

"The Court can tear the veil to decide the real nature of the statute if the facts and circumstances warrant such a course"....."a conclusive declaration would not be permissible so as to defeat a fundamental right".

Palekar, J. said that if the legislation was merely a pretence and the

object was discrimination, the validity of the statute could be examined by the Court notwithstanding the declaration made by the Legislature and the learned Judge referred to Charles Russell vs. The Queen [(1882) 7 AC 829] and to Attorney General vs. Queen Inswane Co. [(1878) 3 AC 1090]. Khanna,J. held that the declaration could not preclude judicial scrutiny. Mathew,J. held that declarations were amenable to judicial scrutiny. If the law was passed only 'ostensibly' but was in truth and substance, one for accomplishing an unauthorised object, the Court, it was held, would be entitled to tear the veil. Beg,J.(as he then was) held that the declaration by the legislature would not preclude a judicial examination. Dwivedi, J. said that the Courts retain the power in spite of Article 31-C to determine the correctness of the declaration. Chandrachud, J. (as he then was) held that the declaration could not be utilised as a cloak to evade the law and the declaration would not preclude the jurisdiction of the Courts to examine the facts.

x x x x

42. It appears to us therefore, from what we have stated above in sub paras (a) to (g) that the Kerala Act had shut its eyes to realities and facts and it came forward with a declaration in sub-clause (a) of Section 3 which, perhaps, it was mistakenly believed was not amenable to judicial scrutiny. Unfortunately, the law is otherwise.

43. In view of the facts and circumstances, referred to above, we hold that the declaration in sub-clause (a) of section 3 made by the legislature has no factual basis in spite of the use of the words `known facts'. The facts and circumstances, on the other hand, indicate to the contrary. In our opinion, the declaration is a mere cloak and is unrelated to facts in existence. The declaration in section 3 (a) is, in addition, contrary to the principles laid down by this Court in Indira Sawhney and in Ashok Kumar Thakur. It is, therefore, violative of Articles 14 and 16(1) of the Constitution of India. Sub-clause (a) of Section 3 is, therefore, declared unconstitutional."

24. The learned Amicus Curiae has also referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***State of Gujarat versus Mirzapur Moti Kureshi Kassab Jamat and others****, reported in* ***(2005) 8 Supreme Court Cases 534****. The relevant paragraph of the judgment (supra) is extracted hereinafter.*

"71. The facts stated in the Preamble and the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the

individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved."

25. The learned Amicus Curiae has referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***Novartis AG versus Union of India and others****, reported in* ***(2013) 6 Supreme Court Cases 1****. The relevant paragraphs of the judgment (supra) are extracted hereinafter.*

"27. The best way to understand a law is to know the reason for it. In Utkal Contractors and Joinery Pvt. Ltd. and others v. State of Orissa and others[7], Justice Chinnappa Reddy, speaking for the Court, said:

"9. … A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are statement of Objects and Reasons when the Bill is presented to Parliament, the reports of committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead…" (emphasis added)

28. Again in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others[8] Justice Reddy said:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction." (emphasis added)"

Analysis of the submissions addressed before this Court by the learned Amicus Curiae, the learned counsels for the petitioners,

and, by the learned State counsel, and, the reasons for upholding the impugned legislation.

26. Dholidars, Butimars, Bhondedars and Muqararidars are in view of expostulations of law made in the judgments (supra), thus adna maliks or inferior occupancy tenants over the disputed lands, besides in terms of the provisions, as carried in the Punjab Act of 1925, wherebys the Muqararidars but are only adna maliks under the superior landlords i.e. ala maliks. Consequently, when in terms of the judgment made by the Hon'ble Apex Court in Raja Rajinder Chand's case (supra), whereby such adna maliks become declared to not succumb their cultivating rights over the disputed lands, vis-a-vis the sovereign. Therefore, therebys besides upon a reference to para 175 of Douie's Settlement Manual, whereins, the concept of ala maliks has been stated to cease to exist, and, the adna maliks have been recognized to be full proprietors. Therefore, when the concept of dual ownership became abolished by the Punjab Abolition of Ala Malikiyat and Talukdari Act, 1950 (for short 'the Punjab Act of 1950'). Resultantly when therebys only two categories of owners are prevalent now, inasmuch as owners of lands, and, owners on the basis of possession. In sequel, when it has also been declared in Douie's Settlement Manual, that a Dholi tenure is an instance of malik kabza, and, the Dholidar is the land owner for the purpose of the Land Revenue Act. In consequence, when the holistic purpose of the Punjab Act of 1950, was thus to abolish the intermediaries besides rather therebys the tiller of the land was deemed to be the full proprietor of the land tilled by him, and/or the malik kabza being the predominant factor for causing the cessation of rights of intermediaries vis-a-vis the lands tilled by the such malik kabza, who may respectively be Dholidars, Butimars, Bhondedars and Muqararidars.

27. Therefore, if the Punjab Act of 1950 caused the cessation of rights of ala maliks or intermediaries over those lands, which became tilled by the cultivators, who respectively now may be Dholidars, Butimars, Bhondedars and Muqararidars, and, who through the impugned legislation become conferred with proprietary rights over the disputed lands. In sequel, since the impugned legislation, thus alike the legislation(s) (supra), rather has caused removal of the intermediaries or caused the extinguishment of rights of ala maliks. As but a natural corollary thereto, the instant legislation when erases the ill dominance over the disputed lands of the superior owners or of the intermediaries, and, recognizes the predominant factor of the lands being tilled by Dholidars, Butimars, Bhondedars and Muqararidars, who despite holding the disputed lands since generations, and, that too without any payment of any rent, wherebys they are deemed to be holding the lands in perpetuity, yet become barred to make alienation(s) of the disputed land in any mode. Therefore, the fetter or

encumbrance upon such perpetual grants, besides as made qua the above categories, is most unjust, unfair, and, inequitable, and, as such was required to be eased or relaxed, as done through the impugned legislation.

28. Moreover, when the statute(s) (supra) abolished intermediaries, and, recognized the rights of tillers, besides when the said statutes were well calibrated towards making agrarian reforms. Therefore, the Statement of Objects and Reasons (supra), which accompanied the bill, which resulted in the assented impugned legislation becoming passed, thus makes voicing about therebys agrarian reforms becoming established. Furthermore, when in a judgment made by the Hon'ble Apex Cout in State of Gujarat's case (supra), it has been stated that the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment, and, that the said Statement of Objects and Reasons, rather constitute important factors which amongst others are to be taken into consideration by the Court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the individuals. Moreover, when it has also been delineated thereins, that the Statement of Objects and Reasons provides a mirror to the reasons for the introduction of the bill, which subsequently became assented to. Consequently, when a keen reading of the Statement of Objects and Reasons (supra) is manifestive, that therebys the impugned Act (supra), thus causing the removal of intermediaries, and, rather recognizing of rights of kabza malik who are Dholidars, Butimars, Bhondedars and Muqararidars over the disputed lands. Resultantly, when the said Statement of Objects and Reasons is clearly indicative of the legislative intent. Therefore, the legislative intent (supra) occurring in Article 31-A(2) whereby the terms any jagir, inam or muafi or other similar grant, any land held under ryotwari settlement, any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, thus become echoed, besides the expression "rights", in relation to an estate, does also become stated to include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. Paramountly when the above expressions are candidly echoed to fall within the purview of constitutional immunity assigned to the contemplations made in Article 31-A of the Constitution of India. Consequently, the impugned legislation wherebys occurs the purported snatchings of proprietary rights of ala maliks or proprietors over the disputed lands, and, concomitantly rights, titles, and, interest over the disputed lands rather become vested in the adna maliks, thus therebys enjoys constitutional immunity within the ambit of Article 31-A of the Constitution of India. Resultantly the agrarian reforms, as

effected by the impugned legislation, thus makes Article 300-A of the Constitution of India, rather to be not applicable thereto nor also if only token compensation becomes assessed, vis-a-vis the ala maliks or superior landlords, thus the said assessment of compensation is neither illusory nor expropriatory, but on the contrary, the said token compensation is both reasonable, and, sufficient. The reason for making the said conclusion is comprised in the trite factum, that since the beginning the Dholidars, Butimars, Bhondedars and Muqararidars, as adna maliks or as occupancy tenants were constantly tilling the lands, and yet they were not entitled to make alienations thereof, nor were they able to mortgage such lands or raise loans from financial institutions. Therefore, reiteratedly also the said token compensation cannot be said to be either unreasonable or arbitrary, nor it can be said to be expropriatory vis-a-vis the land owners concerned, as reiteratedly given the prolonged cultivation made over the disputed lands by the Dholidars, Butimars, Bhondedars and Muqararidars, thereby the said token compensation is deemed to be reasonable.

29. The fine constitutional purpose of agrarian reforms is achieved, through the impugned legislation, especially when a reading of the Statements of Objects and Reasons (supra) makes explicit expression of the impugned legislation being maneuvered to achieve agrarian reforms. Resultantly, when as stated (supra), the impugned legislation becomes clothed with constitutional immunity, in terms of Article 31-A of the Constitution of India, besides when thereto the provisions of Article 300-A of the Constitution of India, do not become attracted. Moreover, when the impugned legislation has dispensed with the ill workings of agro feudalism, thus detrimental to the prolonged cultivations without rent being made over the disputed lands, by the above categories of persons. As but a natural corollary thereto, the freedom from agro feudal fiefdom, as becomes bestowed, upon the above categories of persons but is necessarily a laudable agrarian reform, and, therebys the impugned legislation is required to be complemented rather than the same being declared to be ultra vires the Constitution.

Final order

30. Consequently, the vires of the impugned legislation is maintained, and, upheld. The Dholidars, Butimars, Bhondedars and Muqararidars are permitted to institute an application in terms of the impugned Act before the empowered statutory authorities, who on receiving the said application, shall proceed to in accordance with law make an order conferring proprietary rights, upon the applicants concerned, and, thereafter shall ensure that the records of rights do become accordingly updated.

31. With the afore observations, all the petitions (supra) stand disposed of.

32. The pending application(s), if any, is/are also disposed of."

46. The reasons embodied in the above paragraphs carried in the judgment (supra) passed by this Court, also become the foundation for this Court thus making the hereinabove declaration.

Final order

47. Accordingly, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed. The impugned legislation as well the consequent thereto notification are quashed, and, set aside.

48. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

March 19th, 2025
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No