SASANKA SEKHAR MAITY & ORS. ETC.

v.

UNION OF INDIA & ORS.

May 9, 1980

[Y. V. CHANDRACHUD, CJ., P. N. BHAGWATI, V. R. KRISHNA IYER, V. D. TULZAPURKAR AND A. P. SEN, JJ.]

Fixation of ceiling of agricultural holdings—Whether the provisions of Chapter IIB of the West Bengal Land Reforms Act, 1955 (Act X of 1956) inserted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) and replaced by the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972) with retrospective effect from February 15, 1971 is violative of the second proviso to Article 31A(1) of the Constitution.

In furtherance of the Directive Principles enshrined in Article 39(b), agrarian reform was undertaken in the State of West Bengal in two stages. The first was the stage of abolition of the zamindari system. The West Bengal Estates Acquisition Act, 1953 (Act I of 1954) which received the assent of the President on February 12, 1954 has been placed in the Ninth Schedule as item No. 59, was an Act to provide for the acquisition of estates of rights of intermediaries therein and of certain rights of raiyats and under-raiyats. By virtue of notification under s. 4 issued on April 14, 1955 declaring April 15, 1955 to be the date of vesting the estates and the rights of intermediaries therein, vested in the State free from all encumbrances from that date. After the extinction of the feudal system of zamindari, the big landlords became intermediaries, but by virtue of s. 6(1)(a), (c), (d), (e) and (f), they were entitled to retain land comprised in homesteads, non-agricultural land in their *khas* possession not exceeding 15 acres, agricultural lands in their *khas* possession not exceeding 25 acres, tank fisheries and land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy. Under s. 6(2) they became tenants of the State. The stage was thus set for the imposition of the ceiling on agricultural holdings.

The West Bengal Land Reforms Act, 1955 (Act X of 1956) came into force on March 31, 1956. The object and purpose of the Act as reflected in the preamble was to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein in the State. This was followed by notification issued by the State Government under s. 49 of the West Bengal Estates Acquisition Act, 1953 on April 9, 1956. As a result of the notification under s. 49 the petitioners, who were raiyats, were deemed to be intermediaries and the lands owned and possessed by them as estates and all the lands and the petitioner's rights in such lands vested in the State with effect from April 10, 1956. But the petitioner as intermediaries were permitted to retain the lands as provided for in s. 6(1).

This state of affairs continued till February 12, 1971 when the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) came into force. This was replaced in due course, by the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972) with retrospective effect from February 12, 1971. These Acts brought about a drastic change by introducing Chapter IIB for the imposition of a ceiling an agricultural holdings. As a necessary consequence the Acts deleted s. 4(3) as well as s. 6. As a

result of the deletion of s. 4(3), the right of retention of raiyats of agricultural lands to the extent of 25 acres was taken away and the deletion of s. 6(2) relieved the State of the obligation to pay market value for acquisition of the surplus land.

West Bengal Land Reforms Act, 1955 (Act X of 1956) and the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972), which introduced Chapter IIB therein with retrospective effect from February 12, 1971, have both been placed in the Ninth Schedule by the Constitution (Thirtyfourth Amendment) Act, 1974 being items 60 and 81 thereof. They have thus the immunity of Article 31B besides being fully protected under Articles 31A and 31C.

The petitioners being aggrieved by these agrarian reform challenged in these writ petitions the validity of definition of the term 'family' contained in s. 14K(c), the fixation of ceiling limits of a raiyat under s. 14M(1), the provision for lands held by the members of a family being clubbed under s. 14M(2) the avoidance of transfers by s. 14P, the fixation of a ceiling limit on orchards under s. 14O(2), the vesting of surplus land in the State under s. 14S(1), the penal consequences for failure to file a return provided for in s. 14T(4), the imposition of a restriction on transfers under s. 14U and the absence of a provision for payment of compensation for acquisition of homestead under s. 14V.

Dismissing the petitions, the Court

HELD : (1) Both Articles 31A and 31B were introduced by the Constitution (First Amendment Act) 1957 with retrospetive effect with a view to validate zamindari abolition Acts and conferred immunity from challenge in Courts. Article 31A was designed to facilitate agrarian reform as well as social control of the means of production. Article 31A reflects the intention of the Government to immunise state legislations relating to imposition of ceiling on agricultural holdings from the usual compensation required or other requirements of the fundamental rights guaranteed under Part III which are most likely to be invoked—Articles 14, 19 and 31. [1242 B—1223 C-D, F-H]

The West Bengal Land Reforms Act is a piece of social legislation for agrarian reform. The object of the legislation is to break up the concentration of ownership and control of the material resources of the community and to so distribute the same as best to subserve the common good, as enjoined by Article 39(b) of the Constitution. Having regard to the quantity of land available in the State of West Bengal, which has the next highest per capita density in the whole of the country, the ceiling limits, is reasonable and fair. For equitable distribution of the natural resources it was essential to design the Act as it is so that the surplus land is available for distribution to the landless peasantry. The Act makes available to each person of the community living below the poverty line, to some extent the minimum means of subsistence. In order, therefore, to reconcile the fundamental rights of the community as a whole with the individual rights of the more fortunate section of the community, it was fundamentally necessary to make the impugned legislation to secure to a certain extent the rights of that part of the community which is denied its legitimate share in the means of livelihood. [1224 F-H, 1225 A]

(2) The broad objectivity of any legislation relating to agrarian reform are materially four, namely, (i) to maximise the agricultural output and productivity, (ii) a fair and equitable distribution of agricultural income, (iii) increase in employment opportunities and (iv) a social or ethical order. Though the abolition of zamindari system in the State of West Bengal was an important step forward the feudal structure remained so far as the peasants were concerned. These objectives have been achieved through progressive legislation. [1225 B-C]

(3) The ceiling on agricultural holdings once fixed cannot be static unalterable for all times. The expression "any law for the time being in force", obviously refers to the law imposing a ceiling. Here, it is the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) and now the West Bengal Land Reforms (Amendment) Act, 1971 (Act XII of 1972) which introduced Chapter IIB imposing a new ceiling on agricultural holdings of raiyats. That is the law for the time being in force, and no land is being acquired by the State under s. 14L within the ceiling limits prescribed therein. [1226 A-C]

Further the second proviso to Art. 31A(1) to the "ceiling limit applicable to him", which evidently refers to the law in question and not the earlier law, that is s. 6(1) of the West Bengal Estates Acquisition Act, 1953. Both s. 4(3) and s. 6(2) of the West Bengal Land Reforms Act, 1955 stood deleted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) and thereafter by the West Bengal Land Reforms (Amendment) Act, 1972 with retrospective effect from February 12, 1971. [1226 C-D]

The ceiling limit introduced by s. 14M of the impugned Act which came into force on February 15, 1971, is the ceiling limit "under the law for the time being in force" within the meaning of the second proviso to Art. 31A(1). That being so, the provisions of Chapter IIB have the constitutional immunity of Art. 31A and cannot be challenged on the ground that they are inconsistent with, take away or abridge the fundamental rights guaranteed by Articles 14, 19(1)(f) or 31(2). Even if it were not so, they would be under the protective umbrella of Art. 31B. Indubitably, the provisions of Chapter IIB are a law related to agrarian reform and thus protected. The challenge to the validity of the Constitution (Twentyninth Amendment) Act was allowed to be raised as an additional ground in *Kesavananda Bharati* v. *State of Kerala* and the court by majority of 7 : 6 upheld the validity of the twentyninth amendment. [1227 E-G, 1228 F-G]

Kunjukutty v. *State of Kerala*, [1973] 1 S.C.R. 326 & 341, *Malankara Rubber and Products Co.* v. *State of Kerala*, [1973] 1 SCR 399 followed.

Kesavananda Bharati v. *State of Kerala*, [1973] Supp. SCR 1 referred to.

(4) When Art. 31B was introduced in the Constitution by the Constitution (First Amendment) Act, 1951, it validated retrospectively 13 Acts specified in the Ninth Schedule, which, but for this provision, were liable to be impugned under Art. 13(2). Article 31B conferred constitutional immunity to such laws (all being enactments of State Legislatures) and Parliament alone could have done so by inserting the said Article in the Constitution in exercise of its constituent power under Art. 368. In substance and reality it was constitu-

A tional device employed to protect State laws from becoming void under Art. 13(2). The language in Art. 31B is virtually lifted from Arts. 13(1) and (2) while article 13(2) invalidates legislation, which takes away or abridges the rights conferred by Part III, Art. 31B extends 'protective umbrella" to such legislation if it is included in Ninth Scheduele and, therefore, the Court will have no power to go into the constitutionality of the enactments as included in the Ninth Schedule except on the ground of want of legislative competence. [1229 C-F]

B (5) The definition of 'family' as contained in s. 14K(c) of the Act is more realistic than the definitions of this term in similar laws for imposition of ceiling on agricultural holdings enacted in other States. The definition is much wider, and far more generous and humane because it takes into consideration the existence of a widowed and divorced daughter, which is absent in other Acts. The meaning given by Explanation 1 to an adult unmarried person is an C inclusive one and it includes a daughter who has been divorced. This necessarily also includes a widowed daughter. By the proviso added to Explanation I, where such widowed daughter is the guardian of any minor son or unmarried daughter, or both, she, together with such minor son or unmarried daughter, or both, shall be deemed to be a separate family. She, therefore, is treated to be a raiyat in her own right in relation to her family and her holding is not clubbed with that of her father under s. 14M(2). The benefit provided to D a divorced daughter would, obviously, also extend to a widowed daughter. Explanation II deals with the spouse as in relation to a raiyat who is a woman, reference in Clause (c) to wife's son or daughter shall be construed as reference to the husband's son or daughter, respectively of such woman. The Legislature on a correct perspective has enlarged the definition of a family to the maximum possible extent, and provides for as many as nine members. [1230 H, 1231 A-C]

E The marginal cases wherein normally in the family of a raiyat he has his parents to maintain would be very few. Normally, the father of a raiyat would have his separate holding and would be entitled to a separate ceiling area of his own determined under s. 14M. The Legislature had to draw a line somewhere. By s. 14M(2)(b) it provided for augmenting of the holding of a raiyat to the extent of 7.0 standard hectares by taking into account five F plus four, that is, nine members. [1231 C-E]

(6) The creation of an artificial concept of family and making provision for the clubbing together of land holding of each member of the family are not violative of the second proviso to Art. 31A(1), and even if they were, protected by Art. 31B. This had necessarily to be done for achieving the purpose and object of the legislation, that is, imposition of a ceiling on G agricultural holding. The provisions of Chapter IIB in the Act are a law for imposition of ceiling on agricultural holdings of raiyats and are not a law for enlargement of such holdings, that is, these put a limit on the maximum limit of a holding of a raiyat. The Act adopts the individual as the unit and not the family and allows for augmentation of his holding depending upon the H normal concept of a family. [1231 E-G]

(7) There is no question of conferral of any new rights of minor son or unmarried daughter, as they would be included in the father's family, who

would get a much larger ceiling of 5 to 7 standard hectares, depending upon the number of children that he has. Nothing prevents a minor son or the unmarried daughter of a raiyat, like his parents, from acquiring property of their own subsequently by inheritance or transfer. It is difficult to envisage a family consisting of 18 members in present times. Nor can the Legislature be expected to provide for all contingencies because according to s. 14M(b) the raiyat would be entitled to retain no more than 7 standard hectares, that is, 5 standard hectares for his family up to 5 members and 5.50 standard hectares per head for four other members. The extent of the holdings on which ceiling is fixed varies depending upon whether it is an irrigated area or any other area. There is no arbitrariness and indeed there is no substantial decrease in the limit. One standard hectare is equivalent to 2.47 acres. The ceiling limits, therefore, work out to 6.18 acres in the case of an individual, and 12.35 to 17.29 acres of irrigated land, in the case of a family, which, in the Gangetic plains of West Bengal, is not small by any standard. In other areas, the ceiling limit varies from 8.64 to 24.2 acres. According to agro-economists, an economic holding is of 5 to 7 acres. [1232 A-C, E-F, 1233 G-H, 1234 A-B]

It is not possible to lay down a ceiling standard or prescribe one limit in terms of fixed acreage for general application throughout the country. The productivity of land is not the same in all areas, due allowance has to be made for varying local conditions. As per the suggestions made by the four Five-Year Plans and the Congress Agrarian Reforms Committee, the ceiling limits were mainly prescribed. Some States put a ceiling limit on the holding of an individual owner while the others imposed a ceiling on family holding. In the States where a ceiling was imposed on individual holding there was greater scope for *mala fide* transfers than where the ceiling was imposed on the aggregate area held by all the members of the family. In the latter case there was no inducement to effect transfers between the members of the family as their share had already been given due recognition. [1234 B-E)

(8) The fixation of a back date is a usual legislative device to prevent avoidance of change brought about by law. The date mentioned in s. 14 does bear a reasonable nexus with the object or purpose of the legislation. The West Bengal Land Reforms (Amendment) Act, 1971 while inserting Chapter II B enacted s. 14P providing that in determining the ceiling area of a raiyat any transfer effected by sale, gift or otherwise or by a partition by him after August 7, 1969 and before February 8, 1971, i.e., the date of publication of the Act in the official Gazette shall not be taken into account and the land shall be deemed to form part of the holding of the raiyat. By a legal fiction, such transfers were presumed to be *mala fide* as they were calculated to defeat the ceiling law. [1235 D-F]

The West Bengal Land Reforms (Second Amendment) Bill, 1969 was published in the official Gazette on that date. Though the amendment primarily related to re-assessment of revenue, the concept of "family" was first sought to be introduced in the West Bengal Land Reforms Act by that amendment. The land-holders, therefore, had a fore-warning that the concept of family may come into play in the determination of ceiling area of land. Prior to the said amendment, the proposed legislation ceiling adopted individual as a unit and not the family. Unless a date-line is fixed in the matter of ceiling or similar agrarian reforms, the very purpose of the legislation would be frustrated. The scope and

A effect of s. 14P are that all agriculture lands transferred after August 7, 1969 shall be taken into account in computing the ceiling of the raiyat. The effect was that the ceiling virtually imposed treating the family as the unit in s. 14M (2) was given a retrospective effect by s. 14P with effect from August 7, 1969. [1235 G-H, 1236 A-B]

(9) Section 14U provides that except where he is permitted, in writing, by B the Revenue Officer so to do, a raiyat owning land in excess of the ceiling area applicable to him under s. 14M, shall not, after the publication of the Act in the official Gazette, i.e., February 8, 1971, transfer, by sale, gift or otherwise or make any partition of any land owned by him or any part thereof until the excess land which is to vest in the State under s. 14S, has been determined and taken possession of by or on behalf of the State. Such provisions are to be found in all the Acts passed by different States relating to imposition of ceiling C on agricultural land and indeed they are essential for implementing the scheme of the Act. [1236 B-D]

In acutal implementation, the provision of these Acts were circumvented to a large extent by the making of fraudulent transfers. Transfers of rights in land could be effected by one of several ways such as sale, mortgage, gift and exchange. The Act by s. 14P provides that transfers effected before the date of D publication of the Act and after August 7, 1969 shall not be taken into consideration. The legislature fixed August 7, 1969 as the date from which all such transfers or partitions shall be deemed to have been effected with the intention of defeating the law. Such transfers were presumed to be *mala fide* as they had taken place in anticipation of the enactment and, therefore, liable to be ignored. As the ceiling was fixed for each individual raiyat and not the family, as a unit, there was practically no limit to the amount of land that could be held E by a family in this way, and therefore, the legislature had to insert s. 14M(2) for their shares to be clubbed together. There were plenty of reasons to believe that splitting of big holdings between members of the family had taken place on considerable scale in anticipation of the legislation. [1236 D-G]

(10) There is no absolute bar under section 14U against transfers till the determination of the ceiling area under s. 14M. As regards s. 14U the fundamental right to acquire, hold and dispose of property guaranteed under Art. F 19(1)(f) was subject to the right of the State to impose reasonable restrictions under Art. 19(6). The legislature was fully competent to lay down the maximum limit on an agricultural holding and make ancillary provisions to make the law effective by avoidance of transfers. These provisions contained in s. 14P and s. 14U are without which the whole object of enacting Chapter II B for the imposition of a ceiling on agricultural holdings would have been completely G frustrated. [1236 G-H, 1237 A-B]

(11) The expression "agricultural land" is wide enough to include an orchard. Therefore an orchard as defined in s. 14O(2) does not come within the definition of land in s. 2(7). Any contrary construction would imply that there would be no ceiling on agricultural holdings in large tracts of land in the district of Malda which is famous for its mango orchards. The legislature by enacting s. 14O(2) treats the land comprised in orchards as falling within the H purview of s. 14M, but having regard to the fact that there is a sufficient cluster of fruit-bearing trees in an orchard, which precludes the utilisation of the land comprised therein or substantial portion thereof for effective cultivation,

allows an additional area of 2 standard hectares for each raiyat. There is nothing wrong in the provision contained in s. 14O(2). On the contrary, it is a very reasonable provision. [1237 G-H, 1238 A-C]

(12) Section 14V provides that compensation for vesting of any land in the State under the provisions of Chapter IIB shall be determined on the principles and in the manner as specified in Chapter III of the West Bengal Estate Acquisition Act, 1953. The absence of a provision for payment of compensation in respect of orchards in Chapter III of the West Bengal Estates Acquisition Act, 1953 does not mean that no compensation is to be determined or is not payable under s. 14V. In such a case, the general provisions relating to payment of compensation in respect of acquisition of land will apply. The principle on which, and the manner in which, compensation is to be determined and given are set out in ss. 16 and 17. Section 16 provides for computation the net annual income of land. Section 17 provides that the amount of compensation shall be a multiple of the net annual income, the multiple depending upon the extent of income. The multiple ranges from two to twenty times. The compensation has to be calculated according to the graded scale in the table given in s. 17. [1238 E, H, 1239 A-B]

Where the legislature has laid down the principles for computation, the amount of compensation is not justiciable after the Fourth Amendment. It cannot be asserted that compensation payable for acquisition of land comprised in orchards in excess of the ceiling limit in s. 140(2), according to the provisions of s. 14V is illusory. Where the law provides for payment of compensation as much as twenty times the annual income, it is virtually the capitalised value. The petitioners who own orchards would, therefore, get much more as the income derived by them would be greater than the raiyats holding land in excess of the ceiling limit in s. 14M(2). [1239 B-D]

(13) The definition of 'land' as contained in s. 2(7) is an inclusive one and it means agricultural land other than land comprised in a tea-garden and includes homestead but does not include tank. Therefore, the provisions of Chapter IIB shall apply where the homestead is included in the record of rights as forming part of an agricultural holding. Agricultural holding or a raiyat includes his homestead and the raiyat can retain land including homestead under s. 14M(1) up to 7 standard hectares in irrigated area and 8.9 standard hectares in unirrigated areas. A raiyat would be entitled to get compensation under s. 14B according to the principles specified in Chapter III of the West Bengal Estates Acquisition Act, 1953. [1239 D-F]

(14) Raiyats are entitled to retain the homestead, Normally raiyats would not be affected as they would be allowed to retain their homesteads as falling within the ceiling limits allowed under s. 14M. [1239 G-H]

Provisions have been made in s. 16(1)(a) of the Estates Acquisition Act and also in Rule 15(b) and (d) of the West Bengal Estates Acquisition Rules, 1954 to provide the procedure for arriving at the compensation for any homestead if such homestead falls within the category of agricultural land, i.e., where it is so entered in the record of rights as part of agricultural holding of a raiyat. If a homestead is entered in the record of rights as non-agricultural land or as a part of a non-agricultural holding, it does not come within the purview of the Act, and, therefore, the question of vesting of such homestead does not arise. A raiyat is within his rights to retain land upto the ceiling limit applicable to

A him in accordance with s. 14M and s. 14T. Thus a raiyat is at liberty to retain his homestead and not to allow it to be vested in or acquired by the State under the Act. It is expected that normally raiyats would retain their homesteads and, therefore, the question of ousting them from their homesteads does not arise at all. In other cases, where raiyats willingly give up their homestead to be vested in the State, i.e., to be acquired by the State, without desiring to retain the same within the ceiling area applicable to him, the question of payB ment of compensation will arise and in such cases, compensation would be computed in accordance with s. 16(1)(a)(ii) of the Estates Acquisition Act read with Rule 15(b) and (d) of the Estates Acquisition Rules. [1240 A, D, E, F-H]

(15) The power of eminent domain which is inherent in every sovereign State, must be capable of being exercised against every property held by any person in the State. Being a fundamental attribute of sovereignty of State one cannot imagine that the framers of the Constitution intended to divest the State C of that attribute by implication in the case of property owned by a private trust. Just as the property of a private trust is held subject to a law imposing a tax upon it, so also is that property subject to the eminent domain of the State. [1241 C-D]

All that s. 14M(5) provides is that land owned by a trust of endowment other than of a public nature, shall be deemed to be land owned by the beneD ficiary of the trust or endowment, and each such beneficiary shall be deemed to be a raiyat under the Act to the extent of the share of his beneficial interest in the said trust or endowment. What is of essence is the capacity in which the land is held. If a raiyat is a beneficiary of a private trust his beneficial interest consists in the offerings or income. The provision in effect prescribes that the land should be clubbed for the computation of the ceiling area under s. 14M(1). The imposition of such a ceiling would no doubt reduce E the holding of the trust but the Government has the power under s. 14O(3) to increase the ceiling area in certain cases. Where the Government is satisfied that a corporation or institution established exclusively for a charitable or religious purpose or both, for which a ceiling limit is prescribed under s. 14O(1) or a person holding any land in trust or in pursuance of any other endowment, creating a legal obligation exclusively for a purpose which charitable or reliF gious, or both, requires land, as distinct from the income of such land, for the due performance of its obligation, it may having regard to all the circumstances of the case, increase the ceiling area for such corporation or institution or person to such extent as it may deem fit. The legislature has, threfore, provided adequate safeguards under s. 14O(3) to soften the rigour of the Act in relation to religious and charitable trusts. [1241 E-H, 1242 A]

ORIGINAL JURISDICTION : Writ Petition Nos. 111-114, 201, 208 G 738, 885 and 944 of 1979.

(Under Article 32 of the Constitution).

B. K. Datta and *S. S. Majumdar* and *Mrs. Lakshmi Arvind* for the Petitioners in WP Nos. 111-114 & 208.

D. P. Mukherjee and *A. K. Ganguli* for the Petitioners in WP H No. 944.

M. N. Phadke, Amlan Ghosh and *Mir Mohammed Asfia* for the Petitioners in WP 738.

M. N. Phadke, P. K. Sahana and *Sukumar Ghosh* for the Petitioners in WP 885. A

L. N. Sinha, Att. Genl. *S. N. Kacker, Govind Mukhoty* and *Rathin Das* for the Appearing Respondents.

P. K. Pillai for the applicant intervener in WP 208. B

The Judgment of the Court was delivered by

SEN J. In this batch of writ petitions, the main question that falls for determination, is whether the provisions of Chapter IIB of the West Bengal Land Reforms Act, 1955 (Act X of 1956) inserted by the West Bengal Land Reforms (Amendment) Art, 1971 (President's Act III of 1971), and replaced by the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972) with retrospective effect from February 15, 1971, which provide for a fixation of ceiling on agricultural holdings and for matters ancillary thereto, are violative of the second proviso to Art. 31A (1) of the Constitution. C D

The challenge in particular is to the validity of the definition of the term 'family' contained in s. 14K(c), the fixation of ceiling limits of a raiyat under s. 14M(1), the provision for lands held by the members of a family being clubbed under s. 14M(2), the avoidance of transfers by s. 14P, the fixation of a ceiling limit on orchards under s. 14O(2), the vesting of surplus land in the State under s. 14S(1), the penal consequences for failure to file a return provided for in s. 14T(4), the imposition of a restriction on transfers under s. 14U and the absence of a provision for payment of compensation for acquisition of homestead under s. 14V. E

It would be convenient to refer, in the first place, to the legislative changes brought about in the State of West Bengal in furtherance of the Directive Principles enshrined in Art. 39(b). Agrarian reform was undertaken in two stages. The first was the stage of abolition of the zamindari system. The West Bengal Estates Acquisition Act, 1953 (Act I of 1954) which received the assent of the President on February 12, 1954, and has been placed in the Ninth Schedule as item No. 59, was an Act to provide for the acquisition of estates, of rights of intermediaries therein and of certain rights of *raiyats* and under-*raiyats*. By virtue of notification under s. 4 issued on April 14, 1955 declaring April 15, 1955 to be the date of vesting, the estates and the rights of intermediaries therein, vested in the State free from all encumbrances from that date. Section 5 provided that on and from the date of vesting, the estates and the rights of intermediaries in the estates shall vest in the State free from all encum- F G H

A brances. Section 6(1) provided that, notwithstanding anything contained in ss. 4 and 5, an intermediary shall, subject to certain conditions, be entitled to retain (a) land comprised in homesteads, (c) non-agricultural land in his *khas* possession not exceeding 15 acres in area, and excluding any land retained under cl. (a), (d) agricultural land in his *khas* possession not exceeding twenty-five acres B in area, as may be chosen by him, (e) tank fisheries, and (f) land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy etc. Sub-section (2) thereof provided that, an intermediary who was entitled to retain possession of any land under sub-s. (1), shall be deemed to hold C such land directly under the State from the date of vesting as a tenant.

Chapter VI of the West Bengal Estates Acquisition Act, 1953, which provided for acquisition of interest of *raiyats* and under-*raiyats,* however, did not come into force on the publication of the notification under s. 4 for the acquisition of estates and the rights D of the intermediaries therein with effect from April 15, 1955. That was because s. 49 provided that this Chapter was to come into force on such date as the Government may by notification appoint. By s. 52 it was provided that on the issue of a notification under s. 49, the provisions of Chapters II, III, V and VII were to apply, with such modification as may be necessary, *mutatis mutandis* to *raiyats* E and under-*raiyats* as if such *raiyats* and under-*raiyats* were intermediaries and land held by them were estates. After the extinction of the feudal system of zamindari, the big landlords became intermediaries, but by virtue of s. 6(1)(a), (c), (d), (e) and (f), they were entitled to retain land comprised in homesteads, non-agricultural land in their *khas* possession not exceeding 15, acres, agricultural lands in their *khas* possession not exceeding 25 acres, tank fisheries and land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy. Under s. 6(2), they became tenants of the State. The stage was thus set for the imposition of a ceiling on agricutural holdings.

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The West Bengal Land Reforms Act, 1955 (Act X of 1956) came into force on March 31, 1956. The object and purpose of the Act, as reflected in the preamble, was to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein in the State. This was followed by a Notification H issued by the State Government under s. 49 of the West Bengal Estates Acquisition Act, 1953 on April 9, 1956. As a result of the notification s. 49, the petitioners who are *raiyats,* were deemed to

be 'intermediaries' and the lands owned and possessed by them as estates, and all the lands and the petitioners' rights in such lands vested in the State with effect from April 10, 1956. But the petitioners as intermediaries were permitted to retain the lands as provided for in s. 6(1). A

This state of affairs continued till February 12, 1971, when the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) came into force. This was replaced in due course, by the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972) with retrospective effect from February 12, 1971. These Acts brought about a drastic change by introducing Chapter II B for the imposition of a ceiling on agricultural holdings. As a necessary consequence the Acts deleted s. 4(3) as well as s. 6. As a result of the deletion of s. 4(3), the right of retention of *raiyats* of agricultural lands to the extent of 25 acres was taken away and the deletion of s. 6(2) relieved the State of the obligation to pay market value for acquisition of the surplus land. B C D

West Bengal Land Reforms Act, 1955 (Act X of 1956) and the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972), which introduced Chapter XIB therein with retrospective effect from February 12, 1971, have both been placed in the Ninth Schedule by the Constitution (Thirtyfourth Amendment) Act, 1974 being items 60 and 81 thereof. They have thus the immunity of Art. 31B, besides being full protected under Arts. 31A and 31C. E

Learned counsel for the petitioners, however, seeks to achieve a break-through in three ways. In the first place, he contends that Art. 31A is not attracted because of the breach of the second proviso to Art. 31A(1) inasmuch as Chapter IIB provides for acquisition of land within the ceiling limits applicable to the petitioners without making provision for payment of compensation at the market value. In the second place, he argues in the alternative, that the Parliament cannot in exercise of its constituent power under Art. 368 validate a State law. Thirdly, he tries to get over Arts. 31B and 31C on the ground that in so far as the provisions of Chapter IIB are inconsistent with or take away or abridge the fundamental right to acquire, hold and dispose of property, they affect the 'basic structure' of the Constitution. Even if the right to property does not from a basic structure of the Constitution, he contends that Chapter IIB is bad as it offends Arts. 14 and 31. F G H

It is urged that the lowering of the ceiling area of agricultural holdings by s. 14M from 25 acres, which the petitioners as *raiyats*

A were entitled to retain under s. 4(3) of the Act, since deleted by the President's Act 3 of 1971 and Act 12 of 1972, to seven standard hectares, in the case of a *raiyat* having a family consisting of more than five members infringes Arts. 14, 19(1)(f) and 31(2) of the constitution. The submission is that such lowering of the ceiling B area, in the case of a *raiyat,* is tantamount to acquisition of land, within the ceiling limits applicable to him and, therefore, s. 14V of the Act which provides for payment of compensation according to the provisions contained in Chapter III of the West Bengal Estates Acquisition Act, 1953, and not for payment of compensation at a rate equivalent to the market value thereof, offends against the second C proviso to Art. 31A(1).

Various other questions are also raised viz., the artificial definition of family contained in s. 14K(c) bears no reasonable *nexus* with the traditional concept of a family in West Bengal. The acquisition of orchards as defined in s. 14K(e), for which a ceiling area D is fixed at 2.0 standard hectares by s. 140(2) is *ultra vires* the State Legislature as orchards cannot be treated as land as defined in s. 2(7). The taking away of homesteads, which the petitioners were entitled to retain under s. 6(1) of the West Bengal Estates Acquisition Act without making any provision for payment of market value E thereof deprives them of property without payment of compensation in violation of Art. 31(2). The provisions of s. 14P which provide that in determining the ceiling area any transfer effected by sale, gift or otherwise or by a partition by a *raiyat* after August 7, 1969, but before the date of publication in the Official Gazette of President's Act 3 of 1971, i.e., February 8, 1971 shall be taken into account as F if such land had not been transferred or partitioned, as the case may be, in effect, virtually amounts to taking away of land within the ceiling area prescribed for him by s. 14M and is thus bad.

It is further urged that the restriction on transfer of land by a *raiyat* imposed by s. 14U is an unreasonable restriction and, there- G fore, offends against Art. 19(1)(f). The validity of s. 14(5) by which property belonging to a private trust or endowment, is treated to be property belonging to the beneficiaries, i.e., *shebaits,* and each such *shebait* to be a *raiyat* to the extent of the share of his beneficial interest in the said trust or endowment, is assailed on the ground that it abridges the fundamental rights guaranteed by Art. H 26. Lastly, it is said, the fixation of a ceiling area by s. 14M, at a flat rate, irrespective of the nature and quality of the soil at 2.50 standard hectares in the case of a *raiyat,* who is an adult, unmarried

person, or the sole surviving member of a family; 5.0 standard hectares in the case of a raiyat having a family consisting of two or more members, but not more than five members, and 7.0 standard hectares in the case of a *raiyat* having a family consisting of more than five members, is wholly arbitrary, unreasonable and void.

Chaper IIB consists of ss. 14J to 14Y and bears the heading 'Ceiling on Holdings'. The scheme of this chapter is as follows: Section 14J gives to the provisions of this Chapter on over-riding effect by a *non-obstante* clause. Section 14K deals with the definition of the terms used in various sections. The expression "ceiling area" as defined in cl. (a) means the extent of land which a *raiyat* shall be entitled to own. The definition of 'charitable purpose' in cl. (b) is an inclusive one and it includes relief of the poor, medical relief or the advancement of education or of any other object of general public utility. The term 'family' is defined in cl. (c), and the expression 'irrigated area' in cl. (d). The term 'orchard' is defined in cl. (e) and the expression 'standard hectare' in cl. (f). Section 14L provides that, on and from the date of the commencement of the provisions of Chapter IIB of the Act, no *raiyat* shall be entitled to own, in the aggregate, any land in excess of the ceiling area applicable to him under s.14M.

The provisions of s. 14M lay down the ceiling area with respect to different classes of *raiyats* and it varies from 2.50 standard hectares depending on whether he is an adult unmarried person to 7.0 standard hectares, if he has a family consisting of more than five members. This again varies depending upon the nature of the land as the expression 'standard hectares' as defined in s. 14K(f) means, in relation to an agricultural land, an extent of land equivalent to 1.00 hectare in an irrigated area and 1.40 hectares in any other area. Section 14N provides for the determination of irrigated area and s. 140 provides for an appeal against such determination. Section 14P provides that in determining the ceiling area, any land which was transferred by sale, gift or otherwise or partitioned, by a raiyat after August 7, 1969, but before the date of publication in the official Gazette, of the West Bengal Land Reforms (Amendment) Act, 1971, i.e., February 8, 1971 shall be taken into account as if such land had not been transferred or partitioned, as the case may be.

The ceiling area for a co-operative society, company, co-operative farming society, Hindu undivided family of a firm, is provided for by sub-s. (1) of s. 140. Sub-section (2) thereof prescribes the ceiling area of an orchard at 2.0 standard hectares or the actual

A area comprised in such orchard whichever is the lesser. Sub-section (2A) provides that in determining a ceiling area of trust or institution of a public nature, established exclusively for a charitable or religious purpose or both, the number of its centres or branches in the State established before August 7, 1969 which do not hold any land as a raiyat shall be taken into account and B each such centre or branch shall be deemed to be a raiyat for the purpose of cl. (e) of sub-s. (1) of s. 14M, but the ceiling area of such trust or institution shall not exceed the sum total of the ceiling area of each such centre or branch and of itself. Sub-section (3) provides that, if the State Government after having regard to all the circumstances of the case, is satisfied that a corporation C or institution established exclusively for a charitable or religious purpose, or both, or a person holding any land in trust, or in pursuance of any other endowment, creating a legal obligation exclusively for a purpose which is charitable or religious, or both requires land, as distinct from the income derived from such land, for the due performance of its obligation, it may, by notification in the official D Gazette, increase the ceiling area of such corporation or institution or person to such extent as it may think fit.

Section 14R confers exemption from the provisions of s. 14M to certain classes of raiyats like a local authority or any body or authority constituted or established by or under any law for time E being in force. The vesting of land in excess of ceiling area is provided for by s. 14S, the duty of raiyat to furnish a return is enjoined by s. 14T. Section 14U interdicts that, except where he is permitted, a raiyat owning land in excess of the ceiling area applicable to him under s. 14M, shall not, after the publication in the Official Gazette, of the Act, i.e., after February 8, 1971, transfer F by sale, gift or otherwise or make a partition of land owned by him or any part thereof, untill the excess land, which is to vest in the State under s. 14S, has been determined and taken possession of by and on behalf of the State.

Section 14V lays down the mode of computation of compensation G payable for the vesting of the surplus land in the State. Section 14W provides for payment of damages for use and occupation of land in excess of the ceiling area by a raiyat if he continues to possess such land after the commencement of Chapter IIB. Section 14X bars the jurisdiction of the Civil Courts to decide or deal with any question or determine, any matter which is by or under this Chapter H required to be decided or dealt with or to be determined by Revenue Officer or other authority specified therein and no orders passed or proceedings commenced under the provisions of this

Chapter shall be called in question in any Civil Court. Section 14Y provides that if after the commencement of this Chapter, any raiyat acquires any land, whether by transfer, inheritance or otherwise, and such land, together with the land owned by him, exceeds the ceiling area applicable to him under s. 14M, the area of land which is in excess of such ceiling area shall vest in the State and all the provisions of this Chapter relating to ceiling on holding shall apply to such land. A B

The principal question for consideration in these writ petitions is, whether in view of Art. 31A of the Constitution, any of the provisions of Chapter IIB can successfully be impugned for the reason that they violate the fundamental rights of the petitioners under Arts. 14, 19(1) (f) and 31(2). C

Both Arts. 31A and 31B were introduced by the Constitution (First Amendment) Act, 1951 with retrospective effect with a view to validate zamindari abolition Acts, and confer immunity from challenge in Courts. It must be remembered that the First Amendment was by the First Parliament, i.e., by the Founding Fathers who were the members of the Constituent Assembly. They having given to the citizen the rights guaranteed by Part III of the Constitution, felt that 'primacy' must be given to certain legislations, particularly the laws relating to agrarian reform, over the enjoyment by the citizen of his fundamental rights. It was with that object that Art. 31A was designed, i.e. in order to facilitate agrarian reform as well as social control of the means of production. D E

By 1955, when the Fourth Amendment was adopted, the abolition of zamindari had been in large part accomplished throughout the country except in the state of West Bengal. There remained, and were to remain for many years, the next stage of agrarian change—the imposition of ceiling to prevent large holdings, the consolidation of fragmented holdings, and the development of village panchayats for effective village planning and management. The statement of objects and Reasons clearly brought out the intention of the Government, to immunize State legislations relating to imposition of ceiling on agricultural holdings from the usual compensation required or other requirements of the fundamental rights guaranteed under Part III, which were most likely to be invoked—Arts. 14, 19 and 31. The new Art. 31A, as revised by the Fourth Amendment in 1955 was in a sense less sweeping than the provision introduced by the First Amendment, exempting laws from the effect of only three of the fundamental rights—Arts. 14, 19 and 31, instead of the entire Part III, which contains all the rights. F G H

A The Constitution (Seventeenth Amendment) Act, 1964 made important changes in the definition of 'estates' in Art. 31A(2) in order expressly to include ryotwari interests and measures affecting all kinds of land held or let for purposes of agriculture or for purposes ancillary thereto.

B Article 31A(1), as it stands, provides that no law providing for acquisition of any estate or any rights therein or the modification or extinguishment of any such rights in an estate shall be deemed to be void on the ground that it violates the fundamental rights under Arts. 14, 19 and 31. Undoubtedly, Art. 31A is attracted when the law in question is one for agrarian reform.

C By adding a proviso to Art. 31A(1), which, it will be recalled, states that no law providing for the acquisition, modification or extinguishment of property rights of specified kinds (including acquisition of estates or modification of rights therein) 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 Arts. 14, 19 or 31, a change was D brought about. It reads :

> "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 E 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 F market value thereof."

The Act is a piece of social legislation for agrarian reform. The object of the legislation is to break up the concentration of ownership and control of the material resources of the community and to so distribute the same as best to subserve the common good, as enjoined by G Art. 39(b) of the Constitution. Having regard to the quantity of land available in the State of West Bengal, which has the highest per capita density in the whole of the country, the ceiling limits appear to be reasonable and fair. For equitable distribution of the natural resources, it was essential to design the act as it is so that the surplus land is available for distribution to the landless peasantry. The Act H makes available to each person of the community living below the poverty line, to some extent the minimum means of subsistence. In order, therefore, to reconcile the fundamental rights of the community as a

whole with the individual rights of the more fortunate section of the community, it was fundamentally necessary to make the impugned legislation to secure to a certain extent the rights of that part of the community which is denied its legitimate share in the means of livelihood. A

The broad objectives of any legislation relating to agrarian reforms are materially four viz., (1) to maximise the agricultural output and productivity, (2) a fair and equitable distribution of agricultural income, (3) increase in employment opportunities, and (4) a social or ethical order. Though the abolition of the zamindari system in the State of West Bengal was an important step forward, the feudal structure remained so far as the peasants were concerned. These objectives have been achieved through progressive legislation. B C

It is argued that sub-s. (1) of s. 6 of the West Bengal Estates Acquisition Act, 1953 imposed a ceiling on holdings, as it allowed all intermediaries to retain 25 acres of agricultural land in their *khas* possession, which became applicable to *raiyats* and under-*raiyats* who were deemed to be such intermediaries upon the issue of a notification under s. 49 on April 14, 1956. The ceiling limit thus imposed was continued by sub-s. (3) of s. 4 of the West Bengal Land reforms Act, 1955. One has to see, it is urged whether there was a law in force, i.e., a law imposing a ceiling when the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) was brought into force on February 12, 1971 or the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972) which replaced it with retrospective effect from that date. Once that test is fulfilled it is said, the second proviso to Art. 31A(1) is clearly attracted. It is, further urged that if the ceiling limit of a raiyat in respect of agricultural land under his personal cultivation is curtailed by any subsequent Act prescribing a new ceiling limit, it becomes obligatory for the State to give market value with regard to the land acquired under the new Act. D E F

The submission rests on the assumption that the expression 'any law for the time being in force', appearing in the second proviso to Art, 31A(1) must mean here in this case the West Bengal Estates Acquisition Act, 1953. Our attention is drawn to s. 52 which provides that upon the issue of a notification under s. 49, the provisions of Chapters II, III, V and VII shall, with such modifications as may be necessary, apply *mutatis mutandis* to raiyats and under-raiyats as if such raiyats and under-raiyats were intermediaries and the land held by them were estates. We are afraid, we cannot accept this line of reasoning. There is an apparent fallacy in the argument. G H

A Such a construction, if we may say so, would create a serious impediment to any kind of agrarian reform. The ceiling on agricultural holdings once fixed cannot be static, unalterable for all times. The expression 'any law for the time being in force', obviously refers to the law imposing ceiling. Here it is the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) and now the B West Bengal Land Reforms (Amendment) Act, 1971 (Act XII of 1972) which introduced Chapter IIB imposing a new ceiling on agricultural holdings of raiyats. That is the law for the time being in force, and no land is being acquired by the State under s. 14L within the ceiling limits prescribed therein.

C It will be noticed that the second proviso to Art. 31A(1) refers to the 'ceiling limit applicable to him', which evidently refers to the law in question and not earlier law, that is s. 5(1) of the West Bengal Estates Acquisition Act, 1953. It will be noticed that both s. 4(3) and s. 6(2) of the West Bengal Land Reforms Act, 1955 stood deleted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act III of 1971) and thereafter by the West Bengal Land D Reforms (Amendment) Act, 1972 with retrospective effect from February 12, 1971.

The point in controversy is no longer *res integra*. The question directly came up for consideration in *Kunjukutty* v. *State of Kerala*(1) and *Malankara Rubber and Produce Co.* v. *State of Kerala*.(2) In E *Kunjukutty's* case the Court disposed of a contention similar to that raised before us. It was urged that when the Kerala Land Reforms Act, 1963, as amended by the Kerala Land Reforms (Amendment) Act, 1969, by s. 82 reduced the ceiling limit and required surrender of the land held in excess of the limit fixed by the Amendment Act, without payment of compensation at market value, it violated the F constitutional inhibition contained in the second proviso to Art. 31A(1). In repelling the contention, it was observed :

> "It was not disputed that the ceiling limit fixed by the amended Act was within the competence of the legislature to fix; nor was it contended that the ceiling fixed by the original G unamended Act by itself debarred the legislature from further reducing the ceiling limit so fixed. Prior to the amendment undoubtedly no land within the personal cultivation of the holder under the unamended Act within the ceiling limit fixed thereby could be acquired without payment of compensation according to the market value, *but once ceiling limit was* H *changed by the amended Act, the second proviso to Art.* 31-

(1) [1973] 1 SCR 326 @ 341
[1973] 1 SCR 399.

A(1) must be held to refer only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates only within the ceiling limit fixed under the existing law, at the given time."

In *Malankara Rubber & Produce Co's* case the Court rejected a similar contention based upon the second proviso to Art. 31A(1), observing :

"'Ceiling area' is covered by s. 82. Such area with regard to unmarried persons and families fixed by the 1963 Act was cut down considerably by the Amending Act of 1969. It was.....that this was hit by the second proviso to Art. 31-A(1) inasmuch as the ceiling having once been fixed by the 1963 Act any diminution in the extent thereof would only be justified if compensation at a rate not less than the market value thereof was provided which undoubtedly is not the case here. ...The contention that reduction in the ceiling area fixed by the 1963 Act had to be compensated for by payment of market value of the difference between the ceiling areas fixed by the two Acts cannot be accepted inasmuch as the *'ceiling limit applicable to him under any law for the time being in force' in Art. 31-A can refer only to the limit imposed by the law which fixed it and not any earlier law which is amended or repealed."*

(Emphasis supplied)

This furnishes a complete answer to the contention raised on the second proviso to Art. 31A(1). The ceiling limit introduced by s. 14M of the impugned Act which came into force on February 15, 1971, is the ceiling limit "under the law for the time being in force" within the meaning of the second proviso to Art. 31A(1). That being so, the provisions of Chapter IIB have the constitutional immunity of Art. 31A and cannot be challenged on the ground that they are inconsistent with, take away or abridge the fundamental rights guaranteed by Arts.14, 19(1) (f) of 31(2). Even if it were not so, they would be under the protective umbrella of Art. 31B. Indubitably, the provisions of Chapter IIB are a law related to agrarian reform and thus protected.

It is necessary here to mention that in *Kunjukutty's case* Explanation to s. 85(1) of the Kerala Land Reforms Act, 1963 was challenged as offending the second proviso to Art. 31A(1). Under the Explanation, subject to certain exceptions, any land transferred by

A a person holding in excess of the ceiling area between certain dates, was to be regarded as held by the person for the purpose of fixing the extent of the land to be surrendered by him and such surrender was to be out of the land still held by him. The Kerala High Court struck down the said provision as offending the second proviso to Art. 31A(1) observing:

B

> "If a fiction by which land not held by a person could be taken into account for the determination of the excess land to be surrendered by him, and he could be forced to surrender land actually held by him although it is within the ceiling limit without payment of the market value thereof, were C permitted, the proviso in question could easily be rendered nugatory."

This Court upheld the decision of the High Court and observed:

> "It is clear that by virtue of the second proviso to Art. 31A(1) land within the ceiling limit is expressly protected D against acquisition by the State unless the law relating to such acquisition provides for compensation which is not less than its market value. No attempt was made to take the impugned explanation out of this constitutional inhibition. We, therefore, do not find any reason to differ from the conclusions of the High Court."

E

After the judgment of the High Court, the Kerala Land Reforms (Amendment) Act, 1971 was enacted. When this Court in *Kunjukutty's* case upheld the judgment of the High Court striking down the explanation to s. 85(1) of the Kerala Land Reforms Act, 1963, Parliament by the Constitution (Twenty-Ninth Amendment) Act, F which was assented to by the President on June 9, 1972, inserted both the Kerala Land Reforms (Amendment) Act, 1969 and the Kerala Land Reforms (Amendment) Act, 1971 in the Ninth Schedule to the Constitution. The challenge to the validity of the Constitution (Twenty-Ninth Amendment) Act was allowed to be raised as an additional ground in *Kesvananda Bharati* v. *State of Kerala*(1) and G the Court by majority of 7:6 upheld the validity of the Twenty-Ninth Amendment.

By parity of reasoning, it must follow as a necessary corollary that the West Bengal Land Reforms Act, 1955 (Act X of 1956) and the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII H of 1972) which introduced Chapter IIB therein with retrospective effect, from February 15, 1971, having been placed in the Ninth

(1) [1973] Supp. SCR 1.

schedule by the Constitution (Thirty-Fourth Amendment) Act, 1974, as items 60 and 81 thereof, their validity cannot be questioned under Art. 31B. The challenge to the constitutional validity of Art. 31-B as well as the Constitution Amending Act, whereby the concerned enactments were put in the Ninth Schedule on the ground that these violate the basic structure of features of the Constitution has been separately dealt with and hence the same need not be discussed here.

As regards the submission that Parliament cannot in exercise of of its constituent power under Art. 368 validate a State law, it seems to us that the entire submission proceeds on a mis-conception arising from failure to distinguish between a law made in exercise of legislative power and the law made in exercise of the constituent power. When Art 31-B was introduced in the Constitution by the Constitution (First Amendment) Act, 1951, it validated retrospectively 13 Acts specified in the Ninth Schedule, which, but for this provision, were liable to be impugned under Art. 13(2). Article 31-B conferred constitutional immunity to such laws (all being enactments of State Legislatures) and Parliament alone could have done so by inserting the said Article in the Constitution in exercise of its constituent power under Art. 368. In substance and reality it was a constitutional device employed to protect State laws from becoming void under Art. 13(2). It will appear clear that the language in Art. 31-B is virtually lifted from Arts. 13(1) and (2). While Art. 13(2) invalidates legislation, which takes away or abridges the rights conferred by part III, Art. 31-B extends 'protective umbrella' to such legislation if it is included in Ninth Schedule and, therefore, the Courts will have no power to go into the constitutionality of the enactments as included in the Ninth Schedule except on the ground of want of legislative competence.

The challenge to the definition of 'family' in s. 14K(c) is based on the submission that it is an artificial definition and does not take into account the concept of a family as it exists in West Bengal. The word 'family' as defined in s. 14K(c) is in these terms:

> "(C) "family", in relation to a raiyat, shall be deemed to consist of—
>
> (i) himself and his wife, minor sons, unmarried daughters, if any,
>
> (ii) his unmarried adult son, if any, who does not hold any land as a raiyat,

A (iii) his married adult son, if any, where neither such adult son nor the wife nor any minor son or unmarried daughter of such adult son holds any land as a raiyat,

(iv) widow of his predeceased son, if any, where neither
B such widow nor any minor son or unmarried daughter of such widow holds any lands as a raiyat,

(v) minor son or unmarried daughter, if any, of his predeceased son, where the widow of such predeceased son is dead and any minor son or numarried daughter of such predeceased son does not hold any land as
C raiyat,

but shall not include any other person.

Explanation I.—For the purposes of this Chapter, an adult unmarried person shall include a man or woman who has been divorced and who has not remarried thereafter :
D

Provided that where such divorced man or woman is the guardian of any minor son, or unmarried daughter, or both, he or she, together with such minor son or unmarried daughter, or both, shall be deemed to be a separate family.

E Explanation II.—References in this clause to wife, son or daughter shall, in relation to a raiyat who is a woman, be construed as references to the husband, son or daughter, respectively of such woman,"

It is argued that the definition of 'family' does not take into con-
F sideration the aged parents of a raiyat or his unmarried sisters. It is further argued that the Act suffers from the vice that, the existence of a married son is taken into consideration where neither he nor his wife or any minor son or unmarried daughter of such adult son holds land as a raiyat for the purpose of augmenting the holding of a raiyat, but where in the family of a raiyat there is a married adult son holding
G any land, even a fraction, the family is denied the benefit of his existence. In such a case the effect is the same because under s. 14M(2) the ceiling area of the raiyat is still 7.0 standard hectares. To our mind, these submissions are wholly unfounded.

The definition of 'family' as contained in s. 14K(c) of the Act, is
H more realistic than the definitions of this term in similar laws for imposition of ceiling on agricultural holdings enacted in other states. The definition is much wider, and far more generous and humane

because it takes into consideration the existence of a widowed and divorced daughter, which is absent in other Acts. The meaning given by Explanation I to an adult unmarried person is an inclusive one and it includes a daughter who has been divorced. This necessarily also includes a widowed daughter. By the proviso added to Expln. I, where such widowed daughter is the guardian of any minor son or unmarried dauhter, or both, she, together with such minor son or unmarried daughter, or both, shall be deemed to be a separate family. She, therefore, is treated to a raiyat in her own right in relation to her family and her holding is not clubbed with that of her father under s. 14M(2). The benefit provided to a divorced daughter would obviously also extend to a widowed daughter. Explanation II deals with the spouse as in relation to a raiyat who is a woman, reference in cl. (c) to wife's son or daughter, shall be construed as reference to the husband's son or daughter, respectively of such woman. The legislature on a correct perspective has enlarged the definition of a family to the maximum possible extent, and provides for as many as nine members. We fail to appreciate the submission that normally in the family of a raiyat he has his parents to maintain. Such marginal cases would be very few. Normally, the father of a raiyat would have his separate holding and would be entitled to a separate ceiling area of his own determined under s. 14M. The legislature had to draw a line somewhere. By s. 14M(2) (b) it provided for augmenting of the holding of a raiyat to the extent of 7.0 standard hectares by taking into account five plus four, i.e., nine members.

The creation of an artificial concept of family and making provision for the clubbing together of land holding of each member of the family are not violative of the second proviso to Art. 31A(1), and even if they were, they were protected by Art. 31B. This had necessarily to be done for the purpose and object of the legislation i.e., imposition of a ceiling on agricultural holdings. One is apt to forget that the provisions of Chapter IIB in the Act are a law for imposition of ceiling on agricultural holdings of raiyats and are not a law for enlargement of such holdings, i.e., these put a limit on the maximum limit of a holding of a raiyat. The Act adopts the individual as the unit and not the family and allows for augmentation of his holding depending upon the normal concept of a family.

It is, however, urged that according to the definition of family given in s. 14K(c) of a raiyat, his wife, his minor son and the unmarried daughter are included, but the adult son is not because he owns land and can form a unit by himself. According to the provisions of s. 14M(1)(a) the adult unmarried son will be entitled to retain 2.50

A standard hectares, and if married, he with his wife and children, may retain 5.0 standard hectares; but the minor son and unmarried daughter, as they are included in the father's family will not be entitled to retain any land. We are afraid, this cannot be helped. There is no question of conferral of any new rights on minor son or unmarried daughter, as they would be included in the father's family, who would get a much B larger ceiling of 5.0 to 7.0 standard hectares, depending upon the number of children that he has. Nothing prevents a minor son or the unmarried daughter of a raiyat, like his parents, from acquiring property of their own subsequently by inheritence or transfer.

C Learned counsel for the petitioners tried to highlight certain imperfections in the definition of family which he seems to imagine. To illustrate, he speaks of a family of a raiyat having his wife, three married adult sons (having no land of their own), having wives and three minor sons each and one unmarried daughter. The instance of the family given by him consists of 18 members. According to s. 14M D (2)(b), the raiyat would be entitled to retain no more than 7.0 standard hectares i.e. 5.0 standard hectares for his family up to five members and 0.50 standard hectare per head for four other members. Therefore, we are told that in this case, nine members of the family including minor sons, who have to be brought up, would be entirely deprived of the right to hold property or any land. Further, the coun- E sel urges that if the three adult sons died, the raiyat will have to maintain the minor sons of his predeceased sons, besides the unmarried daughters, of his own. The legislature cannot be expected to provide for all these exigencies. It is difficult to envisage a family consisting of 18 members in present times. Even if there are any, they would not be better off even if Chapter IIB had not been enacted.

F

Section 14M of the Act, so far as relevant, reads :

"14M. *Ceiling area*—(1) The ceiling area shall be,—

(a) in the case of a raiyat, who is an adult unmarried person, 2.50 standard hectares;

G (b) in the case of a raiyat, who is the sole surviving member of a family, 2.50 standard hectares;

(c) in the case of a raiyat having a family consisting of two or more, but not more than five members, 5.00 standard hectares;

H (d) in the case of a raiyat having a family consisting of more than five members, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of

five, so, however, that the aggregate of the ceiling area for such raiyat shall not, in any case, exceed 7.00 standard hectares;

(e) in the case of any other raiyat, 7.00 standard hectares.

(2) Notwithstanding anything contained in sub-section (1), where, in the family of a raiyat, there are more raiyats than one, the ceiling area for the raiyat, together with the ceiling area of all the other raiyats in the family shall not, in any case, exceed,—

(a) where the number of members of such family does not exceed five, 5.00 standard hectares;

(b) where such number exceeds five 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so, however, that the aggregate of the ceiling area shall not, in any case, exceed 7.00 standard hectares.

(3) For the purpose of sub-section (2), all the lands owned individually by the members of a family or jointly by some or all the members of such family shall be deemed to be owned by the raiyats in the family."

The expression 'standard hectare' is defined in s. 14K(f) as follows :—

(f) "Standard hectare" means,—

(i) in relation to an agricultural land, an extent of land equivalent to—

(i) (a) 1.00 hectare in an irrigated area,

(b) 1.40 hectares in any other area;

(ii) in relation to any land comprised in an orchard, in extent of land equivalent to 1.40 hectare."

The fixation of ceiling in case of a raiyat who is an adult unmarried or the sole surviving member of a family at 2.50 standard hectares and in case of a raiyat having a family consisting of two or more but not more than five members at 5.0 standard hectares and in the case of a raiyat having a family consisting of more than five members at 5.0 to 7.0 hectares is objected to as being wholly arbitrary and unreasonable. As already stated, the extent of the holdings on which ceiling is fixed varies depending upon whether it is an irrigated area or any other area. We fail to see any arbitrariness and indeed there is no substantial decrease in the limit. One standard hectare is

A equivalent to 2.47 acres. The ceiling limits, therefore, work out to 6.18 acres in the case of an individual, and 12.35 to 17.29 acres of irrigated land, in the case of a family, which, in the Gangetic plains of West Bengal, is not small by any standard. In other areas, the ceiling limit varies from 8.64 to 24.2 acres. According to agro-economists, an economic holding is of 5 to 7 acres.

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It is not possible to lay down a ceiling standard or prescribe one limit in terms of fixed acreage for general application throughout the country. The productivity of land is not the same in all areas, due allowance has to be made for varying local conditions. The First Five-Year C Plan suggested a ceiling limit to be fixed in terms of a multiple of a family holding. Following the recommendations of the Congress Agrarian Reforms Committee, it recommended that the ceiling limit of an individual holding should be fixed at three times the family holding(1). The Second Five-Year Plan endorsed this recommendation. Each State was to specify according to conditions of D different regions, class of soil, irrigation and the area of land which was to constitute a family holding(2). In implementation of the policy, the different States adopted different levels of ceiling and different basis for its application. Some States put a ceiling limit on the holding of an individual owner while the others imposed a ceiling on family holding. In the States where a ceiling was im- E posed on individual holding there was greater scope for *mala fide* transfers than where the ceiling was imposed on the aggregate area held by all the members of the family. In the latter case there was no inducement to effect transfers between the members of the family, as their share had already been given due recognition. But when the comparative advantages and disadvantages of the two F alternative became apparent it was too late to change the stand once taken.(3) In the Third Five-Year Plan, the Planning Commission therefore, recommended that ceiling should be either invariably to the aggregate area held by a family, rather than the individual (as many of the transfers were effected between the members of the family). G Since legislation had already been passed, in many States, imposing ceilings on individual holdings it recommended that amendments should aim primarily at eliminating deficiencies and facilities implementation rather than at introducing fundamental changes in the principles underlying the legislation. Accordingly, the amendments provided that transfers after a prescribed date should be disregarded.

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(1) First-Five Year Plan. Paras 15 & 16 Ch. XII.
(2) ndFive-Year Plan. Para 40.
(3) Third Five-Year Plan. para 26.

The dates so prescribed were invariably a date anterior to the enactment of law. In some cases it was the date of publication of the Bill, while in others an earlier date was prescribed in view of the special local conditions. The first draft of the Fourth Five-Year Plan, while endorsing the earlier view that the amendments should remove the deficiencies, rather than basically change the law, again suggested as follows :

> "As transfers take place generally between the members of a family, the States might consider the suggestion earlier made by the Panel on Land Reform (and this has already been provided in some laws), namely, to apply ceilings to the aggregate area held by all the members of a family, rather than to individual holdings, the family being defined to include husband and wife, their dependent children and grandchildren."

We may then take up the contention regarding the alleged invalidity of s. 14P and 14U. The fixation of a back-date is a usual legislative device to prevent avoidance of change brought about by law. There is no warrant for the submission that the date mentioned in s. 14P bears no reasonable nexus with the object or purpose of the legislation. The West Bengal Land Reforms (Amendment) Act, 1971, while inserting Chapter IIB enacted s. 14P providing that in determining the ceiling area of a raiyat any transfer effected by sale, gift or otherwise or by a partition by him after August 7, 1969 and before February 8, 1971, i.e., the date of publication of the Act in the Official Gazette shall not be taken into account and the land shall be deemed to form part of the holding of the raiyat. By a legal fiction, such transfers were presumed to be *mala fide* as they were calculated to defeat the ceiling law.

Learned counsel appearing for the State Government of West Bengal has filed a note explaining the reason why the date specified in s. 14P was August 7, 1969. It appears that the West Bengal Land Reforms (Second Amendment) Bill, 1969 was published in the Official Gazette on that date. Though the amendment primarily related to re-assessment of revenue, the concept of 'family' was first sought to be introduced in the West Bengal Land Reforms Act by that amendment. The land-holders, therefore, had a fore-warning that the concept of 'family' may also come into play in the determination of ceiling area of land. Prior to the said amendment, the proposed legislation in ceiling adopted individual as a unit and not the family. It needs no mention that unless a date-line is fixed in

A the matter of ceiling or similar agrarian reform, the very purpose of the legislation would be frustrated. The scope and effect of s. 14P are that all agricultural lands transferred after August 7, 1969 shall be taken into account in computing the ceiling of the raiyat. The effect was that the ceiling virtually imposed treating the family as the unit in s. 14M(2) was given a retrospective effect by s. 14P with effect from B August 7, 1969.

Section 14U provides that except where he is permitted, in writing, by the Revenue Officer so to do, a raiyat owning land in excess of the ceiling area applicable to him under s. 14M, shall not, after the publication of the Act in the official Gazette, i.e., February C 8, 1971, transfer, by sale, gift or otherwise or make any partition of any land owned by him or any part thereof until the excess land, which is to vest in the State under s. 14S, has been determined and taken possession of by or on behalf of the State. Such provisions are to be found in all the Acts passed by different States relating to imposition of ceiling on agricultural land and indeed they are essen- D tial for implementing the scheme of the Act.

It will be noticed that in actual implementation, the provisions of these Acts were circumvented to a large extent by the making of fraudulent transfers. Transfers of rights in land could be effected by one of several ways such as sale, mortgage, gift and exchange. The E Act by s. 14P provides that transfers effected before the date of publication of the Act and after August 7, 1969 shall not be taken into consideration. The legislature fixed August 7, 1969 as the date from which all such transfers or partitions shall be deemed to have been effected with the intention of defeating the law. Such transfers were presumed to be *mala fide* as they had taken place F in anticipation of the enactment and, therefore, liable to be ignored. As the ceiling was fixed for each individual raiyat and not the family, as a unit, there was practically no limit to the amount of land that could be held by a family in this way, and therefore, the legislature had to insert s. 14M(2) for their shares to be clubbed together. There were plenty of reasons to believe that splitting of G big holdings between members of the family had taken place on considerable scale in anticipation of the legislation.

As regards s. 14U, there is no absolute bar against transfers till the determination of the ceiling area under s. 14M. The fundamental right to acquire, hold and dispose of property guaranteed under H Art. 19(1)(f) was subject to the right of the State to impose reasonable restrictions under Art. 19(6). The legislature was fully competent to lay down the maximum limit of an agricultural hold-

ing and make ancillary provisions to make the law effective by avoidance of transfers. These provisions contained in s. 14P and s. 14U thus appear to be reasonable without which the whole object of enacting Chapter IIB for the imposition of a ceiling on agricultural holdings would have been completely frustrated.

It is argued that an 'orchard' as defined in s. 14K(e) does not fall within the definition of 'land' in s. 2(7), and, therefore, it could not be treated as agricultural land and hence the legislature could not have prescribed a ceiling for an orchard under s. 14O(2) by two standard hectares. Now section 14O(2) provides that where a raiyat owns land, comprised in orchard, whether or not in addition to other land, the ceiling area in relation to such raiyat shall be increased by 2.00 standard hectares or the actual area of the land comprised in orchards, whichever is the lesser. The term 'orchard' as defined in s. 14K(e) reads :

> "(e) "orchard" means a compact area of land having fruit bearing trees grown thereon in such number that they preclude; or when fully grown would preclude, a substantial part of such land from being used for any agricultural purpose;"

The word 'land' is defined in s. 2(7) as :—

> "(7) "land" means agricultural land other than land comprised in a tea-garden which is retained under sub-section (3) of section 6 of the West Bengal Estates Acquisition Act, 1953, and includes homesteads but does not include tank."

Some meaning has to be given to the words 'land comprised in orchards' appearing in s. 14O(2). For the word 'land' we have to read 'agricultural land' and that brings out the legislative intent.

It is not right to suggest that land comprised in an orchard cannot be treated as an agricultural land. The meaning of the expression 'agricultural land' as given in 'Words and Phrases Legally Defined, Vol. I, p. 61, runs thus :

> "The expression 'agricultural land' includes arable and meadow land and ground used for pastoral purposes or for market or nursery gardens, and plantations and woods and orchards...."

Thus the expression 'agricultural land' is wide enough to include an orchard. It is, therefore, futile to contend that an orchard as defined in s. 14O(2) does not come within the definition of land in s. 2(7).

A If such a construction were to be adopted, it would imply that there would be no ceiling on agricultural holdings in large tracts of land in the district of Malda which is famous for its mango orchards. The legislature by enacting s. 14O(2) treats the land comprised in orchards, as falling within the purview of s. 14M, but having regard to the fact that there is a sufficient cluster of fruit-bearing trees in an orchard, B which precludes the utilisation of the land comprised therein, or substantial portion thereof, for effective cultivation, allows an additional area of two standard hectares for each raiyat. We find nothing wrong in the provision contained in s. 14O(2). On the contrary, it appears to be a very reasonable provision.

C It is argued that the provision with regard to imposition of a ceiling on orchards contained in s. 14O(2) is not protected by Art. 31A as the land comprised in orchards cannot be said to be agricultural land, nor can acquisition of land comprised in orchards be a part of agricultural reform as it is not held or let out for the purpose D of agriculture and, therefore, cannot be a part of a scheme of agrarian reform. The validity of s. 14O(2) putting on lands comprised in orchards is assailed on the ground that the Act makes no provision for payment of compensation in respect of orchards.

Section 14V provides that compensation for vesting of any land E in the State under the provisions of Chapter IIB shall be determined on the principles and in the manner, as specified in Chapter III of the West Bengal Estates Acquisition Act, 1953. It is pointed out that the West Bengal Estates Acquisition Act 1953 provided by s. 6(1)(f) that, notwithstanding anything contained in ss. 4 and 5 of the Act, for the vesting of estates of rights of intermediaries therein, and off F some rights of raiyats and under-raiyats, an intermediary shall be entitled to retain, subject to the provisions of sub-s. (3) land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy. Since land comprised in orchards did not vest in the State it is urged that no provision was made in Chapter III of the Act for payment of compensation for G orchards. From the absence of such a provision, the learned counsel assumes that there is no provision for payment of compensation for acquisition of land comprised in orchards, fixing the ceiling limit of two standard hectares, under s. 14O(2).

The absence of a provision for payment of compensation in H respect of orchards in Chapter III of the West Bengal Estates Acquisition Act, 1953 does not mean that no compensation is to be determined or is not payable under s. 14V. In such a case, the general

provisions relating to payment of compensation in respect of acquisition of land will apply. The principle on which, and the manner in which, compensation is to be determined and given are set out in ss. 16 and 17. Section 16 provides for computation the net annual income of land. Section 17 provides that the amount of compensation shall be a multiple of the net annual income, the multiple depending upon the extent of income. The multiple ranges from two to twenty times. The compensation has to be calculated according to the graded scale in the table given in s. 17. Where the legislature has laid down the principles for computation, the amount of compensation is not justiciable after the Fourth Amendment. It cannot be asserted that compensation payable for acquisition of land comprised in orchards in excess of the ceiling limit in s. 14O(2), according to the provisions of s. 14V is illusory. Where the law provides for payment of compensation as much as twenty times the annual income, it is virtually the capitalised value. The petitioners who own orchards would, therefore, get much more as the income derived by them would be greater than the raiyats holding land in excess of the ceiling limit in s. 14M(2).

There remains the question as to whether the provisions of Chapter IIB must be struck down on the ground that it permits the taking away of the homestead of a raiyat without payment of compensation. The definition of land as contained in s. 2(7) is an inclusive one and means agricultural land other than land comprised in a tea-garden and includes homesteads but does not include tank. There can, therefore, be no doubt that the provisions of Chapter IIB shall apply where the homestead is included in the record of rights as forming part of an agricultural holding. Agricultural holding of a raiyat includes his homestead and the raiyat can retain land including homestead under s. 14M(1) up to 7.0 standard hectares in irrigated area and 6.9 standard hectares in unirrigated areas. For the vested land a raiyat would be entitled to get compensation under s. 14V, according to the principles specified in Chapter III of the West Bengal Estate Acquisition Act, 1953. It is, however, pointed out that an intermediary was entitled under s. 6(1)(f) of that Act to retain his homestead and, therefore, there is no provision made in s. 16 or s. 17 for payment of any compensation in respect of homestead.

We are informed by learned counsel appearing for the State of West Bengal that the Government are not interested in depriving the raiyats of their homestead, and they are entitled to retain it. Normally, raiyats would not be affected as they would be allowed to retain their homesteads, as falling within the ceiling limit allowed under s. 14M.

A Visualizing that there may be some exceptional cases of large land holders having extensive lands spread over different villages, and consequently a number of homesteads, learned counsel for the State of West Bengal has pointed out that in such an event the provisions of s. 16(1)(a)(ii) of the Estates Acquisition Act would be attracted, which reads :

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> "16(1) For the purpose of the preparation of the Compensation Assessment Roll
>
> (a) the gross income of an intermediary shall be taken to consist of—
>
> C xxx xxx xxx
>
> (ii) in respect of the *Khas* land which the intermediary does not retain under sub-section (1) of section 6, the annual income of such land determined in the prescribed manner."

D In this connection r. 15(b) and (d) of the West Bengal Estates Acquisition Rules, 1954, provide the procedure for arriving at the compensation for any homestead if such homestead falls within the category of agricultural land i.e., where it is entered in the record of rights as part of agricultural holding of a raiyat.

E If a homestead is entered in the record of rights as non-agricultural land or as a part of a non-agricultural holding, it does not come within the purview of the Act, and, therefore, the question of vesting of such homestead does not arise.

As already adumbrated, the State of West Bengal has no intention F to oust any raiyat from his homestead, or not to pay any compensation under the existing provisions for any homestead which is vested in the State under the provisions of the Act. A raiyat is within his rights to retain land upto the ceiling limit applicable to him in accordance with s. 14M and 14T. Thus a raiyat is at liberty to retain his homestead and not to allow it to be vested in or acquired by the State under G the Act. It is expected that normally raiyats would retain their homesteads and, therefore, the question of ousting them from their homesteads does not arise at all. In other cases, where raiyats willingly give up their homestead to be vested in the State, i.e. to be acquired by the State without desiring to retain the same within the ceiling area applicable to him, the question of payment of compensa- H tion will arise and in such cases, compensation would be computed in accordance with s. 16(1)(a)(ii) of the Estates Acquisition Act read with r. 15(b) and (d) of the Estates Acquisition Rules.

The last contention as to the constitutional validity of s. 14M(5) on the ground that it is violative of Art. 26 appears to be misconceived. The submission is that since the fundamental right to own property under cl. (c) of Art. 26 is subject only to the law relating to public order, morality and health, it cannot be made subject to a law for agrarian reform, as that has nothing to do with public order, morality or health. In *State of Bihar* v. *Kameshwar Singh*(1) the Court repelled the argument and said that a charity created by a private individual is not immune from sovereign's power of compulsory acquisition for public purposes, and that the vesting of the property in the State under the provisions of the Act in question there would not in any way affect the charity adversely because the net income that the institutions are deriving from properties has been made the basis of compensation awarded to them. The power of eminent domain which is inherent in every sovereign State, must be capable of being exercised against every property held by any person in the State. Being a fundamental attribute of sovereignty of State one cannot imagine that the framers of the Constitution intended to divest the State of that attribute by implication in the case of property owned by a private trust. Just as the property of a private trust is held subject to a law imposing a tax upon it, so also is that property subject to the eminent domain of the State.

All that s. 14M(5) provides is that land owned by a trust or endowment other than of a public nature, shall be deemed to be land owned by the beneficiary of the trust or endowment, and each such beneficiary shall be deemed to be a raiyat under the Act to the extent of the share of his beneficial interest in the said trust or endowment. What is of essence is the capacity in which the land is held. If a raiyat is a beneficiary of a private trust, his beneficial interest consists in the offerings or income. The provision in effect prescribes that the land should be clubbed for the computation of the ceiling area under s. 14M(1). The imposition of such a ceiling would no doubt reduce the holding of the trust, but the Government has the power under s. 14O(3) to increase the ceiling area in certain cases. Where the Government is satisfied that a corporation or institution established exclusively for a charitable or religious purpose or both, for which a ceiling limit is prescribed under s. 14O(1), or a person holding any land in trust or in pursuance of any other endowment, creating a legal obligation exclusively for a purpose which is charitable or religious, or both, requires land, as distinct from the income of such land, for the due performance of its obligation, it may having regard to all the cir-

(1) [1952] SCR 889.

A cumstances of the case, increase the ceiling area for such corporation or institution or person to such extent as it may deem fit. The legislature has therefore, provided adequate safeguards under s. 14O(3) to soften the rigour of the Act in relation to religious and charitable trusts.

B The challenge to the validity of Chapter II B of the West Bengal Land Reforms Act, 1955 introduced by the West Bengal Land Reforms (Amendment) Act, 1971 must, therefore, fail.

In the result, the petitions must fail and are dismissed with costs.

S.R. *Petitions dismissed.*