THE ISHWARI KHETAN SUGAR MILLS (P.) LTD. & ANOTHER ETC.

v.

THE STATE OF UTTAR PRADESH & ORS. ETC.

April 2, 1980

[V. R. KRISHNA IYER, S. MURTAZA FAZAL ALI, D. A. DESAI, R. S. PATHAK AND A. D. KOSHAL, JJ.]

U.P. Sugar Undertakings (Acquisition) Act 1971 *States legislature, if competent to enact a law on declared industry.*

Constitution of India Entry 52 *List I, Entry* 24, *List II and Entry* 42 *of List III Scope of.*

By the U.P. Sugar Undertakings (Acquisition) Ordinance, 1971 (which later became an Act) twelve sugar undertakings stood transferred and vested in a Government undertaking named the U.P. State Sugar Corporation Limited. The appellants' writ petitions before the High Court impugning the constitutional validity of the Act were dismissed.

In appeal to this Court it was contended on behalf of the appellants that since sugar is a declared industry under the Industries (Development and Regulation) Act, 1951 in view of entry 52 in Union List read with entry 24 in state list further read with Art. 246. Parliament alone is competent to pass the law on the subject and not the State Legislature and, therefore, the impugned legislation is void.

Dismissing the appeals,

HELD : Industry being a matter enumerated in entry 24 of List II only the State legislature has the exclusive power to legislate in respect of it, but this power is subject to the provisions of entries 7 and 52 of List I. While under entry 7, if a declaration is made by Parliament that a particular industry is necessary for defence or for the prosecution of war, Parliament, to the exclusion of the State legislature, would be entitled to legislate in respect of that industry, a declaration by Parliament by law to assume control over any particular industry in public interest in a *sine qua non* to clothe Parliament with power under entry 52, List I to legislate in respect of that industry. The declaration contemplated by this entry is a declaration by law. A mere declaration unaccompanied by law is incompatible with entry 52 of List I. But that does not mean that once a declaration is made in respect of an industry that industry as a whole is taken out of entry 24, List II. [337 F-H; 338 D, F; 339 E]

Baijnath Kedia v. *State of Bihar & Ors.* [1970] 2 SCR 100 at 113 and *State of Haryana & Anr.* v. *Chanan Mal, etc.* [1976] 3 SCR 688 at 700 referred to.

The control under section 2 of the 1951 Act was assumed for a specific and avowed object namely development and regulation of certain industries. This control has to be exercised in the manner provided under the statute. Therefore, Parliament, has made a declaration for assuming control in respect

A of the declared industries set out in the schedule of the Act only to the extent provided in the Act.

A conspectus of the provisions of the impugned Act shows that in pith and substance it is one for acquisition of scheduled undertakings and such acquisition by transfer of ownership of those undertakings to the Corporation would in no way come in conflict with any of the provisions of the Central Act of 1951. B The Central Act is primarily concerned with development and regulation of declared industries and is not concerned with ownership of industrial undertakings in declared industries, except to the extent of control over management of the undertaking by the owner. By the acquisition under the impugned Act and vesting of the undertakings in the Corporation they would still be under the control of the Central Government because the Corporation would be amenable to the authority and jurisdiction of the Central Government. Therefore, there C is no conflict between the impugned legislation and the control exercised by the Central Government under the provisions of the Central Act. [340 H-341 A; 344 C-G, 345 D]

There is no force in the argument that the power of acquisition under Entry 42, List III is incidental to the power to legislate in respect of various topics in the lists and, therefore, when the Union assumed control over the D declared industry such control comprehends the power to acquire and hence the power of the State Legislature to enact legislation for acquisition of property of scheduled undertakings would be denuded. By the Constitution (Seventh Amendment) Act, Entry 33 in List I and Entry 36 in List II were deleted and a single comprehensive Entry 42 in List III (acquisition and requisitioning of property) was added. The power to acquire property can now be exercised concurrently by the Union and the States. After the substitution of Entry 42 E in List III it cannot be said that the power of acquisition and requisitioning of property is incidental to the other power. It is an independent power provided for in a specific entry. Therefore, both the Union and the State would have power of acquisition and requisition of property. [345 E-F; 346 B-E]

There is a long line of decisions which clearly establishes the proposition that power to legislate for acquisition of property is an independent and separate power and is exercisable only under Entry 42, List III and not as an incident F of the power to legislate in respect of a specific head of legislation in any of the three lists. This power of the State legislature to legislate for acquisition of property remains intact and untramelled except to the extent where on assumption of control of an industry by a declaration as envisaged in Entry 52, List I a further power of acquisition is taken over by a specific legislation. [353 H-354 A]

G *Rustom Cavasjee Cooper* v. *Union of India* [1970] 3 SCR 530 at 567, *Rajamundry Electric Supply Corporation Ltd.* v. *State of Andhra Pradesh* [1954] SCR 779.

State of Bihar v. *Maharajadhiraja Sir Kameshwar Singh* [1952] S.C.R. 889, *State of West Bengal* v. *Union of India* [1964] 1 S.C.R. 371, referred to.

H The argument that the State legislature lacked competence to enact the impugned legislation is without force. Legislative power of the State under Entry 24, List II is eroded only to the extent control is assumed by the Union pursuant to a declaration made by the Parliament in respect of a declared

industry as spelt out by the legislative enactment and the field occupied by such enactment is the measure of erosion. Subject to such erosion, on the remainder the State legislature will have power to legislate in respect of a declared industry without in any way trenching upon the occupied field. State legislature, which is otherwise competent to deal with industry under Entry 24, List II, can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in Lists II and III and this power cannot be denied to the State. [354 C, 352 E-F]

The contention that the impugned Act is in violation of section 20 of the Central Act has no merit. The impugned legislation was not enacted for taking over the management or control of any industrial undertaking by the State Government. In pith and substance it was enacted to acquire the scheduled undertakings. If an attempt was made to take over the management or control of any industrial undertaking in a declared industry the bar of section 20 would inhibit exercise of such executive power. The inhibition of section 20 is on the executive power but if as a sequel to an acquisition of an industrial undertaking the management or control of the industrial undertaking stands transferred to the acquiring authority section 20 is not attracted. It does not preclude or forbid a State legislature exercising legislative power under an entry other than Entry 24 of List II and if in exercise of that legislative power the consequential transfer of management or control over the industry or undertaking follows as an incident of acquisition such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of section 20. [355 F, A-E]

The challenge to the validity of the impugned legislation on the ground of violation of Article 31(2) must fail. At the time of acquisition the scheduled undertakings had a heavy backlog of carry forward losses, they failed to pay the growers the price of cane purchased, the labour was not paid as a result of which there was labour unrest. The situation did not improve even when some of the undertakings were taken over under the Central Act and a drastic remedy was called for in public interest and while applying that drastic remedy of acquisition the principles which are valid for determining the value of machinery were adopted. The adequacy or otherwise of compensation on the calculus made by applying the principles is beyond judicial review. [360 C, 359 H-360 B]

Rustom Cavasjee Cooper v. *Union of India* [1970] 3 SCR 530 at 567, *Vajravelu Mudaliar* v. *Special Deputy Collector of Land Acquisition West Madras* [1965] 1 SCR 614, *Union of India* v. *Metal Corporation of India Ltd. & Anr.* [1967] 1 SCR 256, *State of Gujarat* v. *Shantilal Mangaldas & Ors.* [1969] 3 SCR 341 and *His Holiness Kesavananda Bharati Sripadagaivaru* v. *State of Kerala* [1973] Suppl. SCR 1 referred to.

Pathak & Koshal JJ (concurring in the result)

It is not necessary in this case to express any opinion on the question whether the declaration made by Parliament in section 2 of the Industries (Development and Regulation) Act, 1951 in respect of the industries specified in the First Schedule to that Act can be regarded as limited to removing from the scope of Entry 24 of List II of the Seventh Schedule to the Constitution only so much of the legislative field as is covered by the subject matter and content of that Act or it can be regarded as effecting the removal from that entry of the

A entire legislature field embracing all matters pertaining to the industries specified in the declaration. The controversy in the present case can be adequately disposed of on the ground that the legislation falls within Entry 42 of List III and cannot be related to Entry 52 of List I or Entry 24 of List II. [362 E-F, 363 B]

The Hingir Rampur Coal Co. Ltd. and Others v. *The State of Orissa and Others* [1961] 2 SCR 537, *State of Orissa* v. *M. A. Tulloch and Co.* [1964] 4 B SCR 461, *Baijnath Kedia* v. *State of Bihar & Ors. and State of Haryana & Anr.* v. *Chanan Mal, etc.* [1976] 3 SCR 688 held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1614, 1652 and 1637 of 1979.

Appeals by Special Leave from the Judgment and Order dated C 3-5-1979 of the Allahabad High Court in Civil Misc. Writ Nos. 4170/71, 4130/71 and 4193/71.

AND

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) Nos. 6246, 6252, 6373 & 8050/79.

From the Judgment and Order dated 3-5-1979 of the Allahabad D High Court in Civil Misc. Writ Nos. 4150, 4173, 4793 and 4422/71.

F. S. Nariman, Bhaskar Gupta, Rajesh Khaitan, Rohington Nariman and *P. R. Seethrama* for the Appellants in CA 1614/79.

A. K. Sen, Manoj Swarup, Miss Lalita Kohli and *S. K. Srivastava* for the Appellants in CA No. 1652/79 and SLPS. 6146 and 6373/79.

E *R. A. Gupta* for the Petitioner in SLP No. 6252/79.

N. N. Sharma and *N. N. Kacker* for the Petitioner in SLP No. 8050/79.

Lal Narain Sinha Att. Genl. in C.A. 1614.

Rishi Ram Adv. General, U.P. in C.A. 1652.

F *Raju Ramchandran* and *O. P. Rana* for the Respondents in All the Appeals.

The Judgment of V. R. Krishna Iyer, S. Murtaza Fazal Ali and D. A. Desai, JJ. was delivered by Desai, J., R. S. Pathak, J. gave a separate Opinion on behalf of A. D. Koshal, J. and himself.

G DESAI, J.—Acquisition of industrial undertakings involved in manufacturing sugar, a commodity satisfying the basic necessity, in larger public interest and the attempt of the owners of the undertakings to thwart the same, paints the familiar landscape in this group of appeals.

As a sequel to the serious problems created by the owners of certain sugar mills in the State of Uttar Pradesh for cane growers and H labour employed in sugar mills, having an adverse impact on the general economy of the areas where these sugar mills were situated and with a view to ameliorating the situation posing a threat to the economy,

the Governor of Uttar Pradesh promulgated an Ordinance on July 3, 1971, styled as U.P. Sugar Undertaking (Acquisition) Ordinance, 1971 (13 of 1971) ('Ordinance' for short), with a view to transferring and vesting sugar undertakings set out in the Schedule to the Ordinance in the U.P. State Sugar Corporation Ltd. ('Corporation' for short), a Government Company within the meaning of s. 671 of the Companies Act, 1956. Subsequently, by U.P. Sugar Undertakings (Acquisition) Act, 1971, (U.P. Act 23 of 1971) ('Act' for short), the Ordinance was repealed and was replaced. Schedule to the Act enumerates 12 sugar undertakings (referred to as 'scheduled undertakings') and by the operation of s. 3, these scheduled undertakings stood transferred to and vested in the Corporation from the appointed day, *i.e.* July 3, 1971, the date on which the Ordinance was issued. On the promulgation of the Ordinance 11 writ petitions were filed in the Allahabad High Court under Article 226 of the Constitution challenging the constitutional validity of the Ordinance and when the Act replaced the Ordinance effective from August 27, 1971, the writ petitions were amended incorporating the challenge to the Act also. The Ordinance and the Act were challenged in the High Court on the following grounds :

(1) The State legislature had no legislative competence to enact it;

(2) The Act violated Art. 31 of the Constitution because the acquisition was not for a public purpose and the compensation proposed in the Act was illusory;

(3) The Act was in breach of Art. 19(1)(f) and (g) of the Constitution;

(4) The Act infringed the gurantee of equality enshrined in Art. 14 of the Constitution.

A Division Bench of the High Court by a common judgment dated May 3, 1979, repelled the contentions on behalf of the petitioners and upheld the constitutional validity of the Act. Hence these appeals by the original petitioners, the owners of the scheduled undertakings.

Mr. F. S. Nariman, learned counsel who led on behalf of the appellants, confined his attack to two grounds : (a) U.P. State legislature lacked legislative competence to enact the impugned Act; and (b) compensation awarded for acquisition in violative of Art. 31(2) as it stood prior to its amendment by the Constitution (Twentyfifth Amendment) Act, 1971, which came into force on April 20, 1972. Mr. R. A. Gupta who appeared in SLP. 6252/79, canvassed an additional contention that the impugned Act is violative of Art. 14 inasmuch as those similarly situated and similarly circumstanced sugar undertakings have

A not been acquired and the petitioners' scheduled undertakings have been singled out for a drastic treatment of take-over by way of acquisition.

The main thrust of the attack was that the U.P. Legislature lacked legislative competence to enact the impugned Act. There were two B distinct limbs of this submission which would be examined separately. The first limb of the submission was that in exercise of legislative power flowing from Entry 52 List I the Parliament made the requisite declaration in s. 2 of the Industries (Development and Regulation) Act, 1951 ('IDR Act' for short), and in view of placitum 25 of the first schedule to the IDR Act sugar being a declared industry, that industry goes out C of Entry 24 List II, and hence U. P. State legislature was denuded of all legislative power to legislate in respect of sugar industry and as the impugned legislation is in respect of industrial undertaking in sugar industry, the impugned legislation is void on account of legislative incompetence. The learned Attorney General countered it by saying that the power to acquire property derived from entry 42 in List III is an inde- D pendent power and the impugned Act being in pith and substance an Act to acquire scheduled undertakings, meaning thereby the properties of the scheduled undertakings, the power of the State legislature to legislate in this behalf is referable to entry 42 and remains intact irrespective of the fact that sugar is a declared industry, control of which is taken over by the Union Government pursuant to the declaration made under E s. 42 of the IDR Act. This necessitates an analytical examination of the relevant entries keeping in view legislative perspective and the historical background through which these entries have passed.

Entry 7 in the Union List reads as under :

F "7. Industries declared by parliament by law to be necessary for the purpose of defence or for the prosecution of war."

Entry 32 in the same List reads :

"52. Indusries, the control of which by the Union is G declared by parliament by law to be expedient in the public interest."

Entry 24 in List II (State List) reads as under :

"24. Industries subject to the provisions of entries 7 and 52 of List I."

H It may be noted here that entry 33 in List I, entry 36 in List II and entry 42 in List III were amended by s. 26 of the Constitution (Seventh Amendment) Act by which entry 33 of List I and entry 36 of List II

were deleted and entry 42 in List III was amended to read as set out hereinabove. Entry 33 in List I and entry 36 in List II conferred legislative power on the Union and the States respectively for acquisition or requisitioning of property for its own purpose. Constitution (Seventh Amendment) Act, 1956, which made the aforementioned amendment was designed to clear the ambiguity about the power of acquisition and requisitioning of property being not a power incidental to any of the legislative powers but an independent power by itself. The object behind the amendment has been thus explained. "The existence of three entries in the legislative lists (33 of List I, 36 of List II and 42 of List III) relating to the essentially single subject of acquisition and requisitioning of property by the Government gives rise to unnecessary technical difficulties in legislation. In order to avoid these difficulties and simplify the constitutional position, it is proposed to omit the entries in the Union and State Lists and replace the entry in the concurrent list by a comprehensive entry covering the whole subject" (*see* Statement of Objects and Reasons in respect of Constitution (Seventh Amendment) Act, 1956).

Having set out the historical background, attention may now be turned to the scope and content of legislative power of Union and the States flowing from entry 52 in List I and entry 24 in List II in respect of the topic of 'industry.'

The scope and content of entry 52, List I and entry 24, List II has to be demarcated with precision to avoid a possible confusion likely to emanate from an inter-dependence and interaction of the two entries. 'Industry' as a head of legislation is to be found in entry 24, List II with this limitation that it is subject to the provisions of entries 7 and 52, List I. The difference in the language in which entries 7 and 52 are couched has a bearing on the interruption of entry 52. In the former case if a declaration is made by the Parliament that the particular industry is necessary for the purpose of defence or for prosecution of the war, parliament would be exclusively entitled to legislate in respect of that industry to the exclusion of State legislatures because the requisite declaration will have the effect of taking out that industry from entry 24, List II. A declaration by the parliament by law to assume control over any particular industry in public interest is a *sine qua non* to clothe Parliament with power under entry 52, List I to legislate in respect of that industry because otherwise industry as a general head of legislation is in the exclusive sphere of State legislative activity pursuant to entry 24, List II. Distribution of legislative powers as enacted in Part XI and Art. 246 clearly demarcate the field of legislative activity reserved for parliament and for State legislatures and also the concur-

A rent list in respect of which both can legislate subject to other provisions of part XI. Sub-art. (3) of Art. 246 provides that the State legislature has exclusive power to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule. *A fortiori,* industry being the matter enumerated in List II the State legislature has exclusive power to legislate in respect of it and keeping aside for the time B being the words 'subject to the provisions of entries 7 and 52 of List I', the State legislature alone can legislate in respect of the legislative head 'industry.' *Ipso facto,* parliament would not have power to legislate in respect of industry as a legislative head. Now, entry 52 , List I on its own language does not provide a field of legislative activity for the Union Parliament C unless and until a declaration is made by parliament by law to assume control over specified industries. The embargo on the power of Parliament to legislate in respect of industry which is in List II would be lifted once a declaration is made by Parliament by law as envisaged by entry 52, List I. In the absence of a declaration as envisaged by entry 52, List I, it is incontrovertible that Parliament has no power to legislate on D the topic of industry. Entry 52, List I on its own language does not contemplate a bald declaration for assuming control over specified industries, but the declaration has to be by law to assume control of specified industries in public interest. The legislation enacted pursuant to the power to legislate acquired by declaration must be for assuming E control over the industry and the declaration has to be made by law enacted, of which declaration would be an integral part. Legislation for assuming control containing the declaration will spell out the limit of control so assumed by the declaration. Therefore, the degree and extent of control that would be acquired by Parliament pursuant to the declaration would necessarily depend upon the legislation enacted F spelling out the degree of control assumed. A mere declaration unaccompanied by law is incompatible with entry 52, List I. A declaration for assuming control of specific industries coupled with law assuming control is a pre-requisite for taking legislative action under entry 52, List I. The declaration and the legislation pursuant to declaration to that extent denude the power of State legislature to legislate under entry G 24, List II. Therefore, the erosion of the power of the State legislature to legislate in respect of declared industry would not occur merely by declaration but by the enactment consequent on the declaration prescribing the extent and scope of control. When a declaration is made as contemplated by entry 52, List I in respect of any particular industry, it is contended that, that industry as a topic of legislation would be re- H moved from the legislative sphere of the state. What is the effect of a declaration made in respect of mines and minerals as contemplated by entry 54 has been succinctly laid down by a Constitution Bench of this

Court in *Baijnath Kedia* v. *State of Bihar & Ors.*,(1) in the following terms : A

> "Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature . . . . The only dispute, therefore, can be to what extent the declaration by Parliament leaves any scope for legislation by the State legislature. If the impugned legislation falls within the ambit of such scope it will be valid, if outside it, then it must be declared invalid." B C

Sugar is a declared industry. Is it, however, correct to say that once a declaration is made as envisaged by entry 52 List I, that industry as a whole is taken out of entry 24, List II? In respect of an identical entry 54, List I in the passage extracted above it is said that to the extent declaration is made and extent of control laid, that much and that much alone is abstracted from the legislative competence of the State legislature. It is, therefore, not correct to say that once a declaration is made in respect of an industry that industry as a whole is taken out of entry 24, List II. Similarly, in *State of Haryana & Anr.* v. *Chanan Mal, etc.*(2) while upholding the constitutional validity of the Haryana Minerals (Vesting of Rights) Act, 1973, after noticing the declaration made in s. 2 of the Mines & Minerals (Regulation and Development) Act, 1957, ('Mines & Minerals Act' for short), as envisaged by entry 54, List I it was held : D E F

> "Moreover, power to acquire for purposes of development and regulation has not been exercised by Act 67 of 1957. The existence of power of Parliament to legislate on this topic as an incident of legislative power on another subject is one thing. Its actual exercise is another. It is difficult to see how the field of acquisition could become occupied by a central Act in the same way as it had been in the West Bengal case even before Parliament legislates to acquire land in a State." G

These pronouncements demonstrably show that before State legislature is denuded of power to legislate under entry 24, List II in respect of H

(1) [1970] 2 S. C. R. 100 at 113.

(2) [1976] 3 S. C. R. 688 at 700.

A a declared industry, the scope of declaration and consequent control assumed by the Union must be demarcated with precision and then proceed to ascertain whether the impugned legislation trenches upon the excepted field.

The declaration made in s. 2 of IDR Act reads as under :

B

> "It is hereby declared that it in expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

The contention is that as there are no words of limitation to be C found in s. 2 in respect of the control assumed by the declaration by the Union, the necessary concomitant of such declaration is that the State legislature is totally denuded of any power to deal with such declared industry. To buttress this argument reference was made to the declaration made by the Union pursuant to entry 54, List I, as set out in s. 2 of the Mines & Minerals Act which reads as under :

D

> "It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

E Absence of the expression "to the extent hereinafter provided" was pressed into service to point out that while in respect of mines and minerals the Union has assumed control to the extent provided in the Mines & Minerals Act, in the case of declared industries the control is absolute, unlimited, unfettered or unabridged and, therefore, everything that would fall within the connotation of the word 'control' would F be within the competence of the Union and to the same extent and degree the State legislature would be denuded of its power to legislate in respect of that industry. It was said that in respect of declared industries total control is assumed by the Union and, therefore, entry 24, List II on its import must be read industry minus the declared industry because entry 24, List II is subject to entries 7 and 52, List I. Undoub- G tedly the Union is authorised to assume control in respect of any industry if parliament by law considers it expedient in the public interest. The declaration has to be made by the Parliament, but the declaration has to be by law not a declaration simpliciter. The words of limitation on the power to make declaration are 'by law'. Declaration must be an integral part of law enacted pursuant to declaration. The declaration H in this case is made in an Act enacted to provide for the development and regulation of certain industries. Therefore, the control was assumed not in abstract but for a specific and avowed object, *viz.*, development

and regulation of certain industries. The industries in respect of which control was assumed for the purpose of their development and regulation have been set out in the Schedule. This control is to be exercised in the manner provided in the statute, *viz.*, IDR Act. The declaration for assuming control is to be found in the same Act which provides for the limit of control. The deducible inference is that Parliament made the declaration for assuming control in respect of declared industries set out in the Schedule to the Act to the extent mentioned in the Act. It is difficult to accept the submission that s. 2 has to be read *dehors* the Act and not forming part of the Act. This would be doing violence to the art of legislative draftmanship. It is open to Parliament in view of entry 52, List I, to make a declaration in respect of industry or industries to the effect that the Union will assume its control in public interest. It is not to be some abstract control. The control has to be concrete and specific and the manner of its exercise has to be laid down in view of the well-established proposition that executive authority must have the support of law for its action. In a country governed by rule of law, if the Union, an instrumentality for the governance of the country, has to exercise control over industries by virtue of a declaration made by Parliament, it must be exercised by law. Such law must prescribe the extent of control, the manner of its exercise and enforcement and consequence of breach. There is no such concept as abstract control. The control has to be concrete and the mode and method of its exercise must be regulated by law. Now, Parliament made the declaration not in abstract but as part of the IDR Act and the control was in respect of industries specified in the First Schedule appended to the Act itself. Sections 3 to 30 set out various modes and methodology, procedure and power, to effectuate the control which the Union acquired by virtue of the declaration contained in s. 2. Industry as a legislative head finds its place in entry 24, List II. The State legislature can be denied legislative power under entry 24 to the extent Parliament makes declaration under entry 52 and by such declaration Parliament acquires power to legislate only in respect of those industries in respect of which declaration is made and to the extent as manifested by legislation incorporating the declaration and no more. The Act prescribes the extent of control and specified it. As the declaration trenches upon the State legislative power it has to be construed strictly. Therefore, even though the Act enacted under entry 54 which is to some extent in *pari materia* with entry 52 and in a parallel and cognate statute while making the declaration the Parliament did use the further expression "to the extent herein provided" while assuming control, the absence of such words in the declaration in s. 2 would not lead to the conclusion that the control assumed was to be something in abstract, total and unfettered and not as per various

A B C D E F G H

provisions of the IDR Act. The lacuna, if any, is made good by hedging the power of making declaration to be made by law. Legislative intention has to be gathered from the Act as a whole and not by piecemeal examination of its provisions. It would, therefore, be reasonable to hold that to the extent Union acquired control by virtue of declaration in s. 2 of the IDR Act as amended from time to time, the power of the State legislature under entry 24, List II to enact any legislation in respect of declared industry so as to encroach upon the field of control occupied by IDR Act would be taken away. This is clearly borne out not only by the decision in *Baijnath Kedia's* case (supra) where undoubtedly while referring to the control assumed by the Union by a declaration made in s. 2 of the Mines & Minerals Act, it was said that to what extent such a declaration would go is for Parliament to determine and this must be commensurate with public interest, and once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. It is not merely some abstract control but the extent of the control assumed by the Union by the provisions of IDR Act pursuant to declaration made by Parliament that the State Legislature to that extent, that is, to the extent the provisions of IDR Act occupies this field, is denuded of its power to legislate in respect of such declared industry.

The respondents assert the validity of the impugned legislation contending that upon its true construction and proper ascertainment of its object, it is a legislation for acquisition of scheduled undertakings and the power to acquire by legislation such scheduled undertakings by the State is derived from entry 42, List III. The controversy, therefore, centres round the question whether the impugned legislation is in respect of a declared industry referable to entry 24 or one for acquisition of scheduled undertakings in exercise of the power of acquisition and requisitioning of property derived from entry 42, List III. Appellants contend that a reference to Objects and Reasons for enacting the impugned legislation would show that the owners of scheduled undertakings had created serious problems for the cane growers and labour which created an adverse impact on the general economy of the areas where these undertakings were situated, the legislation was enacted to acquire the undertaking and pay compensation and also pay cane growers and labour on high priority and to restart undertakings for crushing season. It was said that these are purely managerial functions discharged by owners of undertakings and if the impugned Act was devised and enacted primarily to assume these managerial functions, the Act would be beyond the legislative competence of the State legislature as it trenches upon the field occupied by IDR Act specifically

enacted to empower Union Government to provide effective control over industrial undertakings in declared industry to prevent mismanagement, or to rectify the same by taking over management. A

When validity of a legislation is challenged on the ground of want of legislative competence and it becomes necessary to ascertain to which entry in the three lists the legislation is referable to, the Court has evolved the theory of pith and substance. If in pith and substance a legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, the Act as a whole would be valid not with standing such incidental trenching. This is well established by a catena of decisions [see *Union of India* v. *H. S. Dhillon,*(1) and *Kerala State Electricity Board* v. *Indian Aluminium Co.*(2)]. After referring to these decisions in *State of Karnataka & Anr. etc.* v. *Ranganatha Reddy & Anr. etc.*(3) Untwalia, J. speaking for the Constitution Bench has in terms stated that the pith and substance of the Act has to be looked into and an incidental trespass would not invalidate the law. The challenge in that case was to the Nationalisation of contract carriages by the Karnataka State, *inter alia,* on the ground that the statute was invalid as it was a legislation on the subject of interstate trade and commerce. Repelling this contention the Court unanimously held that in pith and substance the impugned legislation was for acquisition of contract carriages and not an Act which deals wiih intet-State trade and commerce. B C D E

To start with, it is necessary first to ascertain in pith and substance to what entry in a particular list the impugned legislation is referable. If it is referable to entry other than 24, List II, such as entry 42, List III, it would be necessary to precisely ascertain whether it in any way trenches upon the field occupied by the declaration made by Parliament to assume control over sugar industry as manifested by the various provisions of the IDR Act. F

Section 3 of the Act provides for vesting of scheduled undertakings from the appointed day in the Corporation. Section 4 provides for consequences of vesting. Section 5 makes it obligatory on every person in whose possession or custody or under whose control any property or asset, book of account, register or other document comprised in that undertaking may be, to forthwith deliver the same to the Collector. Section 7 provides for determination and mode of payment of compensation for acquisition of scheduled undertakings. Section 8 provides for claims to be satisfied out of compensation payable to the G H

(1) [1972] 2 S. C. R. 33.
(2) [1976] 1 S. C. R. 552.
(3) [1978] 1. S. C. R. 641.

owners of the undertakings. Section 9 provides for avoidance of certain secured debts consequent upon acquisition. Section 11 provides for appeal and s. 12 provides for constitution of a Tribunal to perform the functions assigned to it by the Act. Section 13 provides for powers and procedure of the Tribunal. Section 14 provides for ouster of jurisdication of civil courts in respect of any dispute arising from the implementation of the Act. Section 16 confers protection on the employees of the scheduled undertaking. The rest are only consequential sections. A comprehensive examination of all the provisions of the Act indisputably shows that in pith and substance the impugned Act is one Act for acquisition of scheduled undertakings and such acquisition by transfer of ownership of the scheduled undertakings to the Corporation would in no way come in conflict with any of the provisions of the IDR Act or would not trench upon any control exercised by the Union under the various provisions of the IDR Act. In fact the IDR Act, generally speaking, does not deal with the ownership of industrial undertakings in declared industries. The Act is primarily concerned with development and regulation of the declared industries. The Central Government has power under ss. 18A and 18AA of the IDR Act to assume direct management or control of industrial undertakings in certain cases and even after acquisition of scheduled undertakings under the impugned legislation the power of the Central Government under ss. 18A and 18AA would remain intact. Even s. 18FA provides for taking over management or control of a company which is being wound up with the permission of the High Court and in such a situation the authorised person appointed by the Central Government would be deemed to be Official Liquidator under sub-s. (4) of s. 18FA. Provision contained in Chapter IIIAC of IDR Act enables Central Govt. to direct sale of the industrial undertaking under certain circumstances and in the situation as set out in s. 18FE(7) to purchase the same. But these powers can be exercise irrespective of the fact who at the relevant time, the owner of the undertaking is. The IDR Act is not at all concerned with the ownership of industrial undertakings in declared industries, except to the extent of control over management of the undertaking by the owner. Owner is defined in s. 3(f) in relation to an industrial undertaking, to mean the person who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agents, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking. This deeming fiction enacted in respect of the concept of ownership clearly manifest the legislative intention that IDR Act treats that person to be the owner who has the ultimate control over the affairs of the under-

taking and if that ultimate control is entrusted to even a manager, for the purposes of the IDR Act the manager would be the owner. This must be so in the very nature of things because the IDR Act is essentially concerned with the control over the management of the industrial undertakings in declared industries. By the acquisition under the impugned Act and vesting of the scheduled undertakings in the Corporation the scheduled undertakings will never the less be under the control of the Central Government as exercised by the provisions of the IDR Act because the Corporation would be the owner and would be amenable to the authority and jurisdiction of the Central Government as the provisions of the IDR Act would continue to apply to the scheduled undertakings, sugar being a declared industry, and scheduled undertakings are industrial undertakings within the meaning of the IDR Act. No provision from IDR Act was pointed out to us to show that in implementing or enforcing such a provision the impugned legislation would be an impediment. Therefore, there is no conflict between the impugned legislation and the control exercised by the Central Government under the provisions of the IDR Act and there is not even a remote encroachment on the field occupied by IDR Act.

The main thrust of the submission was that the power of acquisition under entry 42, List III is not an independent power but it is incidental to the power to legislate in respect of the various topics in various lists and, therefore, when by a declaration made by the parliament enacted in s. 2 of the IDR Act the control over declared industry is assumed by the Union, such control will also comprehend the power to acquire and hence the power of the State legislature to enact legislation for acquisition of property of scheduled undertakings would be denuded as that power as an intergral element of control would vest in the Union Government. The focal point of controversy, therefore, is whether the power of acquisition and requisitioning of property under entry 42. List III is an independent power by itself or it is an integral and inseparable element of the power of control over industry.

Constitution amending process bearing on the three relevant entries may be noticed. Before the Constitution (Seventh Amendment) Act, 1956, which came into force on November 1, 1956, Entry 33 in List I read :

> "Acquisition or requisitioning of property for the purpose of the Union."

Similarly, Entry 36 in List II read :

> "Acquisition or requisitioning of property except for the purpose of the Union subject to the provisions of entry 42 of List III."

A At that time entry 42 in List III read :

> "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given".

B By the Constitution (Seventh Amendment) Act, the three entries were repealed. Entry 33 in List I and entry 36 in List II were deleted and a single comprehensive entry 42 in List III was substituted to read : 'Acquisition and requisitioning of property'. Accordingly, the power to acquire property could be exercised concurrently by the Union and C the States. Even if prior to the deletion of Entry 33 in List I and entry 36 in List II an argument could possibly have been advanced that as power of acquisition of property was conferred both on Union and the States to be exercised either for the purpose of the Union or for the State it was incidental to any other legislative power flowing from various entries in the three Lists and not an independent power, D but since the deletion of entry 33 in List I and entry 36 in List II and substitution of a comprehensive entry in List III, it could hardly be urged with confidence that the power of acquisition and requisitioning of property was incidental to other power. It is an independent power provided for in a specific entry. Therefore, both the Union and the State would have power of acquisition and requisitioning of property. E This position is unquestionably established by the majority decision in *Rustom Cavasjee Cooper* v. *Union of India*(1) where Shah, J. speaking for the majority of 10 Judges held as under :

> "power to legislate for acquisition of property is exercisable only under entry 42 of List III and not as an incident F of the power to legislate in respect of a specific head of legislation in any of the three lists."

In reaching this conclusion reliance was placed on *Rajamundry Electric Supply Corporation Ltd.* v. *State of Andhra Pradesh.*(2) It was, however, urged that the proposition culled out from *Rajamundry Electric Supply Corporation* case by Shah, J. *in R. C. Cooper's*(1) case is not G borne out by the observation in the first mentioned case. In *Rajamundry Electric Supply Corporation*(2) case the challenge was to the Madras Electric Supply Undertakings (Acquisition) Act, 1949, on the ground that the Madras legislature was not competent to enact the legislation because at the relevant time there was no entry in the Government of India Act, 1935, relating to compulsory acquisition of any commer- H cial or industrial undertaking. This challenge failed in the High Court

(1) [1970] 3 S. C. R. 530 at 567.
(2) [1954] S. C. R. 779.

but on appeal the challenge was accepted by a Constitution Bench of this Court. Now, it must be remembered that the impugned legislation in that case was a pre-Constitution legislation then governed by the Government of India Act, 1935. The challenge was that the State legislature had no power to enact a legislation for acquisition of an electrical undertaking. On behalf of the State the Act was sought to be sustained on the ground that the Act was in pith and substance a law with respect to electricity under entry 31 of the Concurrent List and, therefore, the State legislature was competent to enact the same. After scrutinising the Act this Court came to the conclusion that in pith and substance the Act was one to provide for acquisition of electrical undertaking and, therefore the State legislature lacked competence to enact the same. Now, in that case the Advocate-General of Madras in his effort to save the impugned legislation advanced an argument before the Constitution Bench that : 'There was implicit in every entry in the legislative lists in the Seventh Schedule to the Government of India Act, 1935, an inherent power to make a law with respect to a matter ancillary or incidental to the subject-matter of each entry.' His further argument was that each entry in the list carried with it an inherent power to provide for the compulsory acquisition of any property, land or any commercial or industrial undertaking, while making a law under such entry. This argument was in terms repelled relying upon an earlier decision of the Constitution Bench in the *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh*(1) : Repelling this contention of the Advocate-General of Madras would mean that the power of acquisition of property is not ancillary or incidental to the subject-matter of each entry but in substance it is an independent power by itself. This also becomes clear from *Maharajadhiraja Sir Kameshwar Singh's case* (supra) wherein Das, J. in his concurring judgment repelled the argument of the learned Attorney-General appearing for the State contending that the Bihar Land Reforms Act was a law made with respect to matters mentioned in entry 18, List II and not in entry 36, List II. Entry 18 in List II read : 'Land and Land tenures, etc.' and it was contended that the impugned legislation was on the subject of land and tenures and would cover acquisition of land also. Negativing this contention it was held that in that event entry 36 in List II would become redundant. The pertinent observation is as under :

> "In my opinion, to give a meaning and content to each of the two legislative heads under entry 18 and entry 36 in List II the former should be read as a legislative category or head comprising land and land tenures and all matters

(1) [1952] S. C. R. 889.

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connected therewith other than acquisition of land which should be read as covered by entry 36 in List II."

It thus clearly transpires that the observation in *Cooper's* case supra extracted above that power to legislate for acquisition of property B is exercisable only under entry 42 of List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three Lists, is borne out from *Rajamundary Electric Supply Corporation* case and *Maharajadhiraja Sir Kameshwar Singh's* cases (supra).

C It was, however, urged that this proposition runs counter to the decision of a Constitution Bench of six judges in *State of West Bengal* v. *Union of India.*(1) In that case the State of West Bengal filed a suit against the Union of India challenging the constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, D on the ground that the Act to the extent it applied to the lands vested in or owned by the State was beyond legislative competence of Parliament. Power to acquire coal bearing land owned or possessed by the State of West Bengal was amongst others claimed as an integral element of control acquired by the Union pursuant to a declaration made in s. 2 of the IDR Act and Mines and Minerals Act enacted in exercise E of the legislative power under entries 52 and 54 respectively as coal was both a declared industry and a specified mineral. This contention was partly accepted to repell the contention that the Union has no power to acquire the property vested in the State since the State itself is also a sovereign authority. The contention that the property of State cannot be acquired by the Union under entry 42 of List III was F repelled. In reaching this conclusion, another contention was rejected which was also advanced before us, viz., that if power of acquisition is treated as an independent power both of the Union and the State and could be exercised by the Union and the State with respect to the same property it would lead to such a confusion that there would be no end to it. A picture of fearful constitutional impasse was drawn G urging that the State may acquire property of an Industrial undertaking of a declared industry in exercise of the power under entry 42, List III, and the Union may exercise the same power after control is acquired pursuant to declaration made as envisaged in entry 52 in respect of an industry and this merry-go-round needs to be averted by harmonious construction and reconciliation of power between the Union H and the States. Such a situation is beyond the realm of practical possi-

(1) [1964] 1 S. C. R. 371.

bility. His wild apprehension stands so effectively answered by *West Bengal case* (supra) that we cannot improve upon it. Pertinent observation may be extracted : A

> "Power to acquire or requisition property may since the amendment, be exercised concurrently by the Union and the States. But on that account conflicting exercise of the power cannot be envisaged. Article 31(2) which deals with acquisition of all property requires two conditions to be fulfilled : (1) acquisition or requisitioning must be for a public purpose, (2) the law under which the property is acquired or requisitioned must provide for payment of compensation either fixed thereby, or on principles specified thereby. By cl. (3) of Art. 31 no such law as is referred to in cl. (2) made by the Legislature of a State shall have efficacy unless such law has been reserved for the consideration of the President and has received his assent. As the President exercises his authority with the advice of the Union Ministry, conflict by the effective exercise of power of acquisition in respect of the same subject-matter simultaneously by the Union, and the State, or by the State following upon legislation by the Union cannot in practice be envisaged even as a possibility. Article 254 also negatives the possibility of such conflicting legislation. By cl. (1) of that Article if a law made by the legislature of a State is repugnant to any provision of a law competently made by Parliament, the State law is, subject to cl. (2) void. clause (2) recognizes limited validity of a State law on matters in the Concurrent List if that law is repugnant to an existing or earlier law made by Parliament, only if such law has been reserved for the consideration of the President, and has received his assent. By the proviso authority is reserved to the Parliament to repeal a law having even this limited validity. Assent of the President to State legislation intended to nullify a law enacted by Parliament for acquisition of State property for the purposes of the Union lies outside the realm of practical possibility." B C D E F G

Therefore, the contention that power of acquisition or requisitioning of property in entry 42, List III, if held to be an independent power wholly falling outside the control assumed by the Union pursuant to the declaration envisaged by entry 52, List II, would lead to a sort of a constitutional impasse, is more imaginary than real. H

A Further, in the minority judgment, Subba Rao, J. has in this context said :

> "A declaration under entry 52 of List I would no doubt enable Parliament to make a law in respect of an industry, that is to say Parliament may make a law in respect of an
B existing industry or an industry that may be started subsequently. So too, before the declaration a State legislature could have made a law in respect of an industry by virtue of entry 24 of List II. But neither entry 24 of List II nor entry 52 of List I empowers the State legislature before the said declaration or the Parliament after such a declaration
C to make a law for acquisition of lands. If the State legislature before the declaration or the Parliament after the declaration wanted to acquire the land it can only proceed to make a law by virtue of entry 42 of List III."

Reliance was, however, placed on the following passage in *West*
D *Bengal* case (supra) to urge that power of acquisition is an integral and inseparable concomitant of control assumed by the Union :

> "By making the requisite declarations under entry 54 of List I, the Union Parliament assumed power to regulate mines and minerals and thereby to deny to all agencies
E not under the control of the Union, authority to work the mines. It could scarcely be imagined that the Constitution makers while intending to confer an exclusive power to work mines and minerals under the control of the Union, still prevented effective exercise of that power by making it impossible compulsorily to acquire the land vested in the
F State containing minerals. The effective exercise of the power would depend—if such an argument is accepted—not upon the exercise of the power to undertake regulation and control by issuing a notification under entry 54, but upon the will of the State in the territory of which mineral bearing land is situated. Power to legislate for regulation
G and development of mines and minerals under the control of the Union would, by necessary implication include the power to acquire mines and minerals. Power to legislate for acquisition of property vested in the States cannot therefore be denied to the Parliament if it be exercised consistently with the protection afforded by Art. 31."
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This observation, if properly understood, is in the context of the contention that State property could not be subjected to power of

eminent domain and, hence, Union has no power to compulsorily acquire the same. Therefore, there is no inner conflict between *Cooper* case (supra) and *West Bengal* case (supra) on the point that power of acquisition is an independent power referable to entry 42, List III. However, even if there is a conflict between *West Bengal* case (supra) and *Cooper* case on this point, a later larger constitution Bench judgment in *Cooper* case would impliedly overrule the former to the extent of conflict.

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There is on the contrary a good volume of authority for the proposition that the control assumed by the Union pursuant to declaration to the extent indicated in the statute making the declaration does not comprehend the power of acquisition if it is not so specifically spelt out. In *Kannan Devan Hills Produce Company Ltd.* v. *The State of Kerala & Another,*(1) constitutional validity of Kannan Devan Hills (Resumption of Lands) Act, 1971, was challenged on the ground of legislative competence of Kerala State legislature to enact the legislation. It was urged that in view of the declaration made in s. 2 of the Tea Act, 1853, Tea was a controlled industry and, therefore, the State legislature was denuded of any power to deal with the industry. It was further contended that tea plantation required extensive land and that resumption of land by the impugned legislation would directly and adversely affect the control taken over by the Union and, therefore, the State legislature was incompetent to enact the impugned legislation. This contention was repelled holding that the impugned legislation was in pith and substance one under entry 18 of List II read with entry 42, List III. In reaching this conclusion the Court held as under :

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> "It seems to us clear that the State has legislative competence to legislate on entry 18, List II and entry 42 List III. This power cannot be denied on the ground that it has some effect on an industry controlled under entry 52 List I. Effect is not the same thing as subject-matter. If a State Act, otherwise valid, has effect on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III. The object of ss. 4 and 5 seems to be to enable the State to acquire all the lands which do not fall within the categories (a), (b) and (c) of s. 4(1). These provisions are really incidental to the exercise of the power of acquisition. The State cannot be denied a power to ascertain what land should be acquired by it in the public interest".

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(1) (1973) 1 SCR 356.

A This conclusion was sought to be buttressed by reference to the decision of the Privy Council in *Canadian Pacific Railway Company* v. *Attorney General*,(1) wherein it is observed as under :

> "The appellant, the Candian Pacific Rly. Co., which owned and managed the Empress Hotel in Victoria, B British Columbia, while not denying that the regulation of hours of work was ordinarily a matter of "property and civil rights in the province" under head 13 of s. 92 of the British North America Act, 1867, and accordingly within the legislative competence of the provincial legislature, con- C tended, *inter alia,* that the company's activities had become such an extensive and important element in the national economy of Canada that the dominion Parliament was entitled under the general powers conferred by the first part of s. 91 of the Act of 1867 to regulate all the affairs of the company, even where that involved legislating in relation to D matters exclusively reserved to the provincial legislatures by s. 92".

It can, therefore, be said with a measure of confidence that legislative power of the States under entry 24, List II is eroded only to the extent control is assumed by the Union pursuant to a declaration E made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion. Subject to such erosion, on the remainder the State legislature will have power to legislate in respect of declared industry without in any way trenching upon the occupied field. State legislature which is otherwise competent to deal with F industry under entry 24, List II, can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in Lists II and III and this power cannot be denied to the State. In this connection it would be advantageous to refer to *Chanan Mal* case (supra). In that case constitution validity of Haryana Minerals (Vesting of Rights) Act, 1973, and the two notifications issued G thereunder was challenged on the ground that the Act and the notifications issued thereunder were repugnant to the Mines & Minerals Act made by Parliament after making a declaration as contemplated by Entry 54, List I. The challenge was that the State legislature was incompetent to legislate on the topic of mines and minerals under H entry 23, List II in view of the declaration made under entry 54, List I and the enactment of Act 67 of 1957 (Mines & Minerals Act)

(1) [1950] A. C. 122.

by the Parliament. By the impugned Act and the notifications issued thereunder the State Government of Haryana purported to acquire rights to salt petre, a minor mineral in the land described in the Schedule appended to the notification and by the second impugned notification the State Government announced to the general public that certain salt petre bearing areas in the State of Haryana mentioned therein would be auctioned on the dates given there. Repelling the contention regarding legislative incompetence it was observed that it is difficult to see how the field of acquisition could become occupied by a Central Act in the same way as it had been in the *West Bengal* case (supra) even before Parliament legislates to acquire land in a State. At least until Parliament has so legislated as it was shown to have done by the statute considered by this Court in the case from West Bengal, the field is free for State legislation falling under the express provisions of entry 42 of List III. It was further observed as under :

> "It seems difficult to sustain the case that the provisions of the Central Act would be really unworkable by mere change of ownership of land in which mineral deposits are found. We have to judge the character of the Haryana Act by the substance and effect of its provisions and not merely by the purpose given in the statement of reasons and objects behind it. Such statements of reasons are relevant when the object or purpose of an enactment is in dispute or uncertain. They can never override the effect which follows logically from the explicit and unmistakable language of its substantive provisions. Such effect is the best evidence of intention. A statement of objects and reasons is not a part of the statute, and, therefore, not even relevant in a case in which the language of the operative parts of the Act leaves no room whatsoever as it does not in the Haryana Act, to doubt what was meant by the legislators : It is not disputed here that the object and effect of the Haryana Act was to acquire proprietory right to mineral deposits in 'land'".

There is thus a long line of decisions which clearly establishes the proposition that power to legislate for acquisition of property is an independent and separate power and is exercisable only under entry 42, List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists. This power of the State legislature to legislate for acquisition of property remains intact and untramelled except to the extent where on

A assumption of control of an industry by a declaration as envisaged in entry 52, List I, a further power of acquisition is taken over by a specific legislation.

As already pointed out, in pith and substance the impugned legislation is one for acquisition of scheduled undertakings and that field B of acquisition is not occupied by the IDR Act which deals with control of management, regulation and development of a declared industry and there is no repugnancy between the impugned legislation and the IDR Act. Both can co-exist because the power acquired by the Union under the IDR Act can as well effectively be exercised after the acquisition of the scheduled undertakings as it could be exercised C before the acquisition. Therefore, the contention that the State legislature lacked legislative competence to enact the impugned legislation must be negatived.

A faint submission was made that nationalisation of industry as a national policy will have to be determined and enforced by the D Union keeping in view its Industrial Policy Resolution and such piece-meal nationalisation would certainly encroach upon the control assumed by the Union. Impugned legislation does not purport to nationalise sugar industry in Uttar Pradesh. And there is no bar to a Government owned company or Corporation to set up sugar manufacturing undertaking under an appropriate licence. Therefore, the E impugned legislation on this account does not encroach upon the occupied field.

The second limb of the submission was that in any event the impugned legislation was designed and enacted to prevent mismanagement and to take over management of the scheduled undertakings F as a sequel to acquisition and it trenches into the field occupied by the IDR Act, a Central legislation, and to the extent acquisition enables the Corporation by vesting of the scheduled undertakings in it to take over control and management of the scheduled undertakings, the impugned legislation is void and unenforceable. Section 20 of the G IDR Act was pressed into service to substantiate the submission.

Section 20 of the IDR Act reads as under :—

> "20. After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial H undertaking under any law for the time being in force which authorises any such Government or local authority so to do".

Section 20 forbids a State Government or local authority from taking over the management or control of any industrial undertaking in declared industry. On a correct interpretation, s. 20 precludes any State Government or local authority from taking over the control or management of any industrial undertaking under any law for the time being in force which authorises any such Government or local authority so to do.

The impugned legislation was not enacted for taking over management or control of any industrial undertaking by the State Government. In pith and substance it was enacted to acquire the scheduled undertakings. If an attempt was made to take over management or control of any industrial undertaking in a declared industry indisputably the bar of s. 20 would inhibit exercise of such executive power. However, if pursuant to a valid legislation for acquisition of scheduled undertaking the management stands transferred to the acquiring body it cannot be said that this would be in violation of s. 20. Section 20 forbids executive action of taking over management or control of any industrial undertaking under any law in force, which authorises State Government or a local authority so to do. The inhibition of s. 20 is on exercise of executive power but if as a sequel to an acquisition of an industrial undertaking the management or control of the industrial undertaikng stands transferred to the acquiring authority s. 20 is not attracted at all. Section 20 does not preclude or forbid a State legislature exercising legislative power under an entry other than entry 24 of List II, and if in exercise of that legislative power, to wit, acquisition of an industrial undertaking in a declared industry the consequential transfer of management or control over the industry or undertaking follows as an incident of acquisition, such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of s. 20. Therefore, the contention that the impugned legislation violates s. 20 has no merit.

And now to the oft beaten track of legislation being void as being in contravention of Art. 31(2) as it stood at the relevant time. The impugned legislation was put on the statute book on August 27, 1971. Therefore, Art. 31(2) as it stood on the relevant date may be noticed. The Article as amended by Constitution (Twentyfifth Amendment) Act, 1971, will, therefore, not be attracted. Art. 31(2) as it stood at the relevant time reads as under :

> "31(2). No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the

A property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court, on the ground that the compensation provided by that law is not adequate."

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Emphasis was placed on the word 'compensation' retained in Art. 31(2) after its amendment by the Constitution (Fourth Amendment) Act, 1955, and a reference, was made to *Vajravelu Mudaliar* v. *Special Deputy Collector of Land Acquisition, West Madras,*(1) wherein it was held by this Court that even after the amendment of Art. 31(2) C by the Constitution (Fourth Amendment) Act, 1955, it still retains the expression 'compensation' after its judicial interpretation by this Court in several decisions, viz., to mean just equivalent to the expropriated owner. Reference was then made to *Union of India* v. *Metal Corporation of India Ltd. & Anr.,*(2) in which this Court D affirmed the interpretation of the word 'compensation' to mean just equivalent. Approaching the matter from this angle the Court struck down the Metal Corporation of India (Acquisition) Act, 1965, holding that as the Act has laid down different principles for ascertaining the value of different parts of the undertaking and as all the principles so laid down do not provide for the just equivalent of all parts E of the undertaking mentioned therein, the sum total also cannot obviously be a just equivalent of the undertaking. In reaching this conclusion exception was taken to assessing the value of the used machinery on the basis of written down value arrived at as per the provisions of the Income Tax Act. This observation cannot be said to be any more good law in view of the decision of a Constitution F Bench of this Court in *State of Gujarat* v. *Shantilal Mangaldas & Ors.,*(3) wherein Shah, J., speaking for the Court specifically overruled the *Metal Corporation* case (supra) observing as under :

"The Court then proceeded to hold that the two principles laid down in cl. (b) of Paragraph II of the Schedule G to the Act—(i) that compensation was to be equal to the cost price in the case of unused machinery in good condition, and (ii) written down value as understood in the Income-tax law was to be the value of the used machinery were irrelevant to the fixation of the value of the machinery as on the date of acquisition."

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(1) [1965] 1 S. C. R. 614.
(2) [1967] 1 S. C. R. 256
(3) [1969] 3 S. C. R. 341.

"We are unable to agree with that part of the judgment. The Parliament had specified the principles for determining compensation of the undertaking of the company. The principles expressly related to the determination of compensation payable in respect of unused machinery in good condition and used machinery. The principles were set out avowedly for determination of compensation. The principles were not irrelevant to the determination of compensation and the compensation was not illusory."

It thus appears well settled that if a legislation provides principles for determining compensation, to wit, written down value as understood in Income-tax law to be the value of the used machinery, that principle could neither be said to be irrelevant for determining the compensation nor the compensation so awarded could be styled as illusory.. It was, however, said that this decision in *Shantilal Mangaldas* is overruled in *Cooper's* case and, therefore, the wheel has moved the full circle and the expression 'compensation' and principle for determining the compensation as interpreted in *Vajravelu Mudaliar's* case (supra) is restored. This is not borne out by the pertinent observation in *Cooper's* case (supra) which may be extracted :

"Both the lines of thought which converge in the ultimate result, support the view that the principle specified by the law for determination of compensation is beyond the pale of challenge, if it is relevant to the determination of compensation and is a recognized principle applicable in the determination of compensation for property compulsorily acquired and the principle is appropriate in determining the value of the class of property sought to be acquired. On the application of the view expressed in *P. Vajravelu Mudaliar's* case or in *Shantilal Mangaldas's* case the Act, in our judgment, is liable to be struck down as it fails to provide to the expropriated banks compensation determined according to relevant principles. Section 4 of the Act transfers the undertaking of every named bank to and vests it in the corresponding new bank. Section 6(1) provides for payment of compensation for acquisition of the undertaking and the compensation is to be determined in accordance with the principles specified in the Second Schedule. Section 6(2) then provides that though separate valuations are made in respect of the several matter specified in Sch. II of the Act, the amount of compensation shall be deemed to be a single compensation. Compensation being the equivalent in terms

A of money of the property compulsorily acquired, the principle for determination of compensation is intended to award to the expropriated owner the value of the property acquired. The science of valuation of property recognizes several principles or methods for determining the value to be paid as compensation to the owner for loss of his property : there are different methods applicable to different classes of property in the determination of the value to be paid as recompense for loss of his property. A method appropriate to the determination of value of one class of property may be wholly inappropriate in determining the value of another class of property. If an appropriate method or principle for determination of compensation is applied, the fact that by the application of another principle which is also appropriate, a different value is reached, the Court will not be justified in entertaining the contention that out of the two appropriate methods, one more generous to the owner should have been applied by the legislature."

However, it was pointed out that Shelat, J. speaking for himself and Grover, J. in *His Holiness Kesavananda Bharati Sripadagalavaru* v. *State of Kerala,*(1) in terms observed as under :

> "*In State of Gujarat* v. *Shantilal Mangaldas & Ors.* the decision in *Metal Corporation of India* was overruled which itself was overruled by *R. C. Cooper* v. *Union of India.*"

The question is whether the statement of law in *Shantilal Mangaldas* (supra) that the principle of awarding compensation on the basis of written down value for used machinery is a valid principle for determining compensation and whether the compensation so awarded was illusory is not overruled by any observation in *Cooper*'s case.

Undoubtedly, in *Kesavananda Bharati* case (supra) it is reiterated by Hegde, J. speaking for himself and Mukherjea, J. that it will be for the aggrieved party to clearly satisfy the Court that the basis adopted by the legislature has no reasonable relationship to the value of the property acquired or that the amount to be paid has been arbitrarily fixed or that the same is illusory return for the property taken. Chandrachud, J. (as he then was), while interpreting the expression 'amount' in the amended Art. 31(2) observed as under :

> "The specific obligation to pay an "amount" and in the alternative the use of the word "principles" for determination of that amount must mean that the amount fixed or

(1) [1973] Suppl. S. C R. 1

> determined to be paid cannot be illusory. If the right to property still finds a place in the Constitution, you cannot mock at the man and ridicule his right. You cannot tell him 'I will take your fortune for a farthing'."

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But in the next breath it has been observed that "the amount fixed for being paid to the owner is wholly beyond the pale of challenge that it is inadequate. The concept of adequacy is directly co-related to the market value of the property and therefore, such value cannot constitute an element of that challenge." But this was the situation after amendment of Art. 31(2) by the Constitution (Twentyfifth Amendment) Act. Even as the article stood at the relevant time it was open to the legislature to fix principle for determining compensation and unless it is shown that the principles are irrelevant to the determination of the value of the property or by working out the compensation according to the principles so specified the compensation becomes illusory, the principles themselves are beyond the pale of challenge before a court of law on the ground that they do not provide adequate compensation. Now, here the compensation is worked out and specified in the schedule to the impugned Act. The compensation is determined in round figure. This Court has in terms accepted that payment of compensation on the basis of written down value calculated according to the Income-tax law for used machinery is not irrelevant as a principle for determining compensation. That principle appears to have been adopted for valuing used machinery though the legislation fixes compensation payable to each undertaking in round sum. And that was the only part challenged.

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It was, however, said that no principle is discernible because not only none was stated on the floor of the House but to a specific question the reply was that principle is not to be disclosed. Debate in legislature cannot conclude the point. Here the principle is discernible and that appears to be valid. It represents the collective will of the House. To reject it would tantamount to saying that the majority members voted without understanding and appreciating the principles. However, the principle is extracted in court room debate and it is a valid principle.

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A peep into the background leading to the acquisition of the scheduled undertakings would reveal that these scheduled undertakings had a heavy back-load of carried forward loss, that even though they were taking sugar cane from cane growers, *i.e.* the farmers, they failed to pay them the price of sugar cane. There was labour unrest as labour was not paid. Generally speaking, they can be styled as

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A sick undertakings and become a drag on the economy of the area. There was no scope for ploughing back the profits to rejuvenate the machinery because there was no profit. The situation had not improved even when managements of some of the undertakings were taken over under the IDR Act and, therefore, this desparate situation B called for a drastic remedy in public interest and while applying that drastic remedy of acquisition principles which are valid for determining the value of machinery were adopted. The adequacy or otherwise of compensation on the calculus made by applying the principle is beyond the judicial review. It would be a day time hallucination to call such principle irrelevant or compensation illusory. The C challenge to the validity of the impugned legislation on the ground of violation of Art. 31 (2) must accordingly fail.

There remain two minor and incidental points mentioned in passing. The submissions themselves lacked emphasis. They are, that (1) no compensation is provided for the agricultural land taken over by the State; (2) good-will of the scheduled undertakings was not D evaluated as a component of compensation.

With reference to Ishwari Khetan Sugar Mills (P) Ltd., it was said that 36 acres of agricultural land belonging to the company owning the scheduled undertaking was taken over without compensation. It was countered by saying that agricultural land is not E taken over. It is not clear from the pleadings and record whether agricultural land outside the structures of scheduled undertaking has been acquired and has at all been taken over by the Corporation. It may be that between various structures of scheduled undertakings there might be some open land but that is part and parcel of scheduled undertakings because any other construction would show that F a passage or road between two constructions could not be acquired. Unless, therefore, it is specifically shown that while acquiring scheduled undertakings agricultural land belonging to the company or the owner owning scheduled undertaking was either acquired or taken over as part of the acquisition it is not possible to accept the submission that there was acquisition of agricultural land without providG ing compensation for the same.

And as for the good-will, less said the better. The scheduled undertakings were sick units and the sickness was chronic. A manufacturing unit with heavy carried forward loss and defaulting in payments, possibly facing appointment of Receivers for realising tax H arrears, asks compensation for the good-will generated by it. This good-will appears to be more imaginary than real or an argument to support an untenable submission. But the better answer is that there

cannot be a good-will of a manufacturing undertaking but it can be of a company, a partnership, or a proprietor owning scheduled undertaking and neither the company nor the partnership nor the proprietory unit, if any, has been acquired under the impugned legislation. Therefore, in evaluating compensation of the scheduled undertakings there is no question of evaluating the good-will.

Mr. R. A. Gupta appearing in SLP. 6252/79 raised an additional contention that the impugned Act is violative of Art. 14 in that selection of petitioners' scheduled undertakings for acquisition is wholly arbitrary and there is no difference between those selected for acquisition and those left out through all such sugar, undertakings in the State of Uttar Pradesh were similarly situated and similarly circumstanced. Sustenance was largely sought to be drawn from the Report of Justice Bhargava styled as Sugar Industry Inquiry Commission, 1974, which *inter alia*, specified 17 sugar undertakings in Uttar Pradesh as *prima facie* sick sugar mills. After reading out a portion of the Report it was said that classifying the 12 sugar undertakings for acquisition is not based on any intelligible differentia between those included in the group for acquisition and those left out and that this differential treatment has no rational relationship to the object sought to be achieved by the impugned legislation. On behalf of respondents learned Advocate-General for the State of Uttar Pradesh countered this contention by pointing out that before acquiring the scheduled undertakings the Government had a close review of the condition of the sugar undertakings done for certain specific period set out in the affidavit and ascertained whether the situation had become desperate on account of the persistent default in payment of cane price, purchase tax, labour dues, etc. The situation in Uttar Pradesh appears to be peculiar in that cane growers go on selling their cane to sugar undertakings probably having little or no option in this behalf because it is a perishable commodity and must be disposed of as early as possible and they have to await payment at the sweet will, whim and caprice of the sugar barons. Its unhealthy effect on marginal farmers would be intolerable because the cash crop would not fetch any cash and destitution may be the inevitable outcome. And this phenomenon was repeated year after year. It was pointed out that a close scrutiny was applied to this persistent default and where the situation in respect of sugar undertakings was desperate they were classified together and they were sought to be acquired. Can it be said that this classification is not based on any intelligible differentia. Economic situation of an industrial undertaking may be very good, good, average, bad, intolerable and uneconomic in larger national perspective.

A It would have been difficult for the Government to group all sugar undertakings with such as were living on coramine doses. There does appear to be the intelligible differentia by which this classification of those in an intolerable condition has been grouped together. Acquisition was for an avowed object of rejuvenating these undertakings and thereby improving the economy of the area by providing priority in payment to cane growers, labour, in respect of whom there is no cushion for sufferance. Thus, this differentia undoubtedly has a rational relationship to the object sought to be achieved by the Act. The challenge of Art. 14 was an argument of despair and must be repelled.

C These were all the contentions in these appeals and special leave petitions and as there is no merit in any of them, the appeals and the special leave petitions fail and are dismissed with costs in one set.

PATHAK, J.—We have had the benefit of reading the judgment D prepared by our brother Desai. While we broadly agree with the final conclusions reached by him on the several points debated before us, we would prefer to refrain from expressing any opinion on the question whether the declaration made by Parliament in S. 2 of the Industries (Development and Regulation) Act, 1951 in respect of the industries specified in the First Schedule to that Act can be regarded E as limited to removing from the scope of Entry 24 of List II of the Seventh Schedule to the Constitution only so much of the legislative field as is covered by the subject matter and content of that Act or it can be regarded as effecting the removal from that Entry of the entire legislative field embracing all matters pertaining to the industries F specified in the declaration. It seems to us that the observations made by this court in *The Hingir-Rampur Coal Co., Ltd. and Others* v. *The State of Orissa and Others,*(1) *State of Orissa* v. *M. A. Tulloch and Co.,*(2) *Baijnath Kedia* v. *State of Bihar & Ors.*(3) *and State of Haryana & Anr.* v. *Chanan Mal, etc.*(4) cannot be of assistance in this behalf. In each of those cases, the declaration made by Parlia- G ment in the concerned enactment limited the control of the regulation of the mines and the development of minerals to the extent provided in the enactment. Whether the terms in which the declaration has been framed in s. 2 of the Industries (Development and Regulation) Act—a declaration not expressly limiting control of the specific indus-

(1) [1961] 2 S. C. R. 537.
(2) [1964] 4 S. C. R. 461.
(3) [1970] 2 S. C. R. 100.
(4) [1976] 3 S. C. R. 688.

tries to the extent provided by the Act—can be construed as being so limited is a matter which, we think, we should deal with in some more appropriate case. The range of considerations encompassed within the field of enquiry to which the point is amenable has not, to our mind, been sufficiently covered before us. And for good reason. The provocation was limited. For the controversy in the present cases concerning the legislative competence of the State Legislature to enact the U.P. Sugar Undertakings (Acquisition) Act, 1971 can be adequately disposed of on the ground that the legislation falls within Entry 42 of List III and cannot be related to Entry 52 of List I or Entry 24 of List II. When the impugned enactment truly falls within Entry 42 of List III—"acquisition and requisitioning of property"—there is a reluctance to enter upon an examination of the mutually competing claims of Entry 52 of List I and Entry 24 of List II—entries which deal with "industries", an entirely different subject matter.

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With this reservation, we have no hesitation in agreeing with the ultimate conclusions reached by our learned brother on the remaining points of controversy and in concurring with the order proposed by him disposing of these appeals and special leave petitions.

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P.B.R. *Appeals dismissed.*