P. VAJRAVELU MUDALIAR

v.

SPECIAL DEPUTY COLLECTOR, MADRAS & ANR.

October 5, 1964

(K. SUBBA RAO, K. N. WANCHOO, M. HIDAYATULLAH, RAGHUBAR DAYAL AND S. M. SIKRI JJ.)

Constitution of India, Art. 31-A—Whether after amendment applied only to acquisition of "estates" for agrarian reform.—Article 31(2)—Whether after amendment compensation required to be "just equivalent"—Whether a law not providing for "just equivalent" amounted to fraud on power—Whether issue justiciable—Land Acquisition (Madras Amendment) Act, 1961—Whether violative of Art. 31(2) or of Art. 14.

The petitioners' lands were notified for acquisition for the purpose of housing schemes and proceedings in respect of compensation payable to them in accordance with the provisions of the Land Acquisition (Madras Amendment) Act, 1961, were pending. The constitutional validity of this Act was challenged by them on the ground that it infringed Arts. 14, 19 and 31(2) of the Constitution.

It was contended on behalf of the respondents that the Amending Act was protected by Art. 31-A and therefore its validity could not be questioned on the ground that it was hit by Arts. 14, 19 and 31; that after the Constitution (Fourth Amendment) Act, 1955, the expression "compensation" carried a meaning different from that given to it in *Mrs. Bela Banerjee's* case; and that after the said amendment the adequacy of compensation for land acquired ceased to be justiciable.

HELD: (i) Article 31-A applied only to a law made for acquisition by the State of any "estate" or any rights therein or for extinguishment or modification of such rights, if such acquisition, etc., was connected with agrarian reform. This continued to be the position even after the amendment of Art. 31-A by the Constitution (Seventeenth Amendment) Act 1964. Under Art. 31(2) and (2A) of the Constitution, the State was prohibited from making a law for acquiring land unless it was for a public purpose and unless it fixed the amount of compensation or specified principles for determining the amount of compensation. But Art. 31A lifted the ban to enable the State to implement pressing agrarian reforms and this object is implicit in Art. 31A. This was a restricted exception, as otherwise, the State would be in a position to acquire the land of citizens without reference to any agrarian reform in derogation of their fundamental rights and without payment of compensation and thus deprive Art. 31(2) practically of its content. [621 H; 622 A-D].

The object of slum clearance for which the land was stated to have been acquired under the Amending Act could not be related to agrarian reform in its limited or wider sense. [622 E-F].

K. K. Kochuni v. *State of Madras*, [1960] 3 S.C.R. 887 and *Ranjit Singh* v. *State of Punjab*, [1965] 1 S.C.R. 82, considered and followed.

(ii) It was well-settled before Art. 31(2) was amended in 1955 that a person whose land was acquired was entitled to compensation *i.e.*, a "just equivalent" of the land of which he was deprived. The amended Art. 31(2) also contains the expressions "compensation" and "principles" and therefore the legislature must be taken to have accepted the meaning given to

A these expressions in *Mrs. Bela Banerjee's* case. It follows therefore that by vitrue of Art. 31(2), a legislature in making a law of acquistion or requisition must provide for a "just equivalent" of what the owner has been deprived of or specify the principles for the purpose of ascertaining such "just equivalent". [625 E-F, H; 626 A, D-F].

State of West Bengal v. *Mrs. Bela Banerjee,* [1954] S.C.R. 558 and *State of Madras* v. *Namasivaya Mudaliar,* [1964] 6 S.C.R. 936, followed.

B The effect of the amended Art. 31(2) is that a question which pertains to the adequacy of compensation is not justiciable. For determining compensation in respect of any property acquired, there may be many possible modes or principles of valuation; where the adoption of one principle may give a higher and of another, a lesser value, the Court cannot say that the law should have adopted one principle and not the other, for this would relate only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired C or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31(2). If a law says that though a house is acquired, it shall be valued as land, or that though a house site is acquired, it shall be valued as agricultural land, or that though it was acquired in 1950, its value in 1930 should be given, or though 100 acres are required, compensation should be given only of 50 acres, the principles do not pertain to the domain of adequacy and in D such cases the validity of the principles could be scrutinised. Therefore the Court would have jurisdiction to deal with the matter if the legislature, though *ex-facie* purporting to provide for compensation or indicating the principles for its ascertainment, in fact and substance takes away property without providing compensation, or provides for illusory compensation, or for its ascertainment on arbitrary principles, for in that case the legislature would be enacting a law in fraud of its power under Art. 31(2). [627 B-H; 628 A-B; 629 B-E].

E *Gajpati Narayan Deo v. State of Orissa,* [1954] S.C.R. 1 and *Gullapalli Nageswara Rao* v. *A.P. State Road Transport Corporation,* [1959] Supp. 1 S.C.R. 319, referred to.

The impugned provisions of the Amending Act, which provide for compensation on the basis of the value of the land at the date of publication of the Notification under s. 4(1) of the Land Acquisititon Act, 1894, or the amount equal to the average market value of the land during F 5 years immediately preceding such date, whichever is less, for payment of a solatium of only 5 per cent instead of 15 per cent under the Principal Act and for the exclusion of any compensation by reason of the suitability of the land for any use other than the use to which it was put, only pertain to the method of ascertaining the compensation and do not constitute a fraud of power. The Amendng Act did not therefore offend Art. 31(2) of the Constitution. [639 E-H; 631 A-D].

Sri Raja Vyricherla Narayana Gajapatraju Bahadur Guru v. *The Revenue* G *Divisional Officer, Vizianagram,* I.L.R. [1939] Mad. 532, referred to.

(iii) A comparative study of the principal Act and the Amending Act showed that if land was acquired for a housing scheme under the Amending Act, the claimant would get a lesser value than what he would get for the same or similar land acquired for some public purpose under the Principal Act. The discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes was not sustained on the principle of reasonable classifica- H tion founded on intelligible differentia which had a rational relation to the object sought to be achieved. Although it was contended that the Amending Act was passed to meet an urgent demand so as to find a way out to clear up slums, the Act as finally evolved was not confined to any

such problem and land could be acquired under the Amending Act for housing schemes with other objectives. The Amending Act therefore clearly infringed Art. 14 of the Constitution and was void. [633 B-E; 635 A-B]. A

ORIGINAL JURISDICTION : Writ Petitions Nos. 144, 227 and 228 of 1963.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights. B

A. V. Viswanatha Sastri, C. S. Prakasa Rao and *R. Gopalakrishnan*, for the petitioner (in W. P. No. 144/63).

A. V. Viswanatha Sastri, G. A. Pias, T. N. Sambasivan and *N. S. Mani*, for the petitioners (in W. Ps. Nos. 227 and 228 of 1963). C

A. Ranganadham Chetty, R. Viswanathan and *A. V. Rangam*, for the respondents (in W. P. No. 144 of 1963).

R. Ranganadham Chetty and *A. V. Rangam*, for the respondents (in W. P. Nos. 227 and 228 of 1963).

S. S. Shukla, for the interveners (W. P. No. 144 of 1963). D

C. K. Daphtary, Attorney-General, N. S. Bindra, R. H. Dhebar and *B. R. G. K. Achar*, for the Attorney-General (in W. P. No. 144 of 1963).

B. R. L. Iyengar, R. H. Dhebar and *B. R. G. K. Achar*, for the Advocate-General, Gujarat (in W. P. No. 144/63). E

C. K. Daphtary, Attorney-General, R. H. Dhebar and *B. R. G. K. Achar*, for the Advocate-General, Maharashtra, (in W. P. No. 144/63).

R. N. Sachthey and *B. R. G. K. Achar*, for the Advocate-General, Rajasthan (in W. P. No. 144/63). F

I. N. Shroff, for the Advocate-General, Madhya Pradesh (in W. P. No. 144/64).

The Judgment of the Court was delivered by

Subba Rao J. These three petitions filed under Art. 32 of the Constitution raise the question of the constitutional validity of G the Land Acquisition (Madras Amendment) Act, 1961 (Madras Act 23 of 1961), hereinafter called the Amending Act. We shall briefly state the facts relevant to the question raised. The petitioner in Writ Petition No. 144 of 1963, P. Vajravelu Mudaliar, is the owner of lands bearing survey Nos. 4-2, 40-7 and 43-1 of Peruakudal Village and of extents 1.82, 1.39 and 3.72 acres H respectively. By a notification dated November 7, 1960, and published in the Fort. St. George Gazette, dated November 16,

A 1960, the Government issued a notification under s. 4(1) of the Land Acquisition Act (Act 1 of 1894), hereinafter called the Principal Act, notifying that, among other lands, the said lands of the petitioner were needed for a public purpose, to wit, for the development of the area as "neighbourhood" in the Madras City in accordance with the Land Acquisition and Development Scheme
B of the Government. On November 23, 1960, the Special Deputy Collector for Land Acquisition issued a notification under s. 4(1), read with s. 17(4), of the Principal Act, and under the said notification the first respondent was authorized to take possession of the petitioner's lands. The Madras Legislature subsequently
C enacted the Amending Act providing for the acquisition of lands for housing schemes and laying down principles for fixing compensation different from those prescribed in the Principal Act. The petitioner questions the validity of the Amending Act, *inter alia*, on the ground that it infringes Arts. 14, 19 and 31(2) of the Constitution.

D The petitioner in Writ Petitions Nos. 227 and 228 of 1963, Most Rev. Dr. L. Mathias, Archbishop of Madras, owns lands bearing survey Nos. 17-2-B-1 and 127/2B of extent 50.53 acres and 0.62 acre respectively in Urur, near Madras City. By notification dated November 13, 1961, and published in the Fort St.
E George Gazette, the Government of Madras issued a notification under s. 4(1) of the Principal Act notifying, among other lands, that the said lands of the petitioner were needed for a public purpose, to wit, for the development of the area as the "neighbourhood" in Madras City in accordance with the Land Acquisition and Development Schemes of the Government. It was also stated
F in the notification that in view of the urgency, under s. 17(4) of the Principal Act, the application of the provisions of s. 5(a) of the said Act was dispensed with, and that compensation in respect of the said acquisition would be paid in accordance with the provisions of the Amending Act.

G The said petitioner (W. P. No. 228 of 1963) also owns lands bearing survey Nos. 153/1 and 154/2 at Thiruvanmiyar Village, Chingleput District, of the extent 21.56 and 10.50 acres respectively totalling about 32 acres. The said lands were also notified for acquisition and the petitioner was told that he would be paid compensation under the Amending Act.

H The said petitioner in these two petitions questions the constitutional validity of the said Amending Act on the ground, *inter alia*, that it offends Arts. 14, 19 and 31(2) of the Constitution.

To the three petitions the Special Deputy Collector for Land Acquisition, West Madras, and the Government of Madras are made parties. In their counters the respondents pleaded, among others, that the said Act was saved under Art. 31-A of the Constitution and, therefore, its validity could not be questioned on the ground that it infringes either Art. 14, Art. 19 or Art. 31(2) of the Constitution; and that even if Art. 31-A was not attracted, the provisions of the Amending Act would not infringe any of the said three provisions. In these petitions some interveners are represented by their counsel and this Court had also given notices to the Advocates-General of various States. We have heard the arguments advanced on behalf of the petitioners, interveners, and the State of Madras and the counsel on behalf of the Advocates-General of some of the States who supported the State of Madras.

Mr. A. V. Viswanatha Sastri, learned counsel for the petitioners, raised before us the following points : (i) As the Madras State Housing Board Act, 1961, and the Madras Town-Planning Act, 1920, are special statutes providing for the execution of housing and improvement schemes and town-planning schemes respectively, property for the said schemes can be acquired only after following the procedure prescribed thereunder and the Government has no power to acquire land for the said purpose under the Amending Act in derogation of the provisions of the former Act. (ii) The acquisition, though it purports to be for a housing scheme, is really intended for selling the lands acquired and raising revenue for the State and it is, therefore, a colourable exercise of the State's power. (iii) The Amending Act offends Arts. 14 and 19 of the Constitution. And (iv) the Amending Act is also bad, because it does not provide for payment of compensation within the meaning of Art. 31(2) of the Constitution.

Mr. A. Ranganadham Chetty, learned counsel for the State of Madras contends that, (i) the Government in its discretion has the power to acquire land for housing purposes under any one of the three Acts, namely, the Housing Board Act, the Town-Planning Act and Amending Act; (ii) by reason of the Constitution (Seventeenth Amendment) Act, 1964, which is retrospective in operation, the petitioners are precluded from questioning the validity of the Amending Act on the ground that it infringes Art. 14, Art. 19 or Art. 31 of the Constitution; (iii) the Amending Act does not infringe either Art. 14 or Art. 19 of the Constitution; and (iv) after the Constitution (Fourth Amendment) Act 1955, the expression "compensation" carries a meaning

A different from that given to it in *Mrs. Bela Banerjee's* case(1), and thereafter the adequacy of the amount given for acquisition of land ceased to be justiciable.

Mr. Palkhivala, appearing for some of the interveners elaborated the contention of Mr. A. V. Viswanatha Sastri based upon the meaning of the expression "compensation" in Art. 31(2) of the Constitution. We shall consider his argument in the relevant context in the course of our judgment.

The first question need not detain us, for though Mr. Viswanatha Sastri raised the point that the Government can only acquire the lands for housing schemes in conformity with the provisions of either the Madras Town-Planning Act, 1920, or the Madras State Housing Board Act, 1961, but not under the provisions of the Amending Act, he did not pursue the matter in view of the following two decisions of this Court: *Patna Improvement Trust* v. *Smt. Lakshmi Devi*(2), and *Nandeshwar Prasad* v. *U. P. Government*(3). Therefore, nothing more need be said about this.

Mr. A. Ranganadham Chetty relied upon the Constitution (Seventeenth Amendment) Act, 1964, and contended that Art. 31-A, as amended, precluded the petitioners from questioning the validity of the Amending Act on the ground that it infringed Art. 14, Art. 19 or Art. 31 of the Constitution. By the said amendment, in the definition of the expression "estate" sub-cl. (a) of cl. (2) was substituted by a new sub-clause defining the said expression. The material part of the amended sub-cl. (a) of cl. (2) reads:

> "the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to Land tenures in force in that area and shall also include—
>
> (ii) any land held under *ryotwari* settlement."

From the material on record we cannot definitely hold whether the lands in question are held under *ryotwari* settlement. But assuming for the purpose of these petitions that the said lands are held under *ryotwari* settlement, the question arises whether the impugned law provides for acquisition by the State of any "estate" or any rights therein or the extinguishment or modification of any such rights. The scope of this provision fell to be

(1) [1954] S.C.R. 558. (2) [1963] Supp. 2 S.C.R. 812.
(3) A.I.R. 1964 S.C. 1217.

considered by this Court in *K. K. Kochuni* v. *The State of Madras*(1). There it was held that though the impugned Act dealt with an estate, it was not saved by Art. 31-A of the Constitution, as the Act had nothing to do with agrarian reform, but simply conferred on junior members of the *tarawad* joint rights which they had not got before in the *sthanam* properties. Mr. Ranganadham Chetty criticized this decision on the ground that the said view was based only on a part of the statement of "objects and reasons" and that the omitted part thereof supported a wider construction of the provisions so as to include acquisition of a land for slum clearance or other such social purposes. The omitted part of the statement reads thus :

> "(ii) The proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas."

It is true that in the said decision the statement of objects and reasons relevant to the question raised therein was extracted; but it was made clear that it was referred to only for the limited purpose of ascertaining the conditions prevalent at the time the Bill was introduced in Parliament and the purpose for which the amendment was made. It is commonplace that a court cannot construe a provision of the Constitution on the basis of the statement of "objects and reasons", and this Court did not depart from the said salutary rule of construction. The real basis of that decision is found at p. 900 and it is :

> "The definition of "estate" refers to an existing law relating to land tenures in a particular area indicating thereby that the Article is concerned only with the land tenure described as an "estate". The inclusive definition of the rights of such an estate also enumerates the rights vested in the proprietor and his subordinate tenure-holders. The last clause in that definition, *viz.*, that those rights also include the rights or privileges in respect of land revenue, emphasizes the fact that the Article is concerned with land-tenure. It is, therefore, manifest that the said Article deals with a tenure called "estate" and provides for its acquisition or the extinguishment or modification of the rights of the land-holder or the various subordinate tenure-holders in respect of their rights in relation to the estate. The contrary view would enable the State to divest a proprietor

(1) [1960] 3 S.C.R. 887, 900.

A of his estate and vest it in another without reference to any agrarian reform."

This judgment, therefore, in effect, held that Art. 31-A (i)(a) should be confined to an agrarian reform and not for acquiring property for the purpose of giving it to another. This Court in B *Ranjit Singh* v. *The State of Punjab*(1) considered the scope of the said decision. The question that arose in that case was whether the East Punjab Holdings (Conservation and Prevention of Fragmentation) Act, 1948 (Act 50 of 1948), as amended by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (2nd Amendment and Validation) Act, 1960 C (Act 27 of 1960), was protected by Art. 31-A against an attack on the ground that the said Act infringed the fundamental rights under Arts. 13, 14, 19 and 31 of the Constitution. This Court considered the earlier decisions of this Court, including the decision in *K. K. Kochuni* v. *State of Madras*(2). Adverting to *Kochuni's* case, Hidayatullah J., speaking for the Court, D observed :

> "But that was a special case and we cannot apply it to cases where the general scheme of legislation is definitely agrarian reform and under its provisions something ancillary thereto in the interests of rural E economy has to be undertaken to give full effect to the reforms."

Apropos the Act before it, this Court observed :

> "The scheme of rural development today envisages not only equitable distribution of land so that there is F no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few, on the other, but envisages also the raising of economic standards and bettering rural health and social conditions."

That judgment, therefore, accepts the view that Art. 31-A was G enacted only to implement agrarian reform, but has given a comprehensive meaning to the expression "agrarian reform" so as to include provisions made for the development of rural economy.

Under Art. 31(2) and (2A) of the Constitution a State is H prohibited from making a law for acquiring land unless it is for a public purpose and unless it fixes the amount of compensation

(1) [1965] 1 S.C.R. 82. (2) [1960] 3 S.C.R. 887.

or specifies the principles for determining the amount of compensation. But Art. 31-A lifts the ban to enable the State to implement the pressing agrarian reforms. The said object of the Constitution is implicit in Art. 31-A. If the argument of the respondents be accepted, it would enable the State to acquire the lands of citizens without reference to any agrarian reform in derogation of their fundamental rights without payment of compensation and thus deprive Art. 31(2) practically of its content. If the intention of Parliament was to make Art. 31(2) a dead-letter, it would have clearly expressed its intention. This Court cannot by interpretation enlarge the scope of Art. 31-A. On the other hand, the Article, as pointed out by us earlier, by necessary implication, is confined only to agrarian reforms. Therefore, we held that Art. 31-A would apply only to a law made for acquisition by the State of any "estate" or any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian reform.

Mr. Ranganadham Chetty contended that acquisition for housing under the Amending Act is for slum clearance and for relieving congestion of housing accommodation and that acquisition for such a purpose would be in connection with agrarian reform in the enlarged sense of that expression accepted by this Court. Even accepting the argument of the learned counsel that the Act was conceived and enacted only for the purpose of slum clearance which became an urgent problem for the city of Madras, we cannot hold that such a slum clearance relates to an agrarian reform in its limited or wider sense. That apart, the Amending Act in its comprehensive phraseology takes in acquisition for any housing scheme, whether for slum clearance or for creating modern suburbs or for any other public purpose. The provisions of the Amending Act are not confined to any agrarian reform and, therefore, do not attract Art. 31-A of the Constitution.

If Art. 31-A of the Constitution is out of the way, Mr. Viswanatha Sastri, learned counsel for the petitioners contended that the Act is bad as it does not provide for compensation *i.e.*, a "just equivalent" for the land acquired under the Amending Act and, therefore, it offends Art. 31(2) of the Constitution. This aspect is elaborated by Mr. Palkhivala, who appeared for one of the interveners in the petitions. He narrated the following four situations; (i) when the law provides for adequate compensation but there is difference of opinion as to the adequacy of it

A in a given case; (ii) where the law provides for partially inadequate consideration based on valid principles related to the property at the time of acquisition; (iii) where it fixes arbitrarily the compensation based on principles unrelated to the property or to the time of acquisition or to both; (iv) where the compensation fixed is illusory; and contended that in the first situation B compensation is paid, that in the second it is a moot question whether the question of adequacy of compensation is justiciable or not, and that in the third and fourth situations, the said question is clearly justiciable. Mr. Ranganadham Chetty, appearing for the State, on the other hand, argued that the C question of adequacy of consideration, however it arose, was not justiciable in a court of law. To appreciate the contentions it is necessary to consider the following questions: (i) what was the scope of the relevant part of Art. 31(2) of the Constitution before the Constitution (Fourth Amendment) Act, 1955? (ii) why was that amendment brought about? (iii) what was the change D the amendment introduced? and (iv) what was the effect of the amendment?

Article 31(2) before the said amendment read as follows:

> "No property.....shall be taken possession of or acquired for public purposes..... unless E the law provides for compensation for the property taken possession of or either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given."

In *Mrs. Bela Banerjee's*(1) case this Court was called upon to con- F sider the question whether compensation provided for under the West Bengal Land Development and Planning Act, 1948, was in compliance with the provisions of Art. 31(2) of the Constitution. Under the said Act lands could be acquired many years after it came into force, but it fixed the market value that pre- G vailed on December 31, 1946, as the ceiling on compensation without reference to the value of the land at the time of acquisition. In that context this Court considered the provisions of Art. 31(2) of the Constitution and came to the following conclusion, at p. 563-564:

> "While it is true that the legislature is given the H discretionary power of laying down the principles which should govern the determination of the amount

(1) [1954] S.C.R. 558.

to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court."

By applying the said principles this Court held that the provisions of the said Act fixing a ceiling on compensation without reference to the value of the land was arbitrary and, therefore, was not in compliance with, in law and spirit, the requirement of Art. 31(2) of the Constitution. This decision lays down three points, namely, (i) the compensation under Art. 31(2) shall be a "just equivalent" of what the owner has been deprived of; (ii) the principles which the Legislature can prescribe are only principles for ascertaining a "just equivalent" of what the owner has been deprived of; and (iii) if the compensation fixed was not a "just equivalent" of what the owner has been deprived of or if the principles did not take into account all relevant elements or took into account irrelevant elements for arriving at the just equivalent, the question in regard thereto is a justiciable issue. This Court, therefore, authoritatively interpreted Art. 31(2) of the Constitution and laid down its scope. This view was reiterated by this Court in *State of Madras* v. *Namasivaya Mudaliar*[1]. There the question was whether ss. 2 and 3 of the Madras Lignite (Acquisition of Land) Act XI of 1953 which sought to amend the Land Acquisition Act 1 of 1894 were invalid because they infringed the fundamental rights under Art. 31 of the Constitution of owners of lands whose property was to be compulsorily acquired. Under that Act, compensation made payable for compulsory acquisition of land was the value of the land on April 28, 1947, together with the value of any agricultural improvements made thereon after that date and before publication of the notification under s. 4(1). The result of that Act was to freeze for the purpose of acquisition the prices of land in the area to which it applied and the owners were

(1) [1964] 6 S.C.R. 936.

A deprived of the benefit of appreciation of land values since April 28, 1947, whenever the notification under s. 4(1) might be issued and also of non-agricultural improvements made in the land after April 28, 1947. That Act was passed before the Constitution (Fourth Amendment) Act, 1955, was enacted and, therefore, the question fell to be considered on the Article as it
B existed before the amendment. After noticing the relevant provisions and the case-law on the subject, Shah J., speaking for the Court, said :

> "Fixation of compensation for compulsory acquisition of lands notified many years after that date, on the
C market value prevailing on the date on which lignite was discovered is wholly arbitrary and inconsistent with the letter and spirit of Art. 31(2) as it stood before it was amended by the Constitution (Fourth Amendment) Act, 1955. If the owner is by a constitutional guarantee protected against expropriation of his pro-
D perty otherwise than for a just monetary equivalent, a law which authorises acquisition of land not for its true value, but for value frozen on some date anterior to the acquistion, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at sometime in future,
E must be regarded as infringing the fundamental right."

It may, therefore, be taken as settled law that under Art. 31(2) of the Constitution before the Constitution (Fourth Amendment) Act, 1955, a person whose land was acquired was entitled to compensation *i.e.,* a "just equivalent" of the land of which he
F was deprived. The Constitution (Fourth Amendment) Act, 1955, amended Art. 31(2) and the amended Article reads :

> "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for
G the property so acquired or requisitioned and either fixes the amount of 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
H not adequate."

A scrutiny of the amended Article discloses that it accepted the meaning of the expressions "compensation" and "principles" as

defined by this Court in *Mrs. Bela Banerjee's* case(1). It may be recalled that this Court in the said case defined the scope of the said expressions and then stated whether the principles laid down take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court. Under the amended Article, the law fixing the amount of compensation or laying down the principles governing the said fixation cannot be questioned in any court on the ground that the compensation provided by that law was inadequate. If the definition of "compensation" and the question of justiciability are kept distinct, much of the cloud raised will be dispelled. Even after the amendment, provision for compensation or laying down of the principles for determining the compensation is a condition for the making of a law of acquisition or requisition. A Legislature, if it intends to make a law for compulsory acquisition or requisition, must provide for compensation or specify the principles for ascertaining the compensation. The fact that Parliament used the same expressions, namely, "compensation" and "principles" as were found in Art. 31 before the Amendment is a clear indication that it accepted the meaning given by this Court to those expressions in *Mrs. Bela Banerjee's* case(1). It follows that a Legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the "just equivalent" of what the owner has been deprived of. If Parliament intended to enable a Legislature to make such a law without providing for compensation so defined, it would have used other expressions like "price", "consideration" etc. In *Craies On Statute Law*, 6th Edn., at p. 167, the relevant principle of construction is stated thus :

> "There is a well-known principle of construction, that where the legislature used in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears."

The said two expressions in Art. 31(2), before the Constitution (Fourth Amendment) Act, have received an authoritative interpretation by the highest court in the land and it must be presumed that Parliament did not intend to depart from the meaning given by this Court to the said expressions.

(1) [1954] S.C.R. 558.

A The real difficulty is, what is the effect of ouster of jurisdiction of the court to question the law on the ground that the "compensation" provided by the law is not adequate? It will be noticed that the law of acquisition or requisition is not wholly immune from scrutiny by the court. But what is excluded from the court's jurisdiction is that the said law cannot be questioned B on the ground that the compensation provided by that law is not adequate. It will further be noticed that the clause excluding the jurisdiction of the court also used the word "compensation" indicating thereby that what is excluded from the court's jurisdiction is the adequacy of the compensation fixed by the Legislature. The argument that the word "compensation" means a just equi- C valent for the property acquired and, therefore, the court can ascertain whether it is a "just equivalent" or not makes the amendment of the Constitution nugatory. It will be arguing in a circle. Therefore, a more reasonable interpretation is that neither the principles prescribing the "just equivalent" nor the "just equivalent" can be questioned by the court on the ground D of the inadequacy of the compensation fixed or arrived at by the working of the principles. To illustrate : a law is made to acquire a house; its value at the time of acquisition has to be fixed; there are many modes of valuation, namely, estimate by an engineer, value reflected by comparable sales, capitalisation E of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value. But nonetheless they are principles on which and the manner in which compensation is determined. The court cannot obviously say that the law should have adopted F one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31(2) of the Constitution. If a law says that though a house is acquired it G shall be valued as a land or that though a house site is acquired it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given, or though 100 acres are acquired compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property H acquired. In such cases the validity of the principles can be scrutinized. The law may also prescribe a compensation which is illusory; it may provide for the acquisition of a property worth

lakhs of rupees for a paltry sum of Rs. 100. The question in that context does not relate to the adequacy of the compensation, for it is no compensation at all. The illustrations given by us are not exhaustive. There may be many others falling on either side of the line. But this much is clear. If the compensation is illusory or if the principles prescribed are irrelevant to the value of the property at or about the time of its acquisition, it can be said that the Legislature committed a fraud on power and, therefore, the law is bad. It is a use of the protection of Art. 31 in a manner which the Article hardly intended.

This leads us to the consideration of the question of the scope of the doctrine of fraud on power. In *Gajapati Narayan Deo* v. *The State of Orissa*(1), Mukherjee J., as he then was, explained the doctrine thus :

> "It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of *bona fides* or *mala fides* on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power."

The learned Judge described how the Legislature may transgress the limits of its constitutional power thus :

> "Such transgression may be patent, manifest or direct, but it may also be disguised, covert or indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements."

This Court again explained the said doctrine in *Gullapalli Nageswara Rao* v. ***Andhra Pradesh State Road Transport Corporation***(2) thus:

> "The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot over-step the field of its competency,

(1) [1954] S.C.R. 1, 10-11. (2) [1959] Supp. 1 S.C.R. 319, 329.

A directly or indirectly. The Court will scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant."

B

When a Court says that a particular legislation is a colourable one, it means that the Legislature has transgressed its legislative powers in a covert or indirect manner; it adopts a device to outstep the limits of its power. Applying the doctrine to the instant case, the Legislature cannot make a law in derogation of C Art. 31(2) of the Constitution. It can, therefore, only make a law of acquisition or requisition by providing for "compensation" in the manner prescribed in Art. 31(2) of the Constitution. If the Legislature, though *ex facie* purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying D compensation for it, it will be exercising power which it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property E at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the Legislature made the law in fraud of its powers. Briefly stated the legal position is as follows : If the question pertains to the adequacy of compensation, it is not justiciable; if the compensa- F tion fixed or the principles evolved for fixing it disclose that the legislature made the law in fraud of powers in the sense we have explained, the question is within the jurisdiction of the Court.

The next question is whether the Amending Act was made G in contravention of Art. 31(2) of the Constitution. The Amending Act prescribes the principles for ascertaining the value of the property acquired. It was passed to amend the Land Acquisition Act, 1894, in the State of Madras for the purpose of enabling the State to acquire lands for housing schemes. "Housing Scheme" is defined to mean "any State Government H scheme the purpose of which is increasing house accommodation" and under s. 3 of the Amending Act, s. 23 of the Principal Act is made applicable to such acquisition with certain modifica-

tions. In s. 23 of the Principal Act, in sub-s. (1) for clause *first*, the following clause is substituted : A

> "*first*, the market value of the land at the date of the publication of the notification under section 4, sub-section (1) or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less." B

After clause *sixthly*, the following clause was added :

> "*seventhly*, the use to which the land was put at the date of the publication of the notification under section 4, sub-section (1)." C

Sub-section (2) of s. 23 of the Principal Act was amended by substituting the words, in respect of solatium, "fifteen per centum" by the words "five per centum". In s. 24 of the Principal Act after the clause *seventhly* the following clause was added :

> "*eighthly*, any increase to the value of the land acquired by reason of its suitability or adaptability for any use other than the use to which the land was put at the date of the publication of the notification under section 4, sub-section (1)." D

Under s. 4 of the Amending Act, the provisions of s. 3 thereof shall apply to every case in which proceedings have been started before the commencement of the said Act and are pending. The result of the Amending Act is that if the State Government acquires a land for a housing purpose, the claimant gets only the value of the land at the date of the publication of the notification under s. 4(1) of the Principal Act or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less. He will get a solatium of only 5 per centum of such value instead of 15 per centum under the Principal Act. He will not get any compensation by reason of the suitability of the land for any use other than the use for which it was put on the date of publication of the notification. The second principle is only for a solatium and it is certainly within the powers of the Legislature to fix the quantum of solatium in acquiring the land. Nor can we say that the first principle amounts to fraud on power. In the context of continuous rise in land prices from year to year depending upon abnormal circumstances it cannot be said that the fixation of average price over 5 years is not a principle for ascertaining the price of the land in or about the date of acquisition. The third principle E F G H

A excludes what is described by Courts as the potential value of the land acquired. When a land is acquired, compensation is determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The Judicial Committee in *Sri Raja Vyricherla Narayana Gajapatraju Bahdur Garu* v. *The Revenue Divisional Officer, Vizianagaram*(1) B held in clear terms that in the case of compulsory acquisition, "the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined ..... but also by reference to the uses to which it is reasonably capable of being put in the future." In awarding compensation if the potential value of the land is excluded, it C cannot be said that the compensation awarded is the just equivalent of what the owner has been deprived of. But such an exclusion only pertains to the method of ascertaining the compensation. One of the elements that should properly be taken into account in fixing the compensation is omitted : it results in the inadequacy of the compensation, but that in itself does D not constitute fraud on power, as we have explained earlier. We, therefore, hold that the Amending Act does not offend Art. 31(2) of the Constitution.

Mr. Viswanatha Sastri then contended that though the lands were being acquired for the ostensible purpose of housing E schemes; the real purpose was to provide revenue for the State. It is stated that the acquisition is made for and on behalf of the State Housing Board at Rs. 50 or Rs. 60 per ground, that the said Board sells the lands so acquired to private individuals, including the original owners thereof, if the Housing Board so pleased, at a price of Rs. 300/- per ground, and that it is a device F to get revenue for the State. On behalf of the State counter-affidavits are filed in the three petitions denying that the lands are being acquired for filling the coffers of the State and stating that the schemes for acquisition are worked out at no-profit-no-loss basis. It appears from the counter-affidavits and the documents G filed that there cannot possibly be any sinister motive behind the proposed acquisition. Madras is a growing city. By letter dated, October 20, 1959, the Government of India suggested to the States for taking on hand development schemes. The Government of Madras had considered the question of development of the "neighbourhoods" of the Madras city for relieving the grow- H ing congestion and overcrowding in the city; and after making the necessary enquiries and investigations, by order dated,

(1) I.L.R. [1939] Mad. 532.

February 13, 1960, it directed the State Housing Board to take immediate steps for preparing composite layouts for the "West Madras" and Vyasarpadi areas after fixing up the limits of the areas in the manner indicated by the Board and for the acquisition and development of the areas as "neighbourhoods" in accordance with the Land Acquisition and Development Scheme of the Government of India. It directed the said Board to give priority to the "West Madras" over the Vyasarpadi" area in the matter of preparation of composite layouts and acquisition. pursuant to the direction schemes were framed and acquisition proceedings were initiated. It is stated in the counter-affidavit :

> "The lands are being acquired with a view to develop them into composite housing colonies making provision therein to persons in various strata of society, from slum dwellers upwards, and eventually providing for high schools, elementary schools, dispensaries, shopping centres, police stations, and playgrounds and all other community needs, etc.".

It is a composite scheme involving heavy expenditure and adjustments of civil demands of the rich and the poor. Whatever profit is made in the sales of land will be pumped back for improving the colony and for providing amenities for the poorer classes of the society. Except the bare statement by the petitioners in their affidavits that the lands cheaply acquired are being sold at higher prices, the averments of the State that the acquisition is part of a larger scheme of building up of a housing colony on modern lines providing for the rich and the poor alike have not been denied. It is not necessary to pursue the matter further. The petitioners have failed to establish that their lands are being acquired as a device to improve the revenue of the State. Indeed, we are satisfied that the lands are being acquired *bona fide* for developing a housing colony.

The last contention of Mr. Viswanatha Sastri is that the Amending Act is hit by Art. 14 of the Constitution. The law on the subject is well-settled. Under Art. 14 the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But this does not preclude the Legislature from making a reasonable classification for the purpose of legislation. It has been held in a series of decisions of this Court that the said classification shall pass two tests, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons and things left

A out of the group; and (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question. To ascertain whether the impugned Act satisfies the said two tests, three questions have to be posed, namely, (i) what is the object of the Act ? (ii) what are the differences between persons whose lands are acquired for the housing schemes and
B these whose lands are acquired for purposes other than housing schemes or between the lands so acquired? and (iii) whether those differences have any reasonable relation to the said object. On a comparative study of the Principal Act and the Amending Act, we have shown earlier that if a land is acquired for a housing scheme under the Amending Act, the claimant gets a
C lesser value than he would get for the same land or a similar land if it is acquired for a public purpose like hospital under the Principal Act. The question is whether this classification between persons whose lands are acquired for housing schemes and persons whose lands are acquired for other public purposes has
D reasonable relation to the object sought to be achieved. The object of the Amending Act is to acquire lands for housing schemes. It may be, as the learned counsel contends, the Amending Act was passed to meet an urgent demand and to find a way out to clear up slums, a problem which has been baffling the city authorities for a long number of years, because of want
E of funds. But the Act as finally evolved is not confined to any such problem. Under the Amending Act lands can be acquired for housing schemes whether the object is to clear slums or to improve housing facilities in the city for rich or poor. It may be assumed that in the Madras city the housing problem was rather acute and there was abnormal increase in population and
F consequent pressure on accommodation, and that there was also an urgent need for providing houses for the middle-income groups and also to slum-dwellers. However laudable the objects underlying the Amending Act may be, it was so framed that under the provisions thereof any land, big or small, waste or fertile, owned by rich or poor, can be acquired on the ground
G that it is required for a housing scheme. The housing scheme need not be confined to slum clearance; the wide phraseology used in the Amending Act permits acquisition of land for housing the prosperous section of the community. It need not necessarily cater to a larger part of the population in the city : it can be confined to a chosen few. The land could have been
H acquired for all the said purposes under the Principal Act after paying the market value of the land. The Amending Act empowers the State to acquire land for housing schemes at a

price lower than that the State has to pay if the same was acquired under the Principal Act. A

Now what are the differences between persons owning lands in the Madras city or between the lands acquired which have a reasonable relation to the said object. It is suggested that the differences between people owning lands rested on the extent, quality and the suitability of the lands acquired for the said object. The differences based upon the said criteria have no relevance to the object of the Amending Act. To illustrate : the extent of the land depends upon the magnitude of the scheme undertaken by the State. A large extent of land may be acquired for a university or for a network of hospitals under the provisions of the Principal Act and also for a housing scheme under the Amending Act. So too, if the housing scheme is a limited one, the land acquired may not be as big as that required for a big university. If waste land is good for a housing scheme under the Amending Act, it will equally be suitable for a hospital or a school for which the said land may be acquired under the Principal Act. Nor the financial position or the number of persons owning the land has any relevance, for in both the cases land can be acquired from rich or poor, from one individual or from a number of persons. Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the Amending Act and the other for a hospital under the Principal Act; out of two adjacent plots belonging to the same individual and of the same quality and value, one may be acquired under the Principal Act and the other under the Amending Act. From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the Amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the Amending Act. So too, for a public purpose any such land can be acquired under the Principal Act. We.

B C D E F G H

A therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Art. 14 of the Constitution and is void.

In this view it is not necessary to express our opinion on the B question whether the Amending Act infringes Art. 19 of the Constitution.

In the result it is hereby declared that the Amending Act is void. We direct the issue of writs of *mandamus* restraining the respondents from proceeding with the acquisition under the provisions of the Amending Act. This order will not preclude the C respondents from continuing the proceedings under the provisions of the Land Acquisition Act, 1894, in accordance with law. The petitioner in Writ Petition No. 144 of 1963 will get one set of costs, and the petitioner in Writ Petitions Nos. 227 and 228 of 1963 will get one set of costs. One hearing fee.

D

Petitions allowed.