the learned English Judges in the first tea case would not be without relevance on the question of sentence in many cases of this kind. There can, I think, be no doubt that businessmen who are not lawyers might well be misled into thinking that the Ordinance and the Act did not intend to keep the Order of 1944 alive because the Order related to certain specified spices while the Ordinance and the Act changed the nomenclature and limited themsleves to "foodstuffs", a term which, on a narrow view, would not include condiments and spices. However, these observations are not relevant here because we are not asked to restore either the conviction or the sentence. In view of that, there will be no further order and the acquittal will be left as it stands.

Order accordingly.

Agent for the appellant: *P. A. Mehta.*
Agent for the respondent: *M. S. K. Sastri.*

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v.

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(CASES NOS. 305 TO 348 OF 1951 AND PETITION NO. 612 OF 1951)

[PATANJALI SASTRI C. J., MEHR CHAND MAHAJAN, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ.]

Bihar Land Reforms Act (XXX of 1950)—Law for abolition of zamindaries—Validity—Necessity to provide for compensation and of public purpose—Jurisdiction of Court to enquire into validity—Delegation of legislative powers—Fraud on the Constitution—Constitution of India, 1950—Constitution (First Amendment) Act, 1951—Arts. 31, 31-A, 31-B, 362, 363—Sch. VII, List II, entries 18, 36 and List III, entry 42—Construction—Spirit of the Constitution—Right of eminent domain—"Law", "Legislature", "Public purpose", meanings of—Convent of merger—Compulsory acquisition of private property of Ruler—Acquisition of arrears of rent paying 50%—Deduction for cost of works—Legality.

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Held per Curiah (MAHAJAN, MUKHERJEA and CHANDRASEKHARA AIYAR JJ.)—The Bihar Land Reforms Act, XXX of 1950, is not unconstitutional or void except with regard to the provisions in s. 4(b) and s. 23(f) thereof. The provisions of s. 4(b) and s. 23(f) are unconstitutional. *Per* PATANJALI SASTRI C. J. and DAS J.—The whole of the Bihar Land Reforms Act of 1950, including the provisions contained in s. 4(b) and s. 23(f) is constitutional and valid.

Per PATANJALI SASTRI C. J., MAHAJAN, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ.—(i) The Bihar Land Reforms Act, XXX of 1950, is not a law in respect of a matter mentioned in entry 18 of List II, *viz.*, "lands and land tenures", but a law in respect of "acquisition of property", a matter covered by entry 36 of List II.

(ii) The obligation to pay compensation for property acquired by the State is not an obligation imposed by entry 36 of List II read by itself or in conjunction with entry 42 of List III or by the spirit of the Constitution. Consequently, an objection to the validity of a statute in respect of acquisition of property on the ground that it does not provide for payment of compensation is an objection on the ground that it contravenes the provisions of art. 31(2) and the jurisdiction of the Court to entertain such an objection in respect of a statute mentioned in the Ninth Schedule to the Constitution is barred by art. 31(4), art. 31-A and art. 31-B of the Constitution. *Per* DAS *J.*—Assuming that the obligation to pay compensation is also implicit in entry 36 of List II, in itself or read with entry 42 of List III, even then the validity of the Act cannot be questioned by reason of arts. 31(4), 31-A and 31-B.

(iii) Section 32(2) of the Act which empowers the State Government to frame rules providing for "the proportion in which compensation shall be payable in cash and in bonds and the manner of payment of such compensation" does not involve any delegation of legislative powers especially as the legislature has itself provided in s. 32(2) that the compensation shall be payable in cash or in bonds or partly in cash and partly in bonds and fixed the number of instalments in which it should be paid. The words "subject to" in entry 36 of List II only mean that whenever a law is made by a State Legislature in exercise of its legislative power under entry 36, that law will be subject to the provisions of a law made by the Parliament under entry 42 of List III. The words do not mean that when a State makes a law under entry 36 it must lay down the principles on which compensation payable for property acquired is to be determined and the form and manner in which it should be given.

(iv) Entries in the Legislative Lists are merely of an enabling character. The power conferred thereunder on the legislatures is not coupled with any duty on the legislature to exercise

such power and the principle laid down in *Julius* v. *Bishop of Oxford* [5 A.C. 214] has, therefore, no application to the Lists.

Per PATANJALI SASTRI C. J., MUKHERJEA and DAS JJ. (MAHAJAN and CHANDRASEKHARA AIYAR JJ. *dissenting*).—The existence of a public purpose as a pre-requisite to the exercise of the power of compulsory acquisition is an essential and integral part of the provisions of art. 31(2) and an infringement of such a provision cannot be put forward as a ground for questioning the validity of an Act providing for compulsory acquisition. DAS. J.—Even assuming that the necessity of a public purpose is implied in entry 36 of List II and/or entry 42 of List III also, arts. 31 (4), 31-A and 31-B would still protect the Act from being questioned on the ground that the acquisition was not for a public purpose. In any case the impugned Act is supported by a public purpose.

Per MAHAJAN and CHANDRASEKHARA AIYAR JJ.—The scope of art. 31(4) is limited to the express provisions of art. 31(2) and though the courts cannot examine the extent or adequacy of the provisions of compensation contained in any law dealing with the acquisition of property compulsorily, yet the provisions of art. 31 (4) do not in any way debar the court from considering whether the acquisition is for a public purpose. Though the main object of the Act, *viz.*, the acquisition of estates, is for a public purpose, the acquisition of arrears of rent due to the zamindars on payment of 50 per cent. of their value cannot be held to be for a public purpose and sec. 4 clause (b) of the Act is therefore unconstitutional and void. *Per* MUKHERJEA J.—Assuming that art. 31(4) relates to everything that is provided for in art. 31(2) either in express terms or even impliedly and consequently the question of the existence of a public purpose is not justiciable, as the real object of sec. 4, clause (b) is to deprive the man of his money, which is not a subject-matter for acquisition under the powers of eminent domain, without giving anything in exchange, under the guise of acting under entry 42 the legislature has in truth and substance evaded and nullified its provisions altogether and sec. 4 clause (b) is therefore unconstitutional and void.

PATANJALI SASTRI C. J.—Whatever may be the position as regards the acquisition of money as such it is not correct to say that a law made under entry 36 of List II cannot authorise acquisition of choses in action like arrears of rent due from the tenants which are covered by the term "property" used in that entry and in art. 31. The view that a payment in cash or in government bonds of half the amount of such arrears leaves the zamindar without compensation for the balance is equally fallacious. Section 4 clause (b) is not therefore *ultra vires* or unconstitutional.

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Per MAHAJAN, MUKHERJEA and CHANDRASEKHARA AIYAR JJ. (PATANJALI SASTRI C. J. and DAS J. *dissenting*).—Section 23 (b) of the Act which provides for a deduction on a percentage basis out of the gross asserts for "costs of works of benefit to the raiyat", is ostensibly enacted under entry 42 of List III, but it is merely a colourable piece of legislation, a mere device to reduce the gross assets, which does not really come under entry 42 and is unconstitutional. PATANJALI SASTRI C. J. and DAS J.—The zamindars are under an obligation to maintain and repair the minor irrigation works in their villages which are beneficial to the raiyats and the cost of such works is therefore a perfectly legitimate deduction in computing the net assets of the estate and sec. 23(f) is not unconstitutional. Further, as a payment of compensation is not a justiciable issue in the case of the impugned statute, having regard to arts. 31 (4), 31-A and 31-B, it is not open to the Court to enquire whether a reduction which results in reducing the compensation is unwarranted and therefore a fraud on the Constitution.

Per MAHAJAN J.—The phrase "public purpose" has to be construed according to the spirit of the times in which the particular legislation is enacted and so construed, acquisition of estates for the purpose of preventing the concentration of huge blocks of land in the hands of a few individuals and to do away with intermediaries is for a public purpose.

Per DAS J.—No hard and fast definition can be laid down as to what is a "public purpose" as the concept has been rapidly changing in all countries, but it is clear that it is the presence of the element of general interest of the community in an object or an aim that transforms such object or aim into a public purpose, and whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as a public purpose.

APPEALS under article 132(1) of the Constitution of India from the judgment and decree dated 12th March, 1951, of the High Court of Judicature at Patna (Shearer, Reuben and Das JJ.) in Title Suits Nos. 1 to 3 and Mis. Judicial Cases Nos. 230-234, 237-244, 246 to 254, 257, 261 to 264, 266, 262, 270 to 277, 287-290 and 297 of 1951. PETITION No. 612 of 1951, a petition under article 32 of the Constitution for enforcement of fundamental rights, was also heard along with these appeals.

The facts that gave rise to these appeals and petition are stated in the judgment.

M. C. Setalvad (*Attorney-General for India*) and *Mahabir Prasad* (*Advocate-General of Bihar*) with *G. N. Joshi, Lal Narain Singh* and *Alladi Kuppuswami* for the State of Bihar.

P. R. Das (*B. Sen,* with him) for the respondents in Cases Nos. 339, 319, 327, 330 and 332 of 1951.

Sanjib K. Chowdhury, S. N. Mukherjee, S. K. Kapur for the respondents in Cases Nos. 309, 328, and 336 of 1951.

Urukramdas Chakravarty for the respondents in Cases Nos. 326, 337 and 344 of 1951.

Raghosaran Lal for the respondents in Cases Nos. 310, 311 and 329 of 1951.

S. C. Mazumdar for the respondent in Case No. 315 of 1951.

S. Mustafid and *Jagadish Chandra Sinha* for the respondents in Cases Nos. 307, 313, 320, 321, and 322 of 1951.

Ray Parasnath for the respondent in Case No. 331 of 1951.

S. K. Kapur for the petitioner in Petition No. 612 of 1951.

1952. May 2, 5. The Court delivered judgment as follows :—

PATANJALI SASTRI C. J.—*These appeals and petitions which fall into three groups raise the issue of the constitutional validity of three State enactments called

The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950),

*The Chief Justice, in his judgment, dealt with the above Cases and Petition and also Petitions Nos. 166, 228, 237, 245, 246, 257, 268, 280 to 285, 287 to 289, 317, 318 and 487 of 1951 (relating to the Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act, 1950) and Cases Nos. 283 to 295 of 1951 (relating to the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950).

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The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. I of 1951), and

The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. I of 1951)
(hereinafter referred to as the Bihar Act, the Madhya Pradesh Act and the Uttar Pradesh Act, respectively).

The common aim of these statutes, generally speaking, is to abolish zamindaries and other proprietary estates and tenures in the three States aforesaid, so as to eliminate the intermediaries by means of compulsory acquisition of their rights and interests, and to bring the raiyats and other occupants of lands in those areas into direct relation with the Government. The constitutionality of these Acts having been challenged in the respective State High Courts on various grounds, the Bihar Act was declared unconstitutional and void on the ground that it contravened article 14 of the Constitution, the other grounds of attack being rejected while the other two Acts were adjudged constitutional and valid. The appeals are directed against these decisions. Petitions have also been filed in this Court under article 32 by certain other zamindars seeking determination of the same issues. The common question which arises for consideration in all these appeals and petitions is whether the three State Legislatures, whch respetively passed the three impugned statutes, were constitutionally competent to enact them, though some special points are also involved in a few of these cases.

As has been stated, various grounds of attack were put forward in the courts below, and, all of them having been repeated in the memoranda of appeals and the petitions, they would have required consideration but for the amendment of the Constitution by the Constitution (First Amendment) Act, 1951 (hereinafter referred to as the Amendment Act) which was passed by the provisional Parliament during the pendency of these proceedings. That Act by inserting the new articles 31-A and

31-B purported to protect, generally, all laws providing for the acquisition of estates or interests therein, and specifically, certain statutes, including the three impugned Acts, from attacks based on article 13 read with other relevant articles of Part III of the Constitution. And the operation of these articles was made retrospective by providing, in section 4 of the Amendment Act, that article 31-A shall be "deemed always to have been inserted" and, in article 31-B, that none of the specified statutes "shall be deemed ever to have become void". The validity of the Amendment Act was in turn challenged in proceedings instituted in this Court under article 32 but was upheld in *Sankari Prasad Singh Deo* v. *Union of India and State of Bihar*(1). The result is that the impugned Acts can no longer be attacked on the ground of alleged infringement of any of the rights conferred by the provisions of Part III.

It will be noted, however, that articles 31-A and 31-B afford only limited protection against one ground of challenge, namely that the law in question is "inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part". This is made further clear by the opening words of article 31-A "notwithstanding anything in the foregoing provisions of this Part". The Amendment Act thus provides no immunity from attacks based on the lack of legislative competence under article 246, read with the entries in List II or List III of the Seventh Schedule to the Constitution to enact the three impugned statutes, as the Amendment Act did not in any way affect the Lists. Mr. P. R Das, leading counsel for the zamindars, accordingly based his main argument in these proceedings on entry 36 of List II and entry 42 of List III which read as follows :

"36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the Provisions of entry 42 of List III.

42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union

(1) [1952] S.C.R. 89.

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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".

The argument may be summarised thus. Entry 36 of List II read with article 246(3) was obviously intended to authorise a State Legislature to exercise the right of eminent domain, that is, the right of compulsory acquisition of private property. The exercise of such power has been recognised in the jurisprudence of all civilised countries as conditioned by public necessity and payment of compensation. All legislation in this country authorising such acquisition of property from Regulation I of 1824 of the Bengal Code down to the Land Acquisition Act, 1894, proceeded on that footing. The existence of a public purpose and an obligation to pay compensation being thus the necessary concomitants of compulsory acquisition of private property, the term "acquisition" must be construed as importing, by necessary implication, the two conditions aforesaid. It is a recognised rule for the construction of statutes that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation: *Attorney-General* v. *De Keyser's Royal Hotel*(1). The power to take compulsorily raises by implication a right to payment; *Central Control Board* v. *Cannon Brewery*(2). The words "subject to the provisions of entry 42 of List III" in entry 36 reinforce the argument, as these words must be taken to mean that the power to make a law with respect to acquisition of property should be exercised subject to the condition that such law should also provide for the matters referred to in entry 42, in other words, a two-fold restriction as to public purpose and payment of compensation (both of which are referred to in entry 42) is imposed on the exercise of the law making power under entry 36. In any case, the legislative power conferred under entry 42 is a power coupled with a duty to exercise it for the benefit of the owners whose properties are compulsorily acquired

(1) [1920] A.C. 508, 542. (2) [1919] A.C. 744.

under a law made under entry 36. For all these reasons the State Legislatures, it was claimed, had no power to make a law for acquisition of property without fulfilling the two conditions as to public purpose and payment of compensation.

On the basis of these arguments, counsel proceeded to examine elaborately various provisions of the impugned Acts with a view to show that the compensation which they purport to provide has, by "various shifts and contrivances", been reduced to an illusory figure as compared with the market value of the properties acquired. The principles laid down for the computation of compensation operated in reality as "principles of confiscation", and the enactment of the statutes was in truth a "fraud on the Constitution", each of them being a colourable legislative expedient for taking private properties without payment of compensation in violation of the Constitution, while pretending to comply with its requirements. Nor were these statutes enacted for any public purpose; their only purpose and effect was to destroy the class of zamindars and tenure-holders and make the Government a "super-landlord". While such an aim might commend itself as a proper policy to be pursued by the political party in power, it could not, in law, be regarded as a public purpose.

Mr. Somayya, who appeared for some of the zamindars in the Madhya Pradesh group of cases, while adopting the arguments of Mr. Das, put forward an additional ground of objection. He argued that the impugned Acts were not passed in accordance with the procedure prescribed in article 31(3) which provides

"No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent".

Learned counsel stressed the words "law" and "legislature" and submitted that, inasmuch as the legislature of a State included the Governor (article

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168) and a bill could become a law only after the Governor assented to it under article 200, clause (3) of article 31 must be taken to require that a State law authorising compulsory acquisition of property should receive the Governor's as well as the President's assent, the former to make it a law and the latter to give it "effect". As the relative bills were reserved in each case by the Governor concerned after they were passed by the House or Houses of Legislature, as the case may be, without giving his assent under article 200, the statutes did not satisfy the requirements of article 31(3) and so could not have "effect". This ground of attack, it was claimed, was not excluded by article 31-A or article 31-B as it was not based on infringement of fundamental rights.

Dr. Ambedkar, who appeared for some of the zemindars in the Uttar Pradesh batch of cases, advanced a different line of argument. He placed no reliance upon entry 36 of List II or entry 42 of List III. He appeared to concede what Mr. Das so strenuously contested, that those entries, concerned as they were with the grant of power to the State Legislature to legislate with respect to matters specified therein, could not be taken, as a matter of construction, to import an obligation to pay compensation. But he maintained that a constitutional prohibition against compulsory acquisition of property without public necessity and payment of compensation was deducible from what he called the "spirit of the Constitution", which, according to him, was a valid test for judging the constitutionality of a statute. The Constitution, being avowedly one for establishing liberty, justice and equality and a government of a free people with only limited powers, must be held to contain an implied prohibition against taking private property without just compensation and in the absence of a public purpose. He relied on certain American decisions and text books as supporting the view that a constitutional prohibition can be derived by implication from the spirit of the Constitution where no express prohibition has been enacted in that behalf. Articles 31-A and 31-B barred

only objections based on alleged infringements of the fundamental rights conferred by Part III, but if, from the other provisions thereof it could be inferred that there must be a public purpose and payment of compensation before private property could be compulsorily acquired by the State, there was nothing in the two articles aforesaid to preclude objection on the ground that the impugned Acts do not satisfy these requirements and are, therefore, unconstitutional.

In addition to the aforesaid grounds of attack, which were common to all the three impugned statutes, the validity of each of them or of some specific provisions thereof was also challenged on some special grounds. It will be convenient to deal with them after disposing of the main contentions summarised above which are common to all the three batches of cases.

These contentions are, in my judgment devoid of of substance and force and I have no hesitation in rejecting them. The fact of the matter is the zemindars lost the battle in the last round when this Court upheld the constitutionality of the Amendment Act which the Provisional Parliament enacted with the object, among others, of putting an end to this litigation. And it is no disparagement to their learned counsel to say that what remained of the compaign has been fought with such weak arguments as overtaxed ingenuity could suggest.

It will be convenient here to set out the material provisions of the Constitution on which the arguments before us have largely turned.

Article 31 (2). No property movable or immovable .....shall be acquired for public purposes under any law authorising .....such acquisition unless the law provides for compensation for the property....acquired 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.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless

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such law, having been reserved for the consideration of the President, has received his assent.

(4) If any bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(a) The provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.....

31-A. *Saving of laws providing for acquisition of estates, etc.*—(1) Notwithstanding anything in the foregoing provisions of this Part no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part : . . . . . .

31-B. *Validation of certain Acts and Regulations.*—Without prejudice to the generality of the provisions contained in article 31-A none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act,

Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

It will be seen that the scope of article 31(4) is at once narrower and wider than that of article 31-A; the former has application only to statutes which were pending in the legislature at the commencement of the Constitution, whereas the latter is subject to no such restriction. Again, article 31 (4) excludes attack only on the ground of contravention of article 31 (2), while article 31-A bars objections based on contravention of other provisions of Part III as well, such as articles 14 and 19. This indeed was the reason for the enactment of articles 31-A and 31-B, as the words of exclusion in article 31(4) were found inapt to cover objections based on contravention of article 14. On the other hand, the law referred to in article 31(4) covers acquisition of any kind of property, while article 31-A relates only to the acquisition of a particular kind of property, viz., estates and rights therein, and what is more important for our present purpose, the *non obstante* clause in article 31 (4) overrides all other provisions in the Constitution including the List of the Seventh Schedule, whereas a law which falls within the purview of article 31-A could only prevail over "the foregoing provisions of this Part". Now, the three impugned statues fall within the ambit of both article 31 (4) and articles 31-A and 31-B. Putting aside the later articles for the moment, it is plain that, under article 31 (4), the three impugned statutes are protected from attack in any court on the ground that they contravene the provisions of article 31(2). These provisions, so far as they are material here, are (i) that a law with respect to acquisition of property should authorize acquisition only for a public purpose and (ii) that such law should provide for compensation, etc. Mr. Das, while admitting that

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(ii) was a "provision" of article 31(2), submitted that (i) was not. According to him clause (2) assumed but did not "provide" that acquisition should be authorised only for a public purpose. I cannot accept that view. In my opinion, the clause seeks also to impose a limitation in regard to public purpose. The clause was evidently worded in that form as it was copied (with minor variations) from section 299 (2) of the Govesrnment of India Act, 1935, which was undoubetedly designed to give effect to the recommendation of the Joint Parliamentary Committee in para. 369 of their Report that two conditions should be imposed on expropriation of private property : "We think it (the provision proposed) should secure that legislation expropriating or authorising the expropriation of the property of private individuals should be lawful only if confined to expropriation for public purpose and if compensation is determined either in the first instance or in appeal by some independent authority". It is thus clear that section 299(2) was intended to secure fulfilment of *two* conditions subject to which alone legislation authorising expropriation of private property should be lawful, and it seems reasonable to conclude that article 31 (2) was also intended to impose the same two conditions on legislation expropriating private property. In other words, article 31(2) must be understood as also providing that legislation authorising expropriation of private property should be lawful only if it was required for a public purpose and provision was made for payment of compensation. Indeed if this were not so, there would be nothing in the Constitution to prevent acquisition for a non-public or private purpose and without payment of compensation—an absurd result. It cannot be supposed that the framers of the Constitution, while expressly enacting one of the two well-established restrictions on the exercise of the right of eminent domain, left the other to be imported from the common law. Article 31 (2) must therefore, be taken to provide for both the limitations in express terms. An attack on the

ground of contravention of these provisions implies that the law in question authorises acquisition without reference to a public purpose and without payment of compensation. This was precisely the objection raised both by Mr. Das and Dr. Ambedkar to the constitutional validity of the impugned statutes, and such objection really amounts to calling those laws in question on the ground that they contravened the provisions of article 31(2), though learned counsel stoutly denied that they were relying on the provisions of article 31(2). The denial, however, seems to me to be based on a quibbling distinction without a difference in substance. Their main attack was really grounded on the absence of these two essential prerequisites of valid legislation authorising acquisition of private property, though Mr. Das would deduce them by implication from entry 36 of List II and entry 42 of List III, while Dr. Ambedkar sought to derive them from the spirit of the Constitution. But this is only a form of stating the objection which, in substance, is that the statutes are bad because of the absence of a public purpose and the omission to provide for a just compensation. This, in fact, was the burden of the argument before us. If, then, these two grounds of attack fall within the purview of article 31(4), the words "notwithstanding anything in this Constitution" are apt to exclude such grounds howsoever they are derived—whether from the entries in the legislative Lists or from the spirit of the Constitution—for both alike are covered by those words. Indeed, if the objection based on the absence of a public purpose and of a provision for just compensation were still to be open, clause (4) of article 31 would be meaningless surplusage. It is obvious that that clause was specially designed to protect the impugned statutes and other laws similarly enacted from attack in a court of law on the aforesaid grounds and, if they were nevertheless to be considered as not being within the protection, it is difficult to see what the use of article 31(4) would be. Learned counsel were unable to suggest any. The fact is that article 31(4) was

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designed to bar the jurisdiction of courts to entertain objections to the validity of a certain class of enactments on the two fold ground referred to above, and its whole purpose would stand defeated if the zemindars' contention were to prevail.

Even if it were open to the court to consider these grounds of objection, they are, in my opinion, unsustainable. As pointed out already, article 31-A operates as an exception to article 31 (2) read with article 13, only in respect of laws authorising acquisition of "estates" and rights therein, and this exception is to be deemed to have been part of the Constitution from its commencement. But it has no application to laws authorising acquisition of *other* kinds of property and, as regards these, the requirements as to public purpose and payment of compensation are still enforced by the express provisions of article 31(2). In the face of the limitations on the State's power of compulsory acquisition thus incorporated in the body of the Constitution, from which "estates" alone are excluded, it would, in my opinion, be contrary to elementary canons of statutory construction to read, by implication, those very limitations into entry 36 of List II, alone or in conjunction with entry 42 of list III of the Seventh Schedule, or to deduce them from "the spirit of the Constitution", and that, too, in respect of the very properties excluded.

It is true that under the common law of eminent domain as recognised in the jurisprudence of all civilized countries, the State cannot take the property of its subject unless such property is required for a public purpose and without compensating the owner for its loss. But, when these limitations are expressly provided for and it is further enacted that no law shall be made which takes away or abridges these safeguards, and any such law, if made, shall be void, there can be no room for implication, and the words "acquisition of property" must be understood in their natural sense of the act of acquiring property, without importing into the phrase an obligation to pay

compensation or a condition as to the existence of a public purpose. The entries in the Lists of the Seventh Schedule are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures, and such context is hardly appropriate for the imposition of implied restrictions on the exercise of legislative powers, which are ordinarily matters for positive enactment in the body of the Constitution.

There are indications in article 31 itself to show that the expression "acquisition of property in entry 36 of list II does not in itself carry any obligation to pay compensation. Clause (4) of that article postulates a "law" authorising acquisition of property but contravening the provisions of clause (2), that is, without a public purpose or payment of compensation. Similarly, clause (5)(b), which excepts certain categories of "laws" from the operation of clause (2), contemplates laws being made without a public purpose or payment of compensation. Such laws can be made by a State Legislature only under entry 36 which must, therefore, be taken to confer a legislative power unfettered by any implied restrictions. It was suggested that the laws referred to in sub-clause (b) of clause (5) are laws made in exercise of the taxing power or the police power of the State as the case may be, and that the sub-clause was inserted only by way of abundant caution. This is hardly a satisfactory answer. Whatever may be the position as to a taxing law, in regard to the source of legislative power, laws under heads (2) and (3) of sub-clause (b) must necessarily be referable to, and derive their competence from the legislative power under entry 36 of List II, in so far as they purport to authorise acquisition of any property, for the police power of the State is only the general power to regulate and control the exercise of private rights and liberties in the interests of the community and does not represent any specific head of legislative power. And even that answer is not available to Mr. Das in regard to clause (4).

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Nor is the position improved for the zemindars by reading entry 36 of List II and entry 42 of List III together. It was said that the words "subject to the provisions of entry 42 in List III" must be taken to mean that the law-making power under entry 36 could only be exercised subject to the two conditions as to public purpose and payment of compensation, both of which are referred to in entry 42. Those words, in my opinion, mean no more than that any law made under entry 36 by a State Legislature can be displaced or overridden by the Union Legislature making a law under entry 42 of List III. That they cannot bear the interpretation sought to be put upon them by Mr. Das is clear from the fact that similar words do not occur in entry 33 of List I which confers on Parliament the power of making laws with respect to acquisition or requisitioning of property for the purposes of the Union. For if the restrictive conditions as to public purpose and payment of compensation are to be derived only from those words, then it must follow that in the absence of those words in entry 33, Parliament can make laws authorising acquisition or requisitioning of property *without* a public purpose and a provision for compensation. No reason was suggested why parliamentary legislation with respect to acquisition or requisitioning of property is to be free from such restrictive conditions while State legislation should be subject to them. The fact is that the law-making power of both Parliament and State Legislatures can be exercised only subject to the aforesaid two restrictions, not by reason of anything contained in the entries themselves, but by reason of the positive provisions of article 31 (2), and, as laws falling under article 31 (4) or under articles 31-A and 31-B cannot be called in question in a court of law for non-compliance with those provisions, such laws cannot be struck down as unconstitutional and void.

It was further contended that the power to make a law under entry 42 of List III was a power coupled with a duty, because such law was obviously intended

for the benefit of the expropriated owners, and where the Legislature has authorised such expropriation, it was also bound to exercise the power of making a law laying down the principles on which such owners should be compensated for their loss. Reliance was placed in support of this somewhat novel contention on the well-known case of *Julius* v. *Bishop of Oxford.*(1) That case, however, has no application here. While certain powers may be granted in order to be exercised in favour of certain persons who are intended to be benefited by their exercise, and on that account may well be regarded as coupled with a duty to exercise them when an appropriate occasion for their exercise arises, the power granted to a legislature to make a law with respect to any matter cannot be brought under that category. It cannot possibly have been intended that the legislature should be under an obligation to make a law in exercise of that power, for no obligation of that kind can be enforced by the court against a legislative body.

Mr. Somayya's argument based on clause (3) of article 31, to which reference has been made earlier, is equally untenable. It is true that the "Legislature" of a State includes the Governor and that a bill passed by such Legislature cannot become a law until it receives the Governor's assent. Article 200, however, contemplates one of three courses being adopted by the Governor when a bill is presented to him after it is passed by the House or Houses of Legislature: (1) to give his assent, or (2) to withhold assent, or (3) to reserve the bill for the consideration of the President. The first proviso, to that article deals with a situation where the Governor is bound to give his assent and has no relevance here. The second proviso makes reservation compulsory where the bill would, "if it became law", derogate from the powers of the High Court, but such reservation, it is important to note, should be made *without* the Governor himself giving his assent to the bill. It is significant that the article does not contemplate the

(1) L.R. 5 H.L. 214.

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Governor giving his assent and *thereafter,* when the bill has become a full-fledged law, reserving it for the consideration of the President. Indeed, the Governor is prohibited from giving his assent where such reservation by him is made compulsory. The Constitution would thus seem to contemplate only "bills" passed by the House or Houses of Legislature being reserved for the consideration of the President and not "laws" to which the Governor has already given his assent. It was said that article 31 (3) provides a special safeguard which, in order to ensure that no hasty or unjust expropriatory legislation is passed by a State Legislature, requires for such legislation the assent of *both* the Governor and the President, and, to make this clear, the words "law" and "legislature" were deliberately used in clause (3). I am unable to agree with this view. The term "legislature" is not always used in the Constitution as including the Governor, though article 168 makes him a component part of the State Legislature. In article 173, for instance, the word is clearly used in the sense of the "Houses of legislature" and excludes the Governor. There are other provisions also where the word is used in contexts which exclude the Governor. Similarly the word "law" is sometimes loosely used in referring to a bill. Article 31 (4), for instance, speaks of a "bill" being reserved for the President's assent "after it has been passed" by the "legislature of a State" and of "the law so assented to." If the expression "passed by the legislature" were taken to mean "passed by the Houses of the legislature and assented to by the Governor" as Mr. Somayya would have it understood, then, it would cease to be a "bill" and could no longer be reserved as such. Nor is the phrase "law so assented to" strictly accurate, as the previous portion of the clause makes it clear that what is reserved for the President's assent and what he assents to is a "bill" and not a law. The phrase obviously refers to what *has become* a law *after* receiving the assent of the President. Similarly, article 31(3) must, in my judgment, be understood as

having reference to what, in historical sequence, having been passed by the House or Houses of the State Legislature and reserved by the Governor for the consideration of the President and assented to by the latter, has thus become a law. If it was intended that such a law should have the assent of both the Governor and the President, one would expect to find not only a more clear or explicit provision to that effect, but also some reference in article 200 to the Governor's power to reserve a measure for the consideration of the President after himself assenting to it. On the other hand, as we have seen, where reservation by the Governor is made obligatory, he is prohibited from giving his assent.

In the view I have expressed above that the objections based on the lack of a public purpose and the failure to provide for payment of just compensation are barred under article 31(4) and are also devoid of of merits, it becomes unnecessary to consider what is a public purpose and whether the acquisition authorised by the impugned statutes subserves any public purpose. Nor is it necessary to examine whether the scheme of compensation provided for by the statutes is so illusory as to leave the expropriated owners without any real compensation for loss of their property.

Turning now to the special points arising in particular cases, it was urged by Mr. Das that section 4(b) of the Bihar Act, which provides that all arrears of rent, royalties and cesses due for any period prior to the date of the vesting of the estates in Government "shall vest and be recoverable by the State" was unconstitutional and void. In the first place, there was no public purpose to be served by the acquisition of such property. The Government evidently lacked funds for the payment of even the illusory compensation provided for in the Act, and accordingly, hit upon the device of acquiring these arrears on payment of only 50 per cent. of their value as provided in section 24. Raising funds

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for augmenting the Treasury could not be regarded as a public purpose such as would justify expropriation of private property. Secondly, it was said that these 'arrears' would represent so much money when realised, and money could not be the subject of compulsory acquisition as the obligation to pay compensation would practically turn such acquisition into a forced loan. Nor could the payment of 50 per cent of the face value of the arrears be regarded as compensation for the loss of the total arrears, for refund of one half of a sum of money taken away could never make good the loss of the balance. The argument proceeds on a misconception. Whatever may be the position as regards the acquisition of money as such, it is not correct to say that a law made under entry 36 of List II cannot authorise acquisition of choses in action like arrears of rent due from the tenants which are covered by the term "property" used in that entry and in article 31. It is equally fallacious to argue that a payment in cash or in Government bonds of half the amount of such arrears leaves the zemindar without compensation for the balance. It is unrealistic to assume that arrears which had remained uncollected over a period of years during which the zemindar as landlord had the advantage of summary remedies and other facilities for collection, represented so much money or money's worth in his hands when he was to cease to be a landlord and to have no longer those remedies and facilities. When allowance is made for doubtful and irrecoverable arrears and the trouble and expense involved in the collection of the rest of them the payment of 50 per cent. of the face value of the entire arrears must, as it seems to me, be considered reasonable and fair compensation for taking them over. Indeed, the contention leaves one almost wondering what advantage the zemindars would gain by seeking to overthrow a provision in the Act which may well prove beneficial to them. However that may be, for the reasons already indicated, article 31(4) bars a challenge on these two grounds, and the objections to section 4(b) cannot be entertained.

An attack was also directed against section 23 (1)(f) which provides for a deduction on a percentage basis out of the gross assets as "cost of works of benefit to the raiyats of such estate or tenure", in ascertaining the net assets on which compensation is to be based. It was said that there was no evidence to show that it was usual for the zemindars to incur such expenditure, and that the deduction was a mere contrivance to reduce the compensation payable for the acquisition of their estates. The provision for such deduction was therefore a fraud on the Constitution. The argument, however, overlooks the well-established obligation of the zemindars to maintain and repair the irrigation tanks and channels in the villages comprised in their estates. As the Privy Council pointed out in *The Madras Railway Co.* v. *Zemindar of Carvatenagaram*(1), "the zemandars have no power to do away with these tanks in the maintenance of which large numbers of people are interested, but are charged, under Indian law, by reason of their tenure, with the duty of preserving and repairing them". These are, obviously, the works of benefit to the raiyats of the estate, and their cost, which the zemindars are thus under an obligation to bear, is a perfectly legitimate deduction in computing the net assets of the estate. If the zemindars had, in the past, neglected this duty, that does not affect the propriety of the deduction before determining the compensation payable to them. It is, therefore, idle to say that it is a mere contrivance for reducing the compensation. This apart, if, as I have endeavoured to show, payment of compensation is not a justiciable issue in the case of the impugned statutes, having regard to articles 31(4), 31-A and 31-B, it is not open to the court to inquire whether a deduction which results in reducing the compensation is unwarranted and therefore, a fraud on the Constitution.

Lastly, Mr. Das turned his attack on section 32(2) read with section 43(2) (p). Under the former provision compensation was payable in cash or in bonds or partly in cash and partly in bonds. The bonds

(1) (1874) 1 I.A. 364.

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were to be either negotiable or non-negotiable and non-transferable and were payable in forty equal instalments. Power was given to the State Government under section 43 (2) (p) to frame rules providing for "the proportion in which compensation shall be payable in cash and in bonds and the manner of payment of such compensation". It was argued that, while the Constitution conferred power on the legislatures under entry 42 of List III to make laws with respect to the principles on which compensation for property acquired was to be determined and the form and the manner in which such compensation was to be given, it was not competent for the Bihar Legislature to delegate this essential legislative power to the executive government. Section 43 (2) (p) being thus void and inoperative, section 32 (2) must also fall to the ground, being vague and incapable by itself of being given effect to, and, as payment of compensation was an inextricable part of the scheme of acquisition under the Act, the entire Act must go. I see no force in this argument. The legislature has applied its mind to the form in which compensation has to be paid and has fixed the number of equal instalments in which it should be paid. It has also provided for payment of interest on the compensation amount in the meantime. The proportion in which the compensation could be paid in cash and in bonds and the intervals between the instalments have been left to be determined by the executive government as those must necessarily depend on the financial resources of the State and the availability of funds in regard to which the executive government alone can have special means of knowledge. By no standard of permissible delegation can the vesting of such limited discretion by a legislature in an administrative body be held incompetent. The same remark applies to the delegation of rule-making powers in regard to payment of compensation under the other two Acts.

It was contended by Mr. Somayya that the Madhya Pradesh Act was not duly passed as no question was put by the Speaker, at the third reading of the bill,

on the motion that it be passed into law, as required by the provisions of rule 20 (1) of the rules governing legislative business then in force, and that the omission was not a mere "irregularity of procedure" which the court is barred from enquiring into under article 212 (1) of the Constitution. Rule 20 (1) reads as follows:

"A matter requiring the decision of the Assembly shall be decided by means of a question put by the Speaker on a motion made by a member".

What appears to have happened is this. One of the Ministers moved that "The C. P. and Berar. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill, 1949, (No. 64 of 1949) as considered by the House be passed into law". Thereupon the Speaker read the motion to the House, and this was followed by several speeches welcoming the measure, amid general acclamation in the House, as a great boon to the tillers of the soil. The official report of the proceedings prepared by the Secretary under rule 115(1), however, did not record that the Sepaker put the question in the usual form : "The question is etc." and that the motion was carried. It was argued that the official report being the only "authentic record of the proceedings of the Assembly" under rule 115(2), it must be taken to be conclusively established that the motion was not put to the House and carried by it. There is, in my opinion no substance in the objection. The original Bill signed and authenticated by the Speaker was produced before us, and it contains an endorsement by the speaker that the Bill was passed by the Assembly on 5th April, 1950. The endorsement was signed by the Speaker on 10th May, 1950. The official report of the proceedings appears to have been prepared on 21st June, 1950, and was signed by the Speaker on 1st October, 1950. When he signed the report the Speaker did not apparently notice the omission as to the motion having been put and carried. Such omission cannot, in the face of the explicit statement by the Speaker endorsed on the Bill, be taken

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to establish that the Bill was not put to the House and carried by it. In any case, the omission to put the motion formally to the House, even if true, was, in the circumstances, no more than a mere irregularity of procedure, as it is not disputed that the overwhelming majority of the members present and voting were in favour of carrying the motion and no dissentient voice was actually raised.

Mr. Somayya raised a further contention that in regard to the malguzari lands covered by the Madhya Pradesh Act, articles 31-A and 31-B could be of no assistance to the Government, as such lands are not "estates" within the meaning of clause (2) of article 31-A with the result that the objection based on article 14 as to discrimination in the matter of payment of compensation must prevail. It will be recalled that the High Court of Patna held the Bihar Act unconstitutional as being discriminatory in providing for payment of compensation, and it was to overcome that difficulty that articles 31-A and 31-B were inserted in the Constitution. It was conceded by the learned Advocate-General of Madhya Pradesh that these malguzari lands could not be regarded as estates within the meaning of article 31-A read with the Tenancy Acts in force in Madhya Pradesh, but he contended that, inasmuch as article 31-B purported to validate specifically the Madhya Pradesh Act among others, and as that article was not limited in its application to estates, the objection could not prevail. Mr. Somayya, however, submitted that the opening words of article 31-B, namely, "Without prejudice to the generality of the provisions contained in article 31-A" showed that the mention of particular statutes in article 31-B read with the Ninth Schedule was only illustrative, and that, accordingly, article 31-B could not be wider in scope. Reliance was placed in support of this argument upon the decision of the Privy Council in *Sibnath Banerji's case*(1). I cannot agree with that view. There is nothing in article 31-B to indicate that the specific mention of

(1) [1945] F.C.R. 195 (P.C.)

certain statutes was only intended to illustrate the application of the general words of article 31-A. The opening words of article 31-B are only intended to make clear that article 31-A should not be restricted in its application by reason of anything contained in article 31-B and are in no way calculated to restrict the application of the latter article or of the enactments referred to therein to acquisition of "estates." The decision cited affords no useful analogy.

In some of the cases the estates sought to be acquired are situated in what was previously the territory of Indian States and belong to their former rulers. On the merger of those States in Madhya Pradesh or Uttar Pradesh, as the case may be, by virtue of the "covenant of merger" entered into between the rulers and the Government of India the properties in question were recognised to be the "private property" of the Rulers. In these cases it was urged that that estates sought to be acquired formed part of the Rulers' "personal rights" guaranteed to them under the instrument of merger, and that neither the impugned statutes nor the notifications issued thereunder could deprive the Ruler of such properties in contravention of article 362. The Attorney-General had several answers to this argument, including the bar under article 363 to interference by courts in disputes arising out of agreements, covenants, etc., by Rulers of Indian States to which the Government of India was a party. But a short and obvious answer is that there was no contravention of any guarantee or assurance given by the Government under the covenant of merger, as the estates in question are sought to be acquired only as the "private property" of the Rulers and not otherwise. The compensation provided for, such as it is, is in recognition of their private proprietorship, as in the case of any other owner. There is, therefore, no force in this objection. In Appeal No. 285 of 1951 preferred by the Raja of Kapurthala, where a similar objection was raised, it was further alleged that the privy purse of the Ruler was fixed at a low figure in consideration of the Oudh

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Estate being left to be enjoyed by him as his private property, and that its compulsory taking over would deprive him of the means of discharging his liability to maintain the members of his family. In the absence of any material to establish the facts, the allegation calls for no consideration.

Certain other minor points were also raised in some of the cases but they are not worth mentioning as they proceeded either on a misapprehension or were palpably unsound.

Thus all the objections raised to the constitutional validity of the Bihar Act, the Madhya Pradesh Act and the Uttar Pradesh Act or any part thereof fail and are overruled.

MAHAJAN J.—This is an appeal under article 132(3) of the Constitution of India from a judgment of the Full Bench of the High Court of Judicature at Patna, dated the 12th March, 1951, whereby the High Court declared the Bihar Land Reforms Act, 1950, *ultra vires* on the ground of its infringement of article 14 of the Constitution, but decided against the respondent on all other points.

On the 30th December, 1949, a Bill intituled the Bihar Land Reforms Bill was introduced in the Legislative Assembly of Bihar and was passed by both the Houses of Legislature, and after having been reserved for the consideration of the President of India, received his assent on the 11th September, 1950. The Act was published in the Bihar Government Gazette on the 25th September, 1950, and on the same day a notification under section 1 (3) of the Act was published declaring that the Act would come into force immediately. On the same day, a notification under section 3 of the Act was published stating that the estates and tenures belonging to the respondent and two others passed to and became vested in the State of Bihar under the provisions of the Act. The respondent filed a petition in the High Court of Judicature at Patna under article 226 of the Constitution, challenging the constitutionality of the

said Bihar Land Reforms Act and praying for a writ in the nature of *mandamus* to be issued on the State of Bihar restraining it from acting in any manner by virtue of, or under the provisions of, the said Act. This application was heard along with three title suits and other similar applications filed by various zemindars of Bihar by a Special Bench of the High Court. By three separate but concurring judgments, the Court declared the Act to be unconstitutional and void on the ground of its infringement of fundamental right under article 14 of the Constitution.

The validity of the Act was attacked before the High Court on the following grounds:

1. That the Bihar Legislature had no competence to pass it.

2. That it contravened clause (1) of article 31 of the Constitution.

3. That the vesting of the estates in the State of Bihar under the Act being in effect an acquisition of the estates, it was invalid as that acquisition was not for a public purpose and the provision for compensation was illusory.

4. That it contravened article 19(1) (f) of the Constitution.

5. That some of its provisions were invalid on the ground of delegation of legislative powers.

6. That it was a fraud on the Constitution.

7. That it was unconstitutional as it contravened article 14 of the Constitution.

The Court held as follows:—

1. That the Bihar Legislature was competent to enact the legislation.

2. That the Act did not contravene article 31(1) of the Constitution.

3. That the acquisition of the estates and tenures was for a public purpose.

4. That the subject-matter of the Act fell under article 31 (4) of the Constitution.

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5. That article 19 (1) (f) had no application.

6. That whatever powers were delegated to the executive were permissible.

7. That the Act was not a fraud on the Constitution.

8. That the Act was unconstitutional as it contravened article 14 of the Constitution.

During the pendency of the appeal against the decision of the High Court the Union Government with a view to put an end to the litigation of the zamindars brought forward a Bill to amend the Constitution and this was passed by the requisite majority as the Constitution (First Amendment) Act, 1951. The zamindars brought petitions under article 32 of the Constitution impugning the Amendment Act itself as unconstitutional and void. All these petitions were disallowed by this Court on the 5th October, 1951, and it was held that the Constitution (First Amendment) Act, 1951, had been validly enacted. In view of the Amendment Act any argument regarding the unconstitutionality of the Bihar Act based on the ground that the provisions of that Act contravened articles 14, 19 or 31 of the Constitution does not survive and the Act is not open to challenge on any such ground. As the Act has been held invalid by the High Court solely on the ground that it violated the provisions of article 14 of the Constitution, the basis of the judgment declaring the Act to be unconstitutional is no longer tenable and it has therefore to be reversed in case this Court agrees with the decision of the High Court on the points decided against the respondent.

Mr. P. R. Das for the respondent frankly conceded that no objection to the validity of the Act at this stage could be raised on the ground that it contravened any of the provisions of Part III of the Constitution. He, however, supported the decision of the Court on grounds decided against him by that Court and urged the following points :—

1. That it was not within the competence of the Bihar State Legislature to enact the impugned Act.

2. That the acquisition of the estates not being for public purpose, the Act was unconstitutional.

3. That the legislative power in various sections of the Act has been abdicated in favour of the executive and such abdication of power was unconstitutional.

4. That the Act was a fraud on the Constitution and that certain parts of the Act were unenforceable on account of vagueness and indefiniteness.

The foundation of Mr. P. R. Das's attack on the *vires* of the Act mainly rests on the contention that it is implicit within the language of entry 36 of List II of the Seventh Schedule of the Constitution that property could not be acquired without payment of compensation, the only effect of a compulsory power of acquisition against the individual being that there is the power to oblige him to sell and convey property when the public necessities require it, but that the power to take compulsorily raises by implication a right to payment; in other words, there is a concomitant obligation to pay and the power to acquire is inseparable from the obligation to pay compensation and as the provisions of the statute in respect of payment of compensation are illusory, it is unconstitutional.

As regards article 31 (2) of the Constitution, it is said that it deals with the fundamental right regarding property which is expressed in the clause in negative language. In entry 36 it is expressed in an affirmative form. The provisions of articles 31(4) and 31-A and 31-B, though they deprive the expropriated proprietor of his rights provided in Part III of the Constitution, do not in any way affect the ambit of entry 36 and empower the State Legislature to make a law for compulsory acquisition of property without payment of compensation in the true sense of that term. Emphasis is laid on the words "subject to the provisions of entry 42" contained in entry 36 and it is contended that the exercise of legislative power under

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entry 36 is conditional on exercise of power under entry 42, that one could not be exercised without the other and that the power conferred by the two entries had to be construed on the assumption that the acquisition was to be paid for. It is further contended that the legislative power in entry 42 is a power coupled with duty which the legislature was bound to exercise for the benefit of the person whose property was taken in exercise of the legislative power under entry 36. It is also said that the Bihar Legislature had legislated both under entry 36 and entry 42 and intended to take the property conditional on payment of compensation but if it transpires that the provisions it has made about payment of compensation are illusory, then that part of the Act would be void and as it could not have been intended by the legislature to pass the Act in any truncated form in which it would remain if the provisions regarding compensation are taken out of it, the whole Act should be held unconstitutional.

To appreciate the contentions raised by Mr. Das on the question of the competence of the Bihar Legislature to enact the Bihar Land Reforms Act, 1950, it is necessary to refer to its provisions and to see on what subjects the legislature has purported to enact the law.

The title of the Act indicates that the law provides for some kind of land reform in Bihar. Its preamble gives no indication as to the nature of these reforms except that it provides for the constitution of a Land Commission to advise the State Government on the agrarian policy, whatever that expression may mean. The dominant purpose of the Act is that of transference to the State of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests including the interests in trees, forests, fisheries, jalkars, ferries, huts, bazars, mines and minerals. Section 3 provides that the Government may, from time to time, by notification declare the estates or tenures mentioned therein to have passed and become vested in the State. Section 4 mentions the consequences of such vesting. It enacts that the

interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the colletion of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, huts, bazars, and ferries and all other sairati interests as also his interest in the subsoil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under raiyats) shall vest absolutely in the State free from all incumbrances. Clause (b) provides that all arrears of rents, including royalties and all cesses together with interest, if any, due thereon for any period prior to the date of vesting, which were recoverable in respect of the estates or tenures of the proprietor or tenure-holder and the recovery of which was not barred by any law of limitation shall vest in, and be recoverable by, the State. The expression "arrears of rent" includes arrears in respect of which suits were pending on the date of vesting or in respect of which decrees whether having the effect of rent decree or money decree were obtained before the date of such vesting and had not been satisfied and were not barred by limitation and also includes the costs allowed by such decrees. In other words, all outstandings in the nature of rents and rent decrees that were due to the proprietors or tenure-holders before the date of vesting and before the State had any right, title or interest in the estate would also pass to it. This seems to be a peculiar and rather extraordinary consequence of the vesting of an estate. Normally it has no relation to and cannot be regarded as an incident of the transference of the estates. The clause is in effect an independent provision laying down that monies due to the proprietor or tenure-holder during the period antecedent to the vesting and not realized by him but which were in the course of realization, whether by private effort or by means of pending suits or decrees including the costs of those

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suits and decrees will stand forfeited to the State. In clause (c) the liability of the proprietors or tenure-holders for payment of arrears of revenue and cesses to the Government prior to the date of vesting is kept alive. The other consequences of vesting are that no suit can be maintained for recovery of any money from a proprietor or tenure-holder which is secured by a mortgage or charge on the estate and no such estate or tenure covered by the Act is liable to attachment. The Collector is entitled to take charge of the estate and to inspect the documents and accounts which he thinks necessary to do for the management of the estate or tenure. Section 5 permits the proprietors and tenure-holders to retain their homesteads but only in the capacity of tenants free from the obligation to pay rent. Section 6 allows them to retain possession of lands in their khas possession or in the possession of lessees under them, on payment of rent as raiyats to the State in the status of occupancy tenants. Section 7 provides that buildings together with lands on which such buildings stand and in the possession of proprietors and tenure-holders and used as golas, factories or mills shall be retained by them on payment of rent. Section 8 gives a right of appeal to a party aggrieved against the Collector's order. In section 9 it is provided that all mines comprised in the estate or tenure as were in operation at the commencement of this Act and were being worked directly by the proprietor or tenure-holder shall be deemed to have been leased by the State Government to the proprietor or tenure-holder. This section does not include within its scope mines on which considerable money might have been spent but which are actually not in operation. An artificial definition has been given in section (2) sub-clause (m) to the expression "mines in operation" as meaning mines regarding the working of which notice has been served on Government under the Indian Mines Act. Section 10 keeps alive subsisting lease of mines and minerals, the lessee being deemed to be a lessee under the Government. Buildings and lands appurtenant to a mine stand transferred

to the State under the provisions of section 11 and they are to be deemed to be leased by the State to the lessee with effect from the date of vesting. Section 12 lays down the constitution of a Mines Tribunal. Section 13 provides for the management of the estates and tenures that vest in the State. Sections 14, 15, 16, 17 and 18 make provisions relating to the investigation of debts of proprietors and tenure-holders and lay down the procedure for payment of those debts. In section 19 provision is made for the appointment of compensation officer. Certain directions are given in sections 20 and 21 regarding the procedure to be adopted by the compensation officer when the proprietor has only a certain share in an estate and where certain trusts have been created by the tenure-holder or proprietor. Section 22 defines "previous agricultural year" and the phrase "gross assets" with reference to a proprietor or tenure-holder. "Gross assets" in the Act means the aggregate of the rents including all cesses, which were payable in respect of the estates or tenures of such proprietor or tenure-holder for the previous agricultural year, whether payable by a subordinate tenant or the raiyats. Certain details are laid down for the assessment of those rents. In the expression "gross assets" is also included the gross income of the previous agricultural year from fisheries, trees, jalkars, ferries, huts, bazars and sairati interests. Gross income from forests has to be calculated on the basis of the average gross annual income of twenty-five agricultural years preceding the agricultural year in which the date of vesting falls, which in the opinion of a forest officer, the forests would have yielded if they had been placed during the said period of twenty-five years under the management of the State.

Section 23 lays down the method of computation of net income. It provides that the net income of a proprietor or tenure-holder shall be computed by deducting from the gross asset of such proprietor or tenure-holder, as the case may be, the following :—

(a) any sum payable as land revenue or rent ;

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(b) any sum payable by such proprietor as agricultural income-tax in respect of any agricultural income derived from such estate or tenure for the previous agricultural year ;

(c) any sum payable by such proprietor or tenure holder as income-tax in respect of any income derived from such estate or tenure, other than royalties for the previous agricultural year ;

(d) any sum payable as chaukidari tax or municipal tax ;

(e) cost of management of such estate or tenure at rates varying from five to twenty per cent. according to the amount of the gross asset. The lowest limit fixed is at Rs. 2,000, and the highest at any amount exceeding Rs. 15,000.

These rates appear to have been fixed in an arbitrary manner bearing no relation whatsoever to the actual cost of management. To illustrate, in the case of the Maharaja of Darbhanga whose estate has a gross income of nearly forty-eight lakhs, the cost of management, according to this calculation, would work out to a sum of nine and a half lakhs, which on the face of it looks starting; it can hardly have any relation to the costs actually incurred. The expense ratio under the head "management would ordinarily be lowest for the highest gross income. It goes up in proportion to the reduction in the amount of gross income. The Act has, however, reversed this rule of economics with the result that part of the money that on the principles stated for determining compensation would be payable by way of compensation to the proprietor or tenure-holder stands forfeited by this artificial reduction of the net income. Clause (f) provides for deduction from the gross assets of cost of works of benefit to the raiyats of such estates or tenures at rates varying from four to twelve and a half per cent., the rate of four per cent. being applicable where the gross asset does not exceed Rs. 5,000, and the rate of twelve and a half per cent. being applicable if the gross asset exceeds Rs. 25,000. It is obvious

that the calculation of the cost of works of benefit to the raiyats at a flat rate without any reference to the actual expenses that might have been incurred is a provision of a confiscatory character. It artificially reduces the net income which is the basis of the assessment of compensation. The last clause (g) of this section allows deduction of any other tax or legal imposition, payable in respect of such estate or tenure not expressly mentioned in the earlier clauses. Section 24 provides the manner of determination of the compensation payable to the proprietor or tenure-holder. It lays down a sliding scale for the assessment of compensation. Where the net income does not exceed Rs. 500, the compensation payable is twenty times the net income and where the net income computed exceeds Rs. 1,00,000, it is payable at three times the amount. The compensation in such cases is merely nominal. In the case of the Maharaja of Darbhanga, the estate acquired also comprised land purchased by him by spending about a crore of rupees and also comprised mortgages, to the tune of half a crore. All these vest in the Bihar State along with the inherited zemindaris of the Maharaja and arrears of rent amounting to Rs. 30,00,000, while the total compensation payable is nearly a sum of Rs. 9,00,000. This section further provides that to the amount thus payable shall be added the amount of fifty per cent. of the arrears of rent referred to in clause (b) of section 4 along with the amount of compensation payable in respect of mines and minerals as determined under section 25. The section also lays down the method of assessment of compensation in the case of persons who have only a share in the zamindari or have other minor interests in the tenures or estates where the estate or tenure is held in the trust etc., or where they are of an impartible nature. In the case of mines and minerals the method of assessment is laid down in section 25. It has either to be fixed by agreement or by a tribunal appointed for the purpose. The subsequent sections provide for the preparation of compensation roll and for hearing of appeals etc. Section 32

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lays down the method and manner of payment of compensation. Sub-section (2) of this section enacts that the amount of compensation shall be paid in cash or in bonds or partly in cash and partly in bonds. The bonds shall be either negotiable or non-negotiable and non-transferable and be payable in forty equal instalments to the person named therein and shall carry interest at two and a half per cent. per annum with effect from the date of issue. Any disputes about compensation between the proprietors or tenure holders have to be determined by a tribunal appointed by the State Government. Section 34 provides for the constitution of a commission called the Bihar Land Commission. The other provisions of the Act are of a miscellaneous character and require no special mention. The last section authorizes the State Government to make rules for carrying out the provisions of the Act.

From this survey of the Act it appears that the law enacted might be taken to relate to several items in the legislative lists, *i.e.*, rights in or over land and land tenures, forests, fisheries, mines and minerals, acquisition of property and also principles on which compensation for property acquired is to be determined. The pith and substance of the legislation however, in my opinion, is the transference of ownership of estates to the State Government and falls within the ambit of legislative head entry 36 of List II. There is no scheme of land reform within the framework of the statute except that a pious hope is expressed that the commission may produce one. The Bihar Legislature was certainly competent to make the law on the subject of transference of estates and the Act as regards such transfers is constitutional.

The Act further deals with the realization of arrears of rents due before the date of vesting of the estates to the zemindars and forfeits fifty per cent. of such realization to the State exchequer. It also in an indirect manner forfeits the State exchequer part of the compensation money which would have been payable

to the proprietors or tenureholders if the net income was not reduced by deduction from the gross income of items of artificial nature which have no relation to any actual expenses. Both these provisions will be separately dealt with hereinafter as, in my opinion, the enactment of these provisions is unconstitutional.

Having held that the Bihar Act is constitutional as regards transfer of estates to the State and that this is mainly an enactment under legislative head 36 of List II, it is convenient now to examine the contention of Mr. Das to the effect that in the contents of the power conferred on the legislature by this entry their exists a concomitant obligation to pay compensation and that as the provisions regarding payment of compensation are illusory, the Act is unconstitutional and that article 31(4) of the Constitution does not afford any protection against this attack.

For a proper appreciation and appraisal of the proposition of Mr. P. R. Das that the obligation to pay compensation is implicit in the language of entry 36 of List II of the Seventh Schedule and that the power to take compulsorily raises by implication a right to payment, the power to acquire being inseparable from the obligation to pay compensation, it is necessary to examine briefly the origin of the power of the State on the subject of compulsory acquisition of property. This power is a sovereign power of the State. Power to take property for public use has been exercised since olden times. Kent speaks of it as an inherent sovereign power. As an incident to this power of the State is the requirement that property shall not be taken for public use without just compensation. Mr. Broom in his work on Constitutional Law says, "Next in degree to the right of personal liberty is that of enjoying private property without undue interference or molestation, and the requirement that property shall not be taken for public use without just compensation is but an affirmance of the great doctrine established by the common law for the protection of private property. It is founded in natural equity and is

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laid down as a principle of universal law." In the words of Lord Atkinson in *Central Control Board* v. *Cannon Brewery Co. Ltd.* (1), the power to take compulsorily raises by implication a right to payment.

On the continent the power of compulsory acquisition is described by the term "eminent domain". This term seems to have been originated in 1625 by Hugo Grotius, who wrote of this power in his work *"De Jure Belli et Pacis"* as follows:

"The property of subjects is under the eminent domain of the State, so that the State or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the State is bound to make good the loss to those who lose their property."

The relationship between the individual's right to compensation and the sovereign's power to condemn is discussed in Thayer's Cases on Constitutional Law (Vol. I, p. 953) (mentioned on page 3 of Nichols on Eminent Domain) in these words :—

"But while this obligation (to make compensation) is thus well established and clear, let it be particularly noticed upon what grounded it stands *viz.*, upon the natural rights of the individual. On the other hand, the right of the State to take springs from a different source, *viz.*, a necessity of government. These two, therefore, have not the same origin; they do not come, for instance, from any implied contract between the State and the individual, that the former shall have the property, if it will make compensation; the right is no mere right to pre-emption, and it has no condition of compensation annexed to it either precedent or subsequent; but there is a right to take,

(1) [1919] A.C. 744.

and attached to it as an incident, an obligation to make compensation; this latter, morally speaking, follows the other indeed like a shadow but it is yet distinct from it, and flows from another source."

Shorn of all its incidents, the simple definition of the power to acquire compulsorily or of the term "eminent domain" is the power of the sovereign to take property for public use without the owner's consent. The meaning of the power in its irreducible terms is, (a) power to take, (b) without the owner's consent, (c) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power. Courts have defined "eminent domain" so as to include this universal limitation as an essential constituent of its meaning. Authority is universal in support of the amplified definition of "eminent domain" as the power of the sovereign to take property for public use without the owner's consent upon making just compensation.

It is clear, therefore, that the obligation for payment of just compensation is a necessary incident of the power of compulsory acquisition of property, both under the doctrine of the English Common Law as well as under the continental doctrine of eminent domain, subsequently adopted in America.

The question for consideration is whether this obligation to pay compensation for compulsory acquisition of property has been impliedly laid down by the constitution makers in our Constitution under legislative head in entry 36 of List II and entry 33 of List I, or whether this all important obligation which follows ocmpulsory acquisition as a shadow has been put in express and clear terms somewhere else in the Constitution. To my mind, our Constitution has raised this obligation to pay compensation for the

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compulsory acquisition of property to the status of a fundamental right and it has declared that a law that does not make provision for payment of compensation shall be void. It did not leave the matter to be discovered and spelt out by learned arguments at the Bar from out of the contents of entry 36; they explicitly provided for it in article 31 (2) of the Constitution. As the obligation to pay has been made a compulsory part of a statute that purports to legislate under entry 33 of List I and entry 36 of List II, it is not possible to accede to the contention of Mr. P. R. Das that the duty to pay compensation is a thing inherent in the language of entry 36. I agree with the learned Attorney-General that the concept of acquisition and that of compensation are two different notions having their origin in different sources. One is founded on the sovereign power of the State to take, the other is based on the natural right of the person who is deprived of property to be compensated for his loss. One is the power to take, the other is the condition for the exercise of that power. Power to take was mentioned in entry 36, while the condition for the exercise of that power was embodied in article 31(2) and there was no duty to pay compensation implicit in the content of the entry itself.

Reference in this connection may be made to the Government of India Act, 1935. By section 299 of that statute a fetter was imposed on the power of legislation itself. The Constitution, however, declared laws not providing for compensation as void and it not only placed a fetter on the power of legislation but it guaranteed the expropriated proprietor a remedy in article 32 of the Constitution for enforcement of his fundamental right. I am therefore of the opinion that Mr. Das is not right in his contention that unless adequate provision is made by a law enacted under legislative power conferred by entry 36 of List I for compensation, the law is unconstitutional as entry 36 itself does not authorize the making of such a law without providing for compensation. Then

it was said that entry 36 of List II was linked up with entry 42 of the Concurrent List by the words "subject to" occurring therein and that the validity of any law made in exercise of legislative power under entry 36 was conditional on the simultaneous exercise of the legislative power under entry 42 and because there has been no valid exercise of this power (the provisions of the impugned Act regarding the determination of compensation being illusory), the legislation under entry 36 fails. In my opinion, this contention is unsound. The two entries referred to above are merely heads of legislation and are neither interdependent nor complementary to one another. It is by force of the provisions of article 31 (2) that it becomes obligatory to legislate providing for compensation under entry 42 of the Concurrent List in order to give validity to a law enacted under entry 36 and not by reason of the use of the words "subject to" in the wording of the entry. No such words occur in entry 33 of the Union List. It cannot reasonably be argued that Parliament could make a law for compulsory acquisition of property for its purposes without fulfilling the condition of making a law under entry 42 of the Concurrent List, but a State Legislature in this respect is in a different situation. Such a contention, in my opinion, is untenable. The only purpose of the words "subject to" occuring in entry 36 is to indicate that legislation under entry 36 would be subject to any law made by Parliament in exercise of its legislative power under entry 42 of the Concurrent List. Both legislatures can legislate under entry 42 but the Parliamentary statute made in exercise of powers under this entry would have preference over a State law in case of repugnancy and it was for this reason that reference was made to entry 42 in the head of legislation mentioned in the State List under entry 36. In other words, it only means that whenever a law is made by a State Legislature in exercise of its legislative power under entry 36, that law will be subject to the provisions of a Parliamentary statute made in exercise of its legislative powers under entry 42 of the Concurrent List.

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Lastly, it was urged that the legislative power conferred in entry 42 of the Concurrent List is a power conferred for the benefit of the expropriated owner and that the legislature is bound to exercise this power for his benefit whenever it takes property under its compulsory powers, in other words, it was said that the power conferred by the entry was coupled with a duty to exercise it. Reference was made in this connection to the observations of Lord Cairns in *Julius* v. *Bishop of Oxford*(1). The principle of that decision is that where power is conferred in the nature of a trust there is an obligation to exercise it for the benefit of the *cestui que trust.* These observations do not have any apposite application to the case of legislative powers conferred by a constitution. The entries in the lists are merely legislative heads and are of an enabling character. Duty to exercise legislative power and in a particular manner cannot be read into a mere head of legislation. If the argument of the learned counsel was sound, then it would be open to this Court to issue a *mandamus* to the legislature to exercise its power of legislation under entry 42, if it failed to do so. Mr. Das, when faced with this question, had to admit that he could not seriously contend that a legislature could be directed to enact a statute if it did not wish to do so. Failure to make a law under entry 42 cannot make a law made under entry 36 bad. In my opinion, the decision in the case of *Julius* v. *Bishop of Oxford*(1) has no relevancy to the matter before us.

The crucial point for determination in these appeals is to discover the extent to which article 31 (4) of the Constitution or the new articles 31-A and 31-B have deprived the expropriated proprietor of his rights or remedies in respect of this matter and of the guaranteed right to get compensation for property acquired. Article 31(4) is in these terms :—

"If any Bill pending at the commencement of this Constitution in the legislature of a State has, after it has been passed by such Legislature, been

(1) (1880) 5 App. Cas. 214.

reserved for the consideration of the President and has received his assent, then *notwithstanding anything in this Constitution,* the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)."

Articles 31-A and 31-B are in these terms:—

"31-A. (1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part :

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration the President has received his assent.

(2) In this article—

(a) the expression 'estate' shall in relation to any local area have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include any jagir, inam or musafi or other similar grant ;

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

31-B. Without prejudice to the generality of the provisions contained in article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal

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to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force."

The language of article 31(4) is unequivocal in its terms and states that when a Bill has received the assent of the President according to the procedure prescribed in article 31(3) and (4) then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

In order to determine the scope of this clause, it is necessary to determine what are the specific provisions of clause (2) which clause (4) makes unjusticiable. A strict construction has to be placed on the language of this clause, it being in the nature of a debarring provision. In my opinion, the provisions of sub-clause (2) made unjusticiable by clause (4), relate to the determination and payment of compensation. The whole purpose of the clause is to make the obligation to pay compensation a condition precedent to the compulsory acquisition of property. The words of the clause preceding the word *"unless"* are merely descriptive of the law, the validity of which would be questionable if there was no provision for determination and for payment of compensation for the property taken in its contents. The use of the word "such" fully supports this interpretation. The mandate of the clause is that such a law must contain a provision for payment of compensation to the expropriated proprietor. According to the Oxford Dictionary, (Vol. 8, p. 1526) the expression "Provision" when used in statutes, has reference to what is expressly provided therein. What article 31 (4) really says is that the contravention of the express provisions of article 31(2) relating to payment of compensation will not be a justiciable issue. It has no reference to anything that may be implied within the language of that clause. The existence of a "public purpose" is undoubtedly an implied condition of the exercise of compulsory powers of acquisition by the State, but the language of article 31(2) does not

expressly make it a condition precedent to acquisition. It assumes that compulsory acquisition can be for a "public purpose" only, which is thus inherent in such acquisition. Hence article 31(4), in my opinion, does not bar the jurisdiction of the court from inquiring whether the law relating to compulsory acquisition of property is not valid because the acquisition is not being made for a public purpose. This is also the view taken by the learned Judges of the Patna High Court. The sovereign power to acquire property compulsorily is a power to acquire it only for a public purpose. There is no power in the sovereign to acquire private property in order to give it to private persons. Public purpose is a content of the power itself. Reference in this connection may be made to Willoughby's Constitutional Law (page 795). Therein it is stated.

"As between individuals, no necessity, however great, no exigency, however imminent, no improvement, however valuable, no refusal, however unneighbourly, no obstinacy, however unreasonable, no offers of compensation, however extravagant, can compel or require any man to part with an inch of his estate."

Public purpose is an essential ingredient in the very definition of the expression "eminent domain" as given by Nichols and other constitutional writers, even though obligation to pay compensation is not a content of the definition but has been added to it by judicial interpretation. The exercise of the power to acquire compulsorily is conditional on the existence of a public purpose and that being so, this condition is not an express provision of article 31(2) but exists *aliunde* in the content of the power itself and that in fact is the assumption upon which this clause of the article proceeds.

The result of this discussion is that the scope of article 31(4) is limited to the express provisions of article 31(2) and courts cannot examine either the extent or the adequacy of the provisions of compensation contained in any law dealing with the

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acquisition of property compulsorily for public purpose but the barring provisions of article 31(4) do not in any way touch the powers of the court to see whether the acquisition has been made for public purpose. The provisions of this clause also do not take away the court's power to examine whether the legislature that made the law has acted in exercise of its law making power within the lists or has merely made some other law though it has ostensibly exercised its powers under a certain legislative head which cannot be used to support the legislation.

As regards the new articles 31-A and 31-B, they merely place beyond the reach of the court any enactment dealing with compulsory acquisition of property which may infringe any of the provisions of Part III of the Constitution; in other words, article 13(2) of the Constitution cannot be called in aid to impugn the validity of such statutes.

Having determined the scope of article 31 (4), it is now convenient to examine the extent of the protection given by article 31 (4) to the impugned statute.

Mr. Das is to a great extent right in his contention —the point was not seriously challenged by the learned Attorney-General,—that the law under challenge in the matter of compensation is highly unjust or inequitable to certain persons and in certain matters, and compensation in some cases is purely illusory. Be that as it may, the Constitution in express terms prohibits an enquiry in a court of law into those matters. The same Constituent Assembly that provided the guarantees in article 31 (2) in respect of payment of compensation and provided the remedy in article 32 for enforcing the guaranteed right, took away that remedy in the case of the Bihar and other zamindari estates and substituted for it the procedure of article 31(3) and (4), compliance with which would be sufficient to make the laws valid and effective. However repugnant the impugned law may be to our sense of justice, it is not possible

for us to examine its contents on the question of quantum of compensation. It is for the appropriate legislature to see if it can revise some of its unjust provisions which are repugnant to all notions of justice and are of an illusory nature. The courts' hands are tied by the provisions of article 31(4) and that which has been declared by the Constitution in clear terms not to be justiciable, cannot be made justiciable in an indirect manner by holding that the same subject-matter which is expressly barred is contained implicitly in some other entry and therefore open to examination. None of these provisions, however, fetter the power of the court to inquire into any other matters the cognizance of which is not expressly taken away by the provisions of clause (4) and articles 31-A and 31-B.

Therefore, the material point for determination is whether the acquisition of the estates is for any public purpose and if it be not so, the law can certainly be held to be unconstitutional. Mr. Das contended, and in my opinion rightly, that jurisdiction to acquire private property by legislation can only be exercised for a public purpose. It may be the purpose of the Union, or the purpose of the State or any other public purpose. Private property cannot be acquired for a private purpose. The right to legislate under entry 36 postulates the existence of a public purpose and the contention is that there was no public purpose behind the Act. The learned Judges of the High Court negatived this contention on the ground that the question whether there was a public purpose in support of the acquisition of the estates had been by implication decided by the Constituent Assembly and therefore the Court could not go into this matter. Shearer J. said as follows :—

"We are, in my opinion, estopped from saying that the acquisition of estates and tenures is not an acquisition for such a purpose. That it is, has been decided by the Constituent Assembly itself."

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This decision was reached in view of the provisions of clauses (4) and (6) of article 31 which were interpreted to mean that the Constituent Assembly gave their express approval to this legislation. Reuben J. observed as follows :—

"From article 31, clause (2), it is clear that the Constituent Assembly considered two requirements as essential for compulsory acquisition, namely, a public purpose and provision for compensation. The protection which the Constituent Assembly gave under clauses (4) and (6) was confined to the latter requirement. Evidently, therefore, the Constituent Assembly thought that protection was not required under the other head, that is to say, the Constituent Assembly regarded that nationalization of land as itself constituting a public purpose.

I would, therefore, hold that there is a public purpose for the impugned Act within the meaning of clause (2) of article 31."

Das J. said as follows :—

"There is, I think, clear indication in the Constitution of India itself that the expression 'public purpose' is to be understood in a wide and comprehensive sense. Furthermore, there is indication that the Constituent Assembly, representing the people of India which made the Constitution, was itself aware of the existence of legislation of the nature of impugned Act. This is clear from clause (4) of article 31. As a matter of fact, the Land Reforms Bill was pending at the commencement of the Constitution.....If the legislation then pending was not for a public purpose, it was, indeed, surprising that the Constituent Assembly tried to save such legislation by means of the provisions of clause (4) of article 31. One may, I think, say that there was an implied declaration by the Constituent Assembly that such legislation was for a public purpose and such declaration will be given deference by the courts until it is shown to involve an impossibility.

For the reasons given above, I hold that the impugned Act does not fall for want of a public purpose".

Learned counsel challenged this view of the High Court and contended that article 31(4) of the Constitution is no answer on this point and that the Act was bad as it was silent on the question as to why the zamindaris were being acquired ; that it only provided for the interception of rents which instead of being realized by the zamindars would go into the coffers of the Government without any benefit being derived by the tenants ; that private property could not be acquired for merely augmenting the revenues of the State; and that the only purpose that could be gathered from this Act was the ruination of a large class of persons without any corresponding benefit to any section of the community. It is said that there are 13,35,000 land-owners and tenure-holders in Bihar and if an average family be taken to consist of four persons, five and a half million people will be ruined by this legislation, while the ryots will not benefit in any manner because all the lands excepting the waste lands sought to be transferred are in the possession and cultivation of the ryots and no part of the rent realisable from them is being commuted for their benefit. It is pointed out that the waste lands were sufficient to meet the requirements of villagers for grazing cattle and for pasture and that in effect the acquisition of the estates was for the purpose of creating one machine-ridden and red-tapist super-landlord by depriving a substantial portion of the public of their means of livelihood.

The learned counsel proceeded to say that nationalization of land may be the policy of the party in power but this is not a public purpose which involves benefit to the community. Reference in this connection was made to the decision in *Hamabai Pramjee Petit* v. *Secretary of State for India* (1), where it was observed that the phrase "public purpose" whatever it may

(1) (1915) 42 I.A. 44.

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mean, must include a purpose, that is, an object or aim, in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. The impugned Act, it was contended, did not fall within this definition of "public purpose". Reference was also made to Vol. II of Cooley's Constitutional Limitations, at page 744, wherein it is said as follows :—

"The purpose must be public, and must have reference to the needs or convenience of the public, and no reason of general public policy will be sufficient to validate other transfers when they concern existing vested rights."

Finally, it was urged that there was nothing definite or tangible in the Act or in the views of the legislatures which gave any indication of the public purpose for which the estates were being acquired and all that could be gathered was that the legislature did not know its own mind at all and on a vague notion of some future policy directed the acquisition of the estates.

In my opinion, it will not serve any useful purpose to examine each and every argument that was addressed to us by the learned counsel. There can be no manner of doubt that acquisition of private property by legislation under entries 33, 36 and 42 can only be made either for purposes of the Union or for purposes of the State or for a public purpose and that it is unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purposes of the State or for purposes of the public and that the intention was to benefit the community at large. It may be conceded that the present statute does not disclose the legislature's mind as to what it would ultimately do after the estates are vested in the State Government. Perhaps the State Government has not yet made up its mind how and for what purposes the lands and the tenures acquired will be utilized. The statute

provides in section 34 for the establishment of a land commission whose function it will be to advise the Government as to its agrarian policy. Be that as it may, it seems to me that in spite of the criticism levelled against the Act by the learned counsel, it cannot be said that the Act would fall because it fails to postulate a public purpose. The Act is intituled "The Bihar Land Reforms Act, 1950". The preamble of the Constitution says that India has been constituted into a Sovereign Democratic Republic to secure to all its citizens justice, social, economic and political. Article 39 of the Directive Principles of State Policy states as follows :—

"The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ; and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of the acquisition contemplated by the impugned Act therefore is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come in the hands of the State as to subserve the common good as best as possible. In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India. It is fallacious to contend that the object of the Act is

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to ruin five and a half million people in Bihar. All lands in khas possession of all these persons have not been made the subject-matter of acquisition. Their homesteads, their mineral wealth except mines not in operation have not been seriously touched by the provisions of the Act. Various other exemptions have also been made in their favour in the Act, apart from the provisions as to compensation which in the case of small zamindaris can by no means be said to be of an illusory character. It is difficult to hold in the present day conditions of the world that measures adopted for the welfare of the community and sought to be achieved by process of legislation so far as the carrying out of the policy of nationalization of land is concerned can fall on the ground of want of public purpose. The phrase "public purpose" has to be construed according to the spirit of the times in which particular legislation is enacted and so construed, the acquisition of the estates has to be held to have been made for a public purpose.

These observations. however, have no application to the acquisition of arrears of rent. On the face of the statute, acquisition of fifty per cent. of these arrears was for the private purpose of the zemindars and the other fifty per cent. was either for supplementing the revenues of the State or for securing means for payment of compensation to the zemindars. The purpose is to discharge the obligation of the acquirer to pay the price. The same observations apply to clause 23 (f) of the statute. That provision has been made for the purpose of negativing partially the provisions of the Act regarding payment of compensation. Clause (4) of article 31 affords no protection against the invalidity of these clauses.

The learned Attorney-General contended that the acquisition of arrears was an acquisition of choses in action and that the compensation paid for it was fifty per cent. of the amount of arrears. I regret I am unable to accept this suggestion. It is a well accepted

proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State. "The principle of compulsory acquisition of property," says Cooley (in Vol. II at p. 113, Constitutional Limitations) "is founded on the superior claims of the whole community over an individual citizen but is applicable only in those cases where private property is wanted for public use, or demanded by the public welfare and that no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise and the exercise of such a power is utterly destructive of individual right. Taking money under the right of eminent domain, when it must be compensated in money afterwards is nothing more or less than a forced loan. Money or that which in ordinary use passes as such and which the Government may reach by taxation, and *also rights in action which can only be available when made to produce money,* cannot be taken under this power."

Willis in his Constitutional Law, at page 816, offers the same opinion. Nichols on "Eminent Domain" (Vol. I, at page 97) has expressed a contrary opinion and reference has been made to the decision in *Cincinnati* v. *Louisville etc., R. Co.* (1). An examination of this case, however, does not disclose that any such proposition was stated therein. It was held in that case that a Bill to restrain the enforcement of a State statute regulating fire insurance rights was a valid law in the State of Kansas. It was not necessary to decide in this case whether under the compulsory acquisition power the State has the power to acquire choses in action or money, but it cannot be seriously disputed that such an acquisition amounts to a forced loan and that the desired result can be more appositely obtained in exercise of the police power of the State than of the power of eminent domain or compulsory acquisition of property and that compensation in such a case is the same amount of money

(1) 223 U.S. 390.

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that is being taken and in the case of a chose in action the amount of money that it would produce. In this situation it cannot be held that fifty per cent. of the outstanding arrears was compensation in any sense of that expression for this acquisition. The true position is that the State took over all the arrears and decided to refund fifty per cent. of them and forfeit the rest. The validity of this acquisition has to be decided independently of the acquisition of the estates. It has no connection with land reform or with any public purpose. It stands on the same footing as other debts due to zamindars or their other movable properties, which it was not the object of the Act to acquire. As already stated, the only purpose to support this acquisition is to raise revenue to pay compensation to some of the zamindars whose estates are being taken. This purpose does not fall within any definition, however wide, of the phrase "public purpose" and the law therefore to this extent is unconstitutional.

One or two illustrations of the public purpose involved in this provision will bring out its true character. In Appeal No. 299 of 1951, the arrears of Darbhanga Raj on 26th September, 1950, was a sum of Rs. 30,81,967. Half of this amount is payable to the Raj and the other half stands forfeited. In the case of Raja P. C. Lal (Appeal No. 330 of 1951), the rents due were Rs. 10,26,103, and in Appeal No. 339 of 1951, the amount is Rs. 9,52,937.

Next it was contended that the impugned Act is a fraud on the Constitution and therefore void. It was said that the Act, while pretending to comply with the Constitution, evades and invades it; that the Act merely pretends to comply with the Constitution when it says that it provides for payment of compensation but in effect it has produced a scheme for non-payment of compensation by shift and contrivance. Reference was made to certain provisions of the Act of a confiscatory nature, already noticed in this judgment. Section 9 was mentioned under which mines in the course of development and fetching no income yet

vest in the State without payment of compensation. No compensation has been made payable in respect of forests or trees which were not fetching any income at the date of vesting. In a nutshell, it was contended that the object of the Act was to acquire properties of the zemindars by payment of compensation (so-called) out of the moneys belonging to the zemindars themselves and that in some cases they had not only to give up their estates for nothing but would have to pay something, in addition, to the State, if the principles specified in the Act were to apply. It was pointed out in the case of the Maharaja of Darbhanga that his zemindari would be acquired by the State Government without paying anything but that the Maharaja would have to pay out of his own money six lakhs to the Government. In Case No. 330 of 1951 (Raja P. C. Lall), it was said that Government would get the zemindari free, while in Case No. 339 of 1951 the State will get the zemindari and two and half lakhs out of the arrears, while in Case No. 331 of 1951 (Chota Nagpur appeal) the zemindari will be acquired on payment of a small sum of Rs. 14,000 only. Nothing will be payable to the zamindars out of the public exchequer. Attention was drawn to the observations of Shearer J. in the following passage :—

"The legislature, it is clear, are optimistic enough to hope that this reform may conceivably be effected without raising any great loan. The conclusion, to my mind, is irresistible that the intention is to take over the great estates in the province, paying no compensation or the most inadequate compensation, and out of the considerable profits which are likely to be derived from them, to take over, in course of time, the remaining estates and tenures. In other words, a comparatively small minority belonging to this particular class are to be expropriated without compensation or with the most inadequate compensation in order that, when the great majority are expropriated, they receive compensation which will not be inadequate and may, quite possibly, in many cases, be more than adequate."

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Mr. Das vehemently contended that the statute was a fraud on republican Constitution which promised to deprive no one of his property without payment of compensation; that it pretended to make elaborate provisions for paying it but that by shift and contrivance it has provided for the evasion of its payment. Reference was made to a passage in *Moran Proprietary Ltd.* v. *Dy. Commissioner of Taxation for New South Wales* (1), which is in these terms :—

"Cases may be imagined in which a purported exercise of the power to grant financial assistance under section 96 would be merely colourable. Under the guise or pretence of assisting a State with money, the real substance and purpose of the Act might simply be to effect discrimination in regard to taxation. Such an Act might well be *ultra vires* the Commonwealth Parliament. Their Lordships are using the language of caution because such a case may never arise, and also because it is their usual practice in a case dealing with constitutional matters to decide no more than their duty requires. They will add only that, in the view they take of the matter, some of the legislative expedient—objected to as *ultra vires* by Evatt J. in his forcible dissenting judgment—may well be colourable, and such acts are not receiving the approval of their Lordships."

It was urged that a statute could be declared to be a fraud on the Constitution on the same principles that are applicable to cases of corporations or of executive bodies, whether they act in excess or in abuse of their statutory powers. Reliance was placed in this connction on the observations of Abbott C.J. in *Fox* v. *Bishop of Chester*(2), which are in these terms :—

"Our judgment is founded upon the language of the Statute 31 Eliz. c. 6 and the well-known principle of law, that the provisions of an Act of Parliament shall not be evaded by shift or contrivance."

(1) [1940] A.C. 838, at p. 858.
(2) 107 E.R. 520, at p. 527.

In *Fox* v. *Bishop of Chester*(1), it was said that there may be fraud on the law, an insult to an Act of Parliament, though in the language and text of the law no such fraud may have been mentioned. In *Westminster Corporation* v. *London & North Western Railway*(2), it was observed :—

"It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first."

In *Maharaja Luchmeswar Singh* v. *Chairman of the Darbhanga Municipality*(3), it was pointed out that the offer and acceptance of one rupee was a colourable attempt to obtain a title under the Land Acquisition Act without paying for the land. In *Alexander* v. *Brame*(4), it was observed that if it had appeared that sufficient ground existed for holding that the deed in question was a device on the part of Mr. Brame for the purpose of evading and eluding the statute, by keeping seemingly and colourably clear of it, while meaning substantially to infringe it, a view might have been taken favourable to the appellants.

All these principles are well-settled. But the question is whether they have any application to the present case. It is by no means easy to impute a dishonest motive to the legislature of a State and hold that it acted *mala fide* and maliciously in passing the Bihar Land Reforms Act or that it perpetrated a fraud on the Constitution by enacting this law. It may be that some of the provisions of the Act may operate harshly on certain persons or a few of the zamindars and may be bad if they are in excess of the legislative power of the Bihar Legislature but from that circumstance it does not follow that the whole enactment is a fraud on the Constitution. From the premises that the estates of half a dozen zemindars may be expropriated

(1) 6 E.R. 581.
(2) [1905] A.C. 426 at p. 430.
(3) 17 I.A. 90.
(4) 44 E.R. 205.

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without payment of compensation, one cannot jump to the conclusion that the whole of the enactment is a fraud on the Constitution or that all the provisions as to payment of compensation are illusory. At best they are illusory only in the case of some only of the large body of persons affected by it.

Section 23(f), however, in my opinion, is a colourable piece of legislation. It has been enacted under power conferred by legislative entry 42 of List III. It is well-settled that Parliament with limited powers cannot do indirectly what it cannot do directly. (Vide *South Australia* v. *The Commonwealth*(1) and *Madden* v. *Nelson & Port Sheppard R. W. Co.*(2). In *Deputy Federal Commissioner of Taxation* (*N. S. W.*) v. *W. R. Moran Proprietary Ltd.* (3), it was observed as follows :—

"Where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature is really doing. In such cases the court is not to be over persuaded by the appearance of the challenged legislation.....In that case, this court applied the well known principle that in relation to constitutional prohibitions binding a legislature, that legislature cannot disobey the prohibition merely by employing an indirect method of achieving exactly the same result.....The same issue may be whether legislation which at first sight appears to conform to constitutional requirements is colourable or disguised. In such cases the court may have to look behind names, form and appearances to determine whether or not the legislation is colourable or disguised."

The provision herein impeached has not been arrived at by laying down any principles of paying compensation but in truth, is designed to deprive a number of people of their property without payment of compensation. The State legislature is authorised to pass an Act in the interests of persons deprived of

(1) 65 C.L.R. 373.
(2) [1899] A.C. 626.
(3) 61 C.L.R. 735 at p. 793.

property under entry 42. They could not be permitted under that power to pass a law that operates to the detriment of those persons and the object of which provision is to deprive them of the right of compensation to a certain extent.

In this connection it is now convenient to examine the contention of the learned Attorney-General as to the interpretation of legislative head entry 42 of List III. He contended that under this head it was open to the Parliament or the State Legislature to make a law laying down the principles which may result in non-payment of compensation or which may result in not paying any compensation whatsoever. I cannot possibly assent to any such construction of this entry. The entry reads thus:—

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

This head of legislation seems to have been expressly mentioned in the Concurrent List not only in view of the accepted principle of law that in cases of compulsory acquisition of property compensation has to be made but also in view of the clear and mandatory provisions of article 31(2) which require that a law authorising the taking or acquisition of property will be void if it does not provide for payment of compensation for the property acquired or does not either fix the amount of compensation or specify the principles on which and the manner in which the compensation is to be determined and *given*. The power of legislation in entry 42 is for enacting the principles of determining such compensation and for paying it. The principles to be enacted are for determining such compensation and for paying it. The principles to be enacted are for determining the equivalent price of the property taken away. It may be that the determination of the equivalent may be left for ascertainment on the basis of certain uniform rules;

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for instance, it may be laid down that the principles for determining compensation will be the rental basis or the market value of the property etc. But it is difficult to imagine that there can be any principles for non-payment of compensation or for negativing the payment of compensation. No principles are required to be stated for non-payment of compensation. A simple statement that no compensation will be paid is quite enough to attain the object. I know of no principles for determination of compensation which result in its non-payment except in the Act under notice. All legislative heads have to be reasonably construed and the power given under entry 42 is a positive power given to bring about the result of payment of compensation and not non-payment of the same. The key words in the entry are "compensation" and "given". Anything that is unrelated to compensation or the giving of it cannot be justified by legislation under entry 42, Reference was made in this connection to the *United Provinces* v. *Atiqa Begum*(1), in which it was held that the descriptive words under the legislative head "collection of rents" are wide enough to permit legislation in respect of remission of rents and that under item 22 of the Government of India Act, 1935, the legislative head "forests" include the power to legislate with respect not only to afforestation but also to disafforestation and that the legislative head "fisheries" would include the power to legislate on the prohibition of fishing altogether. In my opinion, these analogies have no application to the construction of the language employed in entry 42, These entries are not *in pari materia* to entry 42. Perhaps a more analogous case on the point is the decision in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (2). The question there was whether the legislative head "Regulation of Trade and Commerce" included the power to abolish it also. Their Lordships of the Privy Council made the following observations which appear at page 363 of the report :—

(1) [1940] F.C.R. 110 at p. 135. (2) [1896] A.C. 348.

"A power to regulate assumes the conservation of the thing which is to be made the subject of regulation. In that view, their Lordships are unable to regard the prohibitive enactments of the Canadian statute as regulations of trade and commerce....there is marked distinction between the prohibition or prevention of a trade and the regulation or governance of it."

An entry concerning payment of compensation in no sense includes legislative power of non-payment of compensation. The whole purpose of this head of legislation is to provide payment of compensation and not the confiscation of property.

The provision that four per cent. to twelve and a half per cent. has to be deducted out of the net income on account of costs of works for the benefit of raiyats etc. has no relation to real facts. Even the earlier provision in clause (d) that costs of management have to be deducted up to twenty per cent. has in its entirety no real relation to actual state of affairs. As already pointed out, it is partially of a confiscatory character in sufficient number of cases. The deduction under clause (f) from the gross income is merely a deduction of an artificial character, the whole object being to inflate the deductions and thus bring about non-payment of compensation. Such legislation, in my opinion, is not permitted by entry 42 of List III. Suppose, for instance, instead of a twelve and a half per cent. it declared that a deduction of seventy per cent. be made on that account. Could it be said by any reasonable person that such a piece of legislation was legislation on principles of determining compensation or of making payment of compensation. This provision, therefore, in my opinion has been inserted in the Act as a colourable exercise of legislative power under entry 42 and is unconstitutional on that ground. The power has not been exercised under any other legislative head authorizing the State legislature to pass such a law. Legislation ostensibly under one or other of the powers conferred by the Constitution but in truth and fact not falling within the content of that

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power is merely colourably constitutional but is really not so. [Vide *Quebec* v. *Queen Insurance Co.* (1); *Russell* v. *The Queen*(2).] Reference in this connection may also be made to the decision of the Privy Council in *Madden* v. *Nelson & Fort Sheppard R. W. Co.* (3). This clause therefore is unconstitutional legislation made colourable valid under exercise of legislative power under entry 42 of List II.

It was contended by Mr. Das that if some provisions in the Act are *ultra vires,* the statute as a whole must be pronounced to be *ultra vires* and that it could not be presumed that the legislature intended to pass it in what may prove to be a truncated form. The real question to decide in all such cases is whether what reamins is so inextricably bound up with the part declared invalid that what remains cannot independently survive, or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is *ultra vires.* Looking at the Act as a whole, it seems to me that the offending provisions of the Act are not so inextricably bound up with the part that is valid as to hit or kill the remainder also. In this case a presumption cannot be drawn that the legislature would not have enacted the Act leaving out the two or three provisions which have to be declared to be invalid.

Mr. Das also raised a minor point that the Bihar Act was unenforceable. Reference was made to section 32(2) of the Act which runs as follows :—

"The amount of compensation so payable in terms of a compensation Assessment-roll as finally published shall be paid in cash or in bonds or partly in cash and partly in bonds. The bonds shall be either negotiable or non-negotiable and non-transferable and be payable in forty equal instalments to the person named therein and shall carry interest at two and a half per centum per annum with effect from the date of issue."

(1) (1878) App. Cas. 1090.
(2) 7 (1882) App. Cas. 841.
(3) [1899] A.C. 626.

It was contended that as no date has been mentioned for payment of compensation and no interval has been stated between the instalments mentioned therein and it has not been mentioned how much would be payable in cash and how much in bonds, the Act could not be enforced. Section 43 of the Act empowers the State Government to make rules for carrying out the purposes of the Act. Clause (p) is in these terms :—

"The proportion in which compensation shall be payable in cash and in bonds and the manner of payment of such compensation under sub-sections (2) and (3) of section 32."

It seems clear that the Act has made sufficient provision for enforcing its provisions if section 32(2) is read with the provisions contained in section 43 and it cannot be said that the Act is unenforceable for this reason.

The last point urged by M. Das was that section 32 (2) of the Act was void as in it legislative functions had been abdicated by the legislature in favour of the executive. A two-fold attack was levelled against this provision. Firstly, it was said that the Constitution having in entry 42 of List III of the Seventh Schedule vested authority in the legislature to make laws on the question of the principles as to the payment of compensation and the manner and form of its payment, in other words, it having trusted these matters to the care, judgment and wisdom of the legislature, it had no power to delegate these matters to the executive. Secondly, it was contended that section 32 (2) delegated essential legislative power to the executive which it was incompetent to do. Reference was made to the opinion of this court in Special Reference No. 1 of 1950.

The matters alleged to have been delegated are these :—

1. The determination of the proportion of the cash payment to the payment by giving bonds, negotiable or non-negotiable.

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2. The determination of the period of redemption of these bonds.

3. The period of interval between the several instalments.

The section enacts that the compensation payable shall be paid in cash or in bonds or partly in cash and partly in bonds. It therefore determines the principle that the payment of compensation will be in these two forms. It further enacts that bonds shall be either negotiable or non-negotiable and non-transferable. It therefore also determines the nature of the bonds that would be issued. It further enacts that the payment, if made in bonds, will be paid in forty equal instalments. It is obvious that the time of redemption of the bonds will be co-terminous with the period of the instalments. It has further enacted that the bonds will carry interest at the rate of two and a half per cent. What has been left to the executive is the question of the determination of proportion in which compensation is to be paid in cash or in bonds and the fixation of the interval of the instalments. It seems to me that the delegation to this extent is permissible in view of the decision of this Court in *The State of Bombay* v. *Narottamdas Jethabai*(1) and the decision of their Lordships of the Privy Council in *Queen* v. *Burah*(2). The legislature applied its mind to the question of the method and manner of payment of compensation. It settled its policy and the broad principles. It gave the State Government the power to determine matters of detail after having settled vital matters of policy. It cannot be said that the legislature did not apply its mind to the subject-matter of the legislation and did not lay down a policy. The proportion in which compensation was payable in cash or in bonds or whether the whole of it was to be paid in cash is a matter which only the State Government could fix and similarly, the interval of instalments and the period of redeemability of the bonds were also matters of detail which the executive could

(1) [1951] S.C.R. 51. (2) (1877) 5 I.A. 178.

more oppositely determine in exercise of its rule-making power. It cannot be said in this case that any essential legislative power has been delegated to the executive or that the legislature did not discharge the trust which the Constitution had reposed in it. If the rule-making authority abuses its power or makes any attempt to make the payment illusory, the expropriated proprietor will not be without a remedy.

For the reasons given above, I am of the opinion that section 32(2) of the Act cannot be held bad on the ground that it is a piece of unregulated delegation of legislative power.

Mr. Das's contention in Cases Nos. 319, 327, 330 and 332 of 1951 and in the other cases in which he appeared were the same.

Mr. Chaudhury appearing in Cases Nos. 309 and 328 of 1951 raised a large number of points, some of which are covered by the arguments of Mr. P. R. Das, which I have discussed already. The rest seem to me to be unsubstantial but it is necessary to notice a few of them upon which great stress was laid by the learned counsel. Mr. Choudhury contended that the field of legislation on the question of principles of determination of compensation and the mode and manner of payment of such compensation was already occupied by the Land Acquisition Act which was an existing law of Parliament and, therefore, the State Legislature could not enter on this field and legislate on the principles of payment of compensation. This argument really has no force, because the provisions as to assessment of compensation enacted in the Land Acquisition Act only apply to acquisitions that are made by notification under that Act. Its provisions have no application to acquisitions made under either local or central laws unless they are specifically made applicable by the provisions of these statutes.

Another point put forward by him, that articles 31-A and 31-B of the Constitution cannot affect pending cases cannot be seriously entertained because retrospectivity is writ large on the face of those

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articles. Similarly, I cannot but regard as unsubstantial his contention that transference of estates of zamindars to the State under the provisions of a statute requires registration. The only other point seriously pressed by him is that the Bihar Legislature had no power to issue bonds without complying with the procedure laid down in article 293 of the Constitution. It is enough to state with regard to this point that the stage for issuing bonds has not arrived as yet. When the State legislature issues bonds which are unenforceable or which it is not competent to issue, the contention can possibly be raised.

Mr. Chakravarty who appeared in three cases, Nos. 326, 337, and 344 of 1951, urged that as regards trust properties, the Bihar legislature had no power to acquire them without payment of full compensation as certain educational and charitable institutions would thereby be seriously affected. He was, however, unable to point out how the Bihar Legislature had no power to acquire trust properties.

Mr. Raghav Saran who appeared in Cases Nos. 310, 311 and 329 of 1951, raised a novel point that the Act not being reasonable and just, the Supreme Court had jurisdiction to declare it void on that ground. He was unable to support his argument on any reasonable basis. The constitutionality of a statute passed by a competent legislature cannot be challenged on the ground that the law made is not reasonable or just.

Counsel who appeared in Cases Nos. 307, 313, 315, 320, 321, 322 and 331 and Petition No. 612 of 1951 merely adopted the points urged by Mr. P. R. Das.

The result is that the provisions of the Bihar Land Reforms Act contained in sections 4(b) and 23(f) are held not constitutional. The rest of the Act is good. The appeals are therefore allowed except to the extent indicated above. A writ of *mandamus* will issue to the State Government not to give effect to the two provisions mentioned above and held unconstitutional.

Petition No. 612 of 1951 under article 32 is dismissed as it is not maintainable; no infringement of any fundamental right has been alleged therein. There was no appearance for the respondents in Cases Nos. 18 of 1950 and 299 of 1951 and no opposition to the appeals being allowed. They are accordingly allowed. I will make no order as to costs in any of these appeals and petition.

MUKHERJEA J.—I had the advantage of going carefully through the judgment of my learned brother Mahajan J. and I concur entirely in the conclusions arrived at by him. In my opinion, the Bihar Land Reforms Act of 1950 is not unconstitutional, with the exception of the provisions contained in section 4(b) and 23(f) of the Act and these provisions alone must be held to be void and inoperative.

As regards section 23(f) the Bihar Land Reforms Act, my learned brother has based his decision on the ground that the provision of this clause constitutes a fraud on the Constitution, and although in enacting the provision, the legislature purported to exercise its powers under entry 42 of the Legislative List III in Schedule VII of the Constitution, in reality it is a colourable exercise of that power under which a thing has been done which is not contempleted by that entry at all and lies outside its ambit. I agree with the line of reasoning adopted by my learned brother in this connection and there is nothing further which I can usefully add.

As regards section 4 (b) it has been held by my learned brother that the provision of this clause is unconstitutional as it does not disclose any public purpose at all. The requirement of public purpose is implicit in compulsory acquisition of property by the State or, what is called, the exercise of its power of eminent domain. This condition is implied in the provision of article 31 (2) of the Constitution and although the enactment in the present case fulfills the requirements of clause (3) of article 31 and as

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such attracts the operation of clause (4) of that article, my learned brother has taken the view that the bar created by cleause (4) is confined to the question of compensation only and does not extend to the existence or necessity of a public purpose which, though implicit in, has not been expressly provided for by clause (2) of the article. For my part I would be prepared to assume that clause (4) of article 31 relates to everything that is provided for in clause (2) either in express terms or even impliedly and consequently the question of the existence of a public purpose does not come within the purview of our enquiry in the present case. Even then I would hold that the same reasons, which have weighed with my learned brother in declaring section 23(f) of the impugned Act to be unconstitutional, apply with equal, if not greater, force to section 4 (b) of the Act and I have no hesitation in agreeing with him as regards his decision on the constitutionality of this provision of the Act though I would prefer to adopt a different line of reasoning in support of the same.

Section 4 (b) of the Bihar Land Reforms Act lays down, as one of the results of the publication of a notification under section 3(1) of the Act that "all arrears of rents..... and all cesses together with interest, if any, due thereon for any period prior to the date of vesting which were recoverable in respect of the estate or tenure by the proprietor or tenure-holder and the recovery of which was not barred by any law of limitation shall vest in and be recoverable by the State". The explanation attached to the clause further provides that for purposes of the clause the expression "arrears of rent" shall include arrears in respect of which suits were pending on the date of vesting or in respect of which decrees were obtained before that date together with costs allowed by such decrees. Under section 24 of the Act, 50% of these arrears of rent are directed to be added to the amount of compensation money payable for the estate or interest calculated in accordance with the provisions of the Act.

The arrears of rent whether merged in decrees or not, which were due to the landlord for a period anterior to the date of notification under section 3(1) of the Act, were undoubtedly the property of the landlord, irrespective of his interest in the estate or tenure which is the subject-matter of acquisition. Such arrears could not vest in the State as a normal result of acquisition of any estate or interest therein, and it is conceded by the learned Attorney-General that article 31-A of the Constitution has no application so far as these arrears of rent are concerned. The arrears of rent, therefore, are the subject-matter of separate and indipendent acquisition under the Bihar Land Reforms Act, if the word "acquisition" can at all be appropriate to cases of this description.

It cannot be disputed that in every Government there is inherent authority to appropriate the property of the citizens for the necessities of the State and constitutional provisions do not confer this power though they generally surround it with safeguards. The restrains invariably are that when private property is taken, a pecuniary compensation must be paid(1). Thus eminent domain is an attribute of sovereign power supposed to be tempered by a principle of natural law which connects its exercise with a duty of compensation(2).

Possibly under the impression that the sacredness of private property should not be confided to the uncertain virtues of the party in power for the time being, the Constitution-makers of our country have declared it as one of the fundamental rights that no property shall be taken possession of or acquired for public purpose unless the law directing its appropriation makes provision for compensation in the manner laid down in article 31(2). Clause (4) of article 31 does not do away with the obligation to pay compensation; it merely lays down that laws which are referred to in clause (3) of the article would be immune from judicial scrutiny on the ground of inadequacy of the

(1) Vide Cooley on Constitutional Limitations, Vol. II, p. 1110.
(2) Vide Encyclopaedia of Social Science, Vol. V, p. 493.

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amount of compensation or the impropriety of the principle for assessing the same as provided for in the enactment. The clause presupposes however that the enactment is the result of a valid exercise of a legislative power conferred on the legislature by the appropriate entries in the Legislative Lists and if the legislature acts outside these entries or, under the pretence of acting within them, does something which is in flat contradiction with its contents, clause (4) of article 31 could not be invoked to afford any protection to such legislation.

Clause (4) (b) of the impugned Act read with the provision of section 24 of the same, empowers the State Government to appropriate all the arrears of rent due to a landlord at a particular time and the only obligation it casts on the Government in this respect is to allow 50% of the amount thus appropriated as *solatium* for the so-called acquisition. On the face of it the legislative provision purports to have been made in exercise of the powers conferred on the State legislature under entry 36 of List II and entry 42 of List III of Schedule VII of the Constitution. In my opinion, this is a mere device or pretence and the real object which the legislation intended to accomplish is to deprive a man of his money which is not ordinarily a subject-matter of acquisition, in exercise of what are known as powers of eminent domain by the State, without giving him anything in exchange; and under the guise of acting under entry 42 of List III, the legislature has in truth and substance evaded and nullified its provisions altogether.

The general principles, which distinguish the powers of eminent domain from other powers of the State under which the sacrifice of the proprietary interest of a citizen could be demanded or imposed, are fairly well-known. As has been observed by Cooley in his Constitutional Limitations "every species of property which the public needs may require and which the Government cannot lawfully appropriate under any other right, is subject to be seized and

appropriated under the right of eminent domain(1). Money as such and also rights in action are ordinarily excluded from this List by American jurists and for good reasons(2). There could be no possible necessity for taking either of them under the power of eminent domain. Money in the hands of a citizen can be reached by the exercise of the power of taxation, it may be confiscated as a penalty under judicial order and we can even conceive of cases where the State seizes or confiscates money belonging to or in the hands of a citizen under the exercise of its 'police' powers on the ground that such fund may be used for unlawful purposes to the detriment of the interest of the community. But, as Cooley has pointed out(3), taking money under the right of eminent domain when it must be compensated by money afterwards could be nothing more or less than a forced loan and it is difficult to say that it comes under the head of acquisition or requisitioning of property as described in entry 36 of List II and is embraced within its ordinary connotation.

It is said by the learned Attorney-General that the subject matter of acquisition in the present case is not money but choses in action. It seems to me that there is no difference in principle between them because a chose in action can be available to the acquiring authority only when it is made to produce money; Otherwise it is useless altogether(3).

Assuming however that entry 36 of List II is wide enough to include acquisition of money or a right of action, I have no hesitation in holding that in providing for compensation in respect of such acquisition the legislature has made a colourable use of entry 42 of List III and has thereby defeated the purpose of that entry altogether. Entry 42 of List III speaks of "principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or any other public purpose is to be

(1) See Cooley on Constitutional Limitations, Vol. II, p. 1113.
(2) Cooley, Vol. II, p. 1118; Willis on Constitutional Law, p. 816.
(3) Vide Cooley on Constitutional Limitations, Vol. II, p. 1118, F. N.

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determined, and the form and the manner in which such compensation is to be given". This is a description of legislative head and I agree with the learned Attorney-General that in deciding the competency of the legislation under this entry, we are not concerned with the justice or propriety of the principles upon which the assessment of compensation is to be made under a particular legislation nor are we concerned with the justice or otherwise of the form or manner in which such compensation is to be given. I do not, however, agree with the learned Attorney-General for the reasons already given by my learned brother in his judgment that legislation under this head need not provide for any compensation at all and that a legislative provision which declares that no compensation is to be given comes within the ambit of this legislative head. Such construction is repelled by the very language of the entry which speaks of giving compensation and not of denying or withholding it. Stripped of all disguise, the net result of the impugned provision is that it would be open to the State Government to appropriate to itself half of the arrears of rent due to the landlord prior to the date of the acquisition without giving him any compensation whatsoever. Taking of the whole and returning a half means nothing more or less than taking half without any return and this is naked confiscation, no matter in whatever specious form it may be clothed or disguised. The impugned provision, therefore, in reality does not lay down any principle for determining the compensation to be paid for acquiring the arrears of rent, nor does it say anything relating to the form of payment, though apparently it purports to determine both. This, in my opinion, is a fraud on the Constitution and makes the legislation, which is a colourable one, void and inoperative. The learned Attorney-General has contended that it is beyond the compentency of the Court to enter into a question of *bona fides* or *mala fides* of the legislature. In a sense this is true. If the legislature is omnipotent, the motives, which impel it to enact a particular law, are absolutely irrelevant; and

on the other hand, if it lacks competence the question of motives does not at all arise. But when a legislature has a limited or qualified power and has got to act within a sphere circumscribed by legislative entries, the question, whether in purporting to act under these entries, it has, in substance, gone beyond them and has done certain things which cannot be accomplished within the scope of these entries, is really a question affecting the competency of the legislature. In such cases, although the legislation purports to have been enacted under a particular entry, if it is really outside it, it would be void(1). It has been suggested in course of the argument on behalf of the State that in the present case the Government in the exercise of its powers of acquisition could acquire the arrears of rent and as the arrears were still unrealised, it was quite legitimate and proper for the Government to deduct half of the gross amount as consideration for the trouble and expense that it would have to undergo in the matter of realising these arrears. This would mean that what the legislature intended is simply to enable the Government to help the zamindars in realising the arrears of rent and as a return for the help which it is to render, the Government is given the right to retain half of the arrears that were actually due. This could not possibly have been the real intention of the legislature and I do not think that there is any item in the long legislative lists framed by the Constitution which empowers the legislature to interfere with the legal rights of the landlord in this manner apart from special circumstances like indebtedness or otherwise and impose upon him an onerous obligation to which he is not a consenting party. A legislation of this character is a complete novelty, the like of which has seldom been witnessed before. The result is that I concur in the order which has been made by my learned brother Mahajan J. in this case and I allow the appeals subject to the two modifications indicated above. There would be no order as to costs.

(1) See Lefroy on Canadian Constitution, pp. 79-80.

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DAS J.—The proceedings out of which these appeals have arisen were initiated by different proprietors of estates in Bihar challenging the constitutional validity of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950) which will hereafter in this judgment be referred to as "The Act".

On January 26, 1950, when our Constitution came into force, the Bill which eventually became the Act was pending before the Legislature of the State of Bihar. After the Bill had been passed by the State Legislature, it was reserved for the consideration of the President. On September 11, 1950, that Bill received the assent of the President and became the Act. The provisions of the Act have been analysed and summarised in the judgment just delivered by Mahajan J. and it is not necessary for me to burden this judgment by recapitulating the same. On September 25, 1950, the text of the Act was published in the Official Gazette with a notification under section 1 (3) dated September 24, 1950, bringing the Act into operation. A notification under section 3 of the Act dated September 25, 1950 vesting the estates of certain named proprietors was published in the Official Gazette on the next day. This Notification having been published in the Official Gazette, some of the proprietors affected thereby instituted suits in the Subordinate Courts in Bihar after giving the requisite notice under section 80 of the Code of Civil Procedure and prayed for a declaration that the Act was unconstitutional and void and that their title to the properties remained unaffected. Some of the other proprietors filed applications in the High Court at Patna under article 226 of the Constitution praying for the issue of appropriate writs, directions or orders. The State of Bihar filed its written statements in the suits which were transferred to the High Court for disposal in exercise of its extraordinary Original Civil Jurisdiction. The suits and the applications were heard together. As the issues involved grave questions of interpretation of the Constitution, the suits and applications were placed before a Special Bench

of the Patna High Court and were disposed of on March 12, 1951. All the learned Judges, for one reason or another, repelled all the main contentions of the proprietors but held that the Act was unconstitutional in that it denied to the proprietors equal protection of the laws guaranteed by article 14 of the Constitution. The High Court rejected the plea of the State that article 31(4) of the Constitution by reason of the words "notwithstanding anything in this Constitution" excluded article 14 at least in its application to the alleged inequality of compensation. Article 31(4) is in these terms:—

"If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)."

The State of Bihar obtained leave of the Patna High Court under article 132 (1) of the Constitution to appeal to this Court and preferred these appeals before us.

It may be mentioned here that the States of Uttar Pradesh and Madhya Pradesh also passed legislation for the abolition of zamindaries in their respective States and the validity of those legislations was also contested by the proprietors affected thereby. The respective High Courts of those States, however, upheld the validity of the respective State legislations and the aggrieved proprietors came up to this Court either on appeal or on substantive application under article 32. It was at that stage that the Constituent Assembly passed the Constitution (First Amendment) Act, 1951. Sections 4 and 5 of the Act which are material for our purpose are as follows :—

Insertion of new article 31-A.

4. After article 31 of the Constitution the following article shall be inserted, and shall be deemed always to have been inserted, namely :—

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Saving of laws providing for acquisition of estates, etc.

31-A. (1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this article,—

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jagir, inam* or *muafi* or other similar grant;

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

Insertion of new article 31-B.

5. After article 31-A of the Constitution as inserted by section 4, the following article shall be inserted, namely :—

Validation of certain Acts and Regulations.

31-B. Without prejudice to the generality of the provisions contained in article 31-A, none of the Acts and Regulations specified in the Ninth Schedule or any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part,

and notwithstanding any judgment, decree or order of any court or tribunal to the contrary each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force."

A new Schedule called the Ninth Schedule specifying thirteen several Acts and Regulations of which the Bihar Land Reforms Act, 1950, was the first was added to the Constitution. The legal validity of the Constitution (First Amendment) Act, 1951, has been recently upheld by this Court and all Courts must give effect to the two new articles which are now substantive parts of our Constitution. Article 31-A relates back to the date of the Constitution and article 31-B to the respective dates of the Acts and Regulations specified in the Ninth Schedule. It has not been disputed that the provisions of the above two newly added articles have to be taken into consideration in disposing of these appeals.

Learned counsel appearing for the respondents accept the position that as a result of the constitutional amendments the impugned Act has been removed from the operation of the provisions of Part III of the Constitution including article 14 and that the respondents cannot, therefore, complain of the breach of the equal protection of the laws under article 14 which was the only ground on which the respondents succeeded in the High Court. Learned counsel, however, maintain that although they cannot now challenge the constitutionality of the Act on the ground that it contravenes or is inconsistent with or takes away or abridges any of the rights conferred by any of the provisions of Part III of the Constitution; it is, nevertheless, open to them to call the Act into question on other grounds founded on other parts of the Constitution or on general principles of law. Accordingly Mr. P. R. Das formulates the following five principal grounds of attack against the Act, namely:

A. On a proper interpretation of articles 245 and 246 read with entry 36 in List II and entry 42 in

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List III the Bihar Legislature had no power to enact the said Act inasmuch as it makes no provision for the payment of just compensation for the proposed acquisition of the zamindaries and tenures.

B. Even if the Court does not accept the correctness of the arguments based on entry 36 in List II and entry 42 in List III and holds the respondents barred from going into the question of compensation by reason of articles 31(4), 31-A and 31-B the respondents are still entitled to challenge the Act on the ground that the proposed acquisition is not for a public purpose.

C. The Act constitutes a fraud on the Constitution, that is to say, while it purports to be in conformity with the Constitution it, in fact, constitutes a definance of it.

D. The Act is unenforceable in that section 32(2) provides for payment of compensation in 40 equal instalments without specifying the period of interval between the instalments.

E. The Act delegated essential legislative functions to the executive Government.

The heads of objections thus formulated by Mr. P. R. Das apparently look formidable and it is necessary, therefore, to consider with close attention the arguments advanced by him in support of each of them.

Re Ground A : That article 31(2) imposes upon a law for the compulsory acquisition of private property the obligation to provide for compensation and that such obligation is, therefore, a provision of article 31(2) is not challenged. Nor is it claimed, in view of articles 31(4), 31-A and 31-B, that it is still open to the respondents to call in question the validity of the impugned Act on the ground that it contravenes or is inconsistent with or takes away or abridges the provision for compensation made in article 31(2). What is urged is that the obligation to provide for compensation is not a provision to be found exclusively in article 31(2) but that it is also provided for in other parts of the Constitution and

that, in so far as such obligation is found provided elsewhere, the impugned Act can well be challenged on the ground that it contravenes or is inconsistent with or takes away or abridges the provisions of those other parts of the Constitution, for that ground of challenge has not been taken away by articles 31(4), 31-A and 31-B, by reason of the delimiting words used therein. The argument is developed in the following way. The State's power to acquire private property is, in essence, a power to compel the owner to sell his property when the public interest requires it. Authority for this proposition is to be found in Blackstone's Commentary (Broom's Edn.) p. 165 and in Cooley's Constitutional Limitations, 8th Edn., Vol. II, p. 1201, Footnote (3). Indeed, in some of the English statutes for compulsory acquisition of lands and hereditaments (*e.g.* 5 & 6 Vic. C. 94 and 8 & 9 Vic. C. 18) the word "purchase" was used to denote acquisition. As there can be no sale without a price, there can be no compulsory acquisition of private property without a provision for payment of just compensation, *i.e.*, its equivalent value in money. That the obligation to pay just compensation for compulsory acquisition of private property is a principle of natural equity recognised by all temperate and civilized governments, that the right to compensation is an incident to the exercise of the power of eminent domain and that the one is so inseparably connected with the other that they may be said to exist, not as separate and distinct principles but, as parts of one and the same principle are well-established by a series of decisions of the American courts quoted by Harlan J. in *Chicago, Burlinghton and Quincy Railroad Company* v. *Chicago*(1). In England Lord Dunedian in *Attorney-General* v. *De Keyser's Royal Hotel Ltd.*(2), described the obligation to pay compensation as "a necessary concomitant to taking". It follows, therefore, that the obligation to pay compensation is inseparable from and is implicit in the power of acquisition. This obli-

(1) 166 U.S. 216; 41 L. Ed. 979. (2) [1920] A.C. 508.

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gation flows from the mere use of the word "acquisition" in entry 36 in List II, as in entry 33 in List I. That word, by itself, according to Mr. P. R. Das, connotes a compound concept, namely, the concept of a power of taking on just terms and confines the very legislative competency under those entries within the limits of that compound concept. If, however, the word "acquisition" in entry 36 in List II and entry 33 in List I does not by itself imply the obligation to pay just compensation, then, urges Mr. P. R. Das in the alternative, the words "subject to the provisions of entry 42 of List III" occurring at the end of entry 36 in List II certainly brings in that obligation. On a plain reading of entry 36 in List II the power to make law with respect to matters specified therein is "subject to", that is to say, "conditional upon" the exercise of legislative power under entry 42 in List III. Those concluding words, Mr. P. R. Das says, import the obligation to provide for compensation as provided in entry 42 in List III into entry 36 in List II and thereby enlarge the content of the last mentioned entry so as to make it a legislative head comprising the compound concept referred to above. The third alternative position is that if the word "acquisition" in entry 36 in List II does not, by itself, imply the obligation to provide for compensation and if the words "subject to the provisions of entry 42 of List III" do not import that obligation as stated above, entry 42 in List III should, nevertheless, be construed as conferring a power coupled with a duty, so that if the law-making power under entry 33 in List I or entry 36 in List II is at all exercised, the law-making power under entry 42 in List III must, on the principle laid down by the House of Lords in *Julus* v. *Lord Bishop of Oxford*(1) and adopted by this Court in *Chief Controlling Revenue Authority* v. *Maharashtra Sugar Mills Ltd.*(2), also be exercised. It is urged that the Bihar Legislature having purported to exercise its power to make a law for compulsory acquisition of property under entry 36 in

(1) L.R. 5 App. Cas. 214. (2) [1950] S.C.R. 536.

List II but not having made any law laying down any principle for determining what may, in the eye of the law, be regarded as just compensation at all, the Act is *ultra vires* and void. The arguments thus developed by Mr. P. R. Das undoubtedly have the merit of attractive ingenuity and apparent cogency and certainly call for very careful consideration.

To cut at the root of the above argument the learned Attorney-General appearing for the appellant State contends that the impugned Act is a law made with respect to matters mentioned in entry 18 in List II and not under entry 36 in List II. The contention is that it is essentially a legislation for land reforms and alteration of land tenures. It is pointed out that the Act eliminates the interests of all zemindars and intermediate tenure-holders so that the State and the actual tiller of the soil may be brought into direct relationship. Incidental to this primary object is the acquisition of the various interests in the land. Reference is made to the cases of *The United Provinces* v. *Mst. Atiqa Begum and Others*(1), *Thakur Jagannath Baksh Singh* v. *The United Provinces*(2) and *Megh Raj and Another* v. *Allah Rakhia and Others*(3) in support of the proposition that each entry in the list, which is a category or head of the subject-matter of legislation, must be construed as widely as possible so as to include all ancillary matters. This lien of reasoning found favour with Shearer J. but was rejected by Reuben J. and S. K. Das J. There is no doubt that "land" in entry 18 in List II has been construed in a very wide way but if "land" or "land tenures" in that entry is held to cover acquisition of land also, then entry 36 in List II will have to be held as wholly redundant, so far as acquisition of land is concerned, a conclusion to which I am not prepared to assent. 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

(1) [1940] F.C.R. 110 at p. 134.
(2) [1946] F.C.R. 111 at p. 119.
(3) [1947] F.C.R. 77.

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category or head comprising land and land tenures and all matters connected therewith other than acquisition of land which should be read as covered by entry 36 in List II. Further, the impugned Act purports to acquire all arrears of rent and a law for acquisition of the arrears of rent cannot possibly be said to be a law with respect to matters specified in entry 18 in List II for it cannot be supposed to be a law relating to the collection of rent within the meaning of that entry. On this point I find myself in agreement with Reuben J. and S. K. Das J. and I cannot accept the arguments of the learned Attorney-General to the contrary. Therefore, the arguments of Mr. P. R. Das founded on entry 36 in List II and entry 42 in List III cannot be rejected *in limine* but have to be considered and I proceed to do so immediately.

That the obligation to pay compensation is concomitant to, that is to say, accompanies, the power of compulsory taking of private property by the State cannot be disputed. The first important question is whether this obligation is implicit in the term "acquisition" as used in entry 36 in List II, or in other words whether this obligation is to be inferred simply from the use of that term as a part of the content or meaning thereof. In *Attorney-General* v. *De Keyser's Royal Hotel Limited* (supra) Lord Dunedin pointed out that the power of acquisition was, in its origin, derived from the prerogative of the Crown and that the payment of compensation was originally a matter of negotiation and bargain between the Crown and the subject, but came to be determined later on by statutes of local application and finally by statutes of general application and that, therefore, the Crown, which is an assenting party to every statute, must, in effect, be regarded as having consented to the exercise of its prerogative being made subject to payment of compensation regulated by statutes. In that case, however, it was not disputed in arguments that the taking itself was a matter of prerogative right. In the United States of America the power of eminent domain was not originally, in terms, conferred on

the United States by any provision of the Federal Constitution, but this power has always been recognised to exist as an inherent attribute of the sovereignty of the State. So far as the United States are concerned, the Fifth Amendment by providing that private property shall not be taken for public use without just compensation gave a constitutional recognition to the right of eminent domain and, to protect the subjects, imposed a limitation on the exercise of that right by the State. This indicates that the power of acquisition and the obligation to pay compensation are two separate and distinct concepts although the second follows the first. If the obligation to pay compensation were an integral part of the concept or the meaning of "taking" itself, then this part of the Fifth Amendment was wholly unnecessary. It follows, therefore, that the expression "acquisition" does not, by itself and without more, import any obligation to pay compensation. It is urged by Mr. P. R. Das that entry 42 in List III really implements the obligation implicit in entry 36 in List II and the two entries are complementary to each other. If this obligation were not implicit in entry 36 in List II then where else, it is asked, is the obligation to pay compensation to be found ? The obvious answer is that that obligation is to be found in article 31(2) in Part III of our Constitution. The obligation to pay compensation may be introduced as a part of the legislative power itself, in which case it becomes a composite power, namely, a power to make law with respect to acquisition circumscribed by the obligation to provide for compensation. Thus in section 31 (XXXI) of the Commonwealth of Australia Constitution Act the acquisition of property on just terms has been made a head or category of legislative power of the Commonwealth Parliament. There the power is not to make a law for the acquisition of property simpliciter but is to make a law for the acquisition of property on just terms which connotes that the legislative power itself is circumscribed by the necessity for providing just terms. But there is no overriding

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necessity of constitutional law that I know of, or that has been brought to our notice, which requires that the obligation to pay compensation for the acquisition of property must be made part and parcel of the very legislative power to make a law with respect to the compulsory acquisition of private property. It must depend on the provisions of the particular constitution under consideration. What do we find in our Constitution ? We find that under article 246 Parliament has exclusive power to make laws with respect, *inter alia,* to matters specified in entry 33 in List I, namely, "acquisition or requisitioning of property for the purposes of the Union, that the State Legislatures have exclusive power to make laws with respect, *inter alia,* to matters specified in entry 36 in List II, namely, the "acquisition or requisitioning of property except for the purposes of the Union subject to the provision of entry 42 of List III" and that both Parliament and the State Legislatures may make laws with respect to matters set forth in entry 42 in List III, namely, the principles for determining the compensation and the form and manner of giving such compensation. This legislative power of Parliament or of the State Legislatures is, by article 245, made "subject to the provisions of this Constitution." One of the provisions of the Constitution is article 31(2) under which no property can be "taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for compensation for the property 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." The scheme of our Constitution obviously is to provide the three things separately, namely, the power of making a law for acquisition of property in article 246 read with entry 33 in List I and entry 36 in List II, the obligation of such law to provide for compensation in article 31(2) and the power of making a law laying down the principles for determining such compensation in article 246 read with entry 42 in List III.

According to this scheme it is not necessary at all to regard entry 33 in List I and entry 36 in List II, which are mere heads of legislative power, as containing within themselves any obligation to provide for the payment of compensation. In other words, it is not necessary to treat the obligation to pay compensation as implicit in or as a part or parcel of these legislative heads themselves, for it is separately and expressly provided for in article 31 (2). The well-known maxim *expressum facit cessare tacitum* is, indeed, a principle of logic and common sense and not merely a technical rule of construction (See Broom's Legal Maxims, 10th Edn., p. 443 at p. 452). The express provision in article 31 (2) that a law of acquisition, in order to be valid, must provide for compensation, will, therefore, necessarily exclude all suggestion of an implied obligation to provide for compensation sought to be imported into the meaning of the word "acquisition" in entry 36 in List II. In the face of the express provision of article 31 (2) there remains no room for reading any such implication in the legislative heads.

Mr. P. R. Das suggests, in the alternative, that if the obligation to provide for compensation is not implicit in the word "acquisition" itself as used in entry 36 in List II that obligation is attracted and made a part and parcel of that entry by reason of the words "subject to the provisions of entry 42 of List III". The last mentioned words are, however, not to be found in entry 33 in List I and this part of Mr. P. R. Das's argument would lead to this anomalous result that while the obligation to provide for compensation is made a part of the legislative power under entry 36 in List II by virtue of its last few words quoted above, no such obligation is attracted and made part of the legislative power under entry 33 in List I, and that, therefore, in making a law with respect to acquisition of property under entry 33 in List I Parliament, unlike the State Legislatures, will not be bound to provide for any compensation at all. This cannot possibly be the intention of the framers

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of our Constitution. Further, Mr. P. R. Das reads the words "subject to" as meaning "conditional upon" the exercise of the legislative power under entry 42 in List III, that is to say, conditional upon fulfilling the obligation to provide for compensation and the form and the manner in which such compensation is to be given. I agree with S. K. Das J. that the words "subject to" have not the meaning sought to be given to them by Mr. P. R. Das but that they mean "but not" so as to indicate that the scope of entry 36 in List II is restricted, that is to say, that the subject-matter of entry 42 in List III is not within the content of entry 36 in List II. If entry 42 in List III were, by reason of the words "subject to the provisions of entry 42 of List III" occurring in entry 36 in List II, to be read as having been made a part of the content of entry 36 in List II then it may well be argued that, in view of article 246, Parliament will not be competent to maintain law with respect to principles on which compensation is to be determined. It is in order to prevent this argument and out of abundant caution that the subject-matter of entry 42 in List III has been excluded from the content of entry 36 in List II by the words "subject to" et cetera and Parliament may, therefore, freely make a law with respect to the matters thus excluded from entry 36 in List II and set forth as a separate and independent item in entry 42 in List III. This consideration was not material in connection with entry 33 in List I which explains the omission of the words "subject to" et cetera from that entry.

Mr. P. R. Das finally urges that if the obligation to provide for compensation is not implicit in the word "acquisition" in entry 36 in List II and if that obligation is not to be read into that entry even in view of the words "subject to....." at the end of it, even then if the State exercises its power to make a law with respect to acquisition of property under entry 36 in List II it is the duty of the State Legislature to make a law also with respect to matters specified in entry 42 in List III on the principles that as

entry 42 in List III confers a power on the Legislature for the protection of the interest of persons whose property is compulsorily acquired, such power must, therefore, be regarded as coupled with a duty to exercise it. No authority has been brought to our notice establishing or even suggesting that the principle laid down by the House of Lords in *Julius* v. *Lord Bishop of Oxford* (supra) has been extended to the exercise of Legislative power and I am not prepared to assent to the proposition. Article 246 does not make it obligatory for Parliament or the State Legislatures to make a law under any of the entries in any of the Lists in the Seventh Schedule. Entry 42 in List III does not, therefore, impose any duty upon Parliament or the State Legislatures to make any law for payment of compensation. What requires Parliament or State Legislatures, when making a law for compulsory acquisition of private property, to provide for compensation and either to fix the amount thereof or specify the principles on which and the manner in which the compensation is to be determined and given is the provision of article 31 (2). Entry 42 in List III only constitutes a legislative head under which Parliament or the State Legislatures may make a law so as to give effect to the obligation expressly imposed on them by article 31 (2). In view of the clear provision of that article it is wholly unnecessary to read entry 42 in List III as imposing an implied duty on the Legislature on the principle referred to in the House of Lords case.

That the obligation to provide for compensation is not included in the content of the legislative power under entry 36 in List II, by itself or read with entry 42 in List III, will be made further clear when we come to consider closely clauses (4) and (5) of article 31 and article 31-A. Article 31 (4) protects a law of the description mentioned therein against the provisions of article 31 (2). It follows, therefore, that what is sought to be protected by article 31 (4) is a law for the acquisition or taking possession of property which does not, amongst other things, provide for compensation or

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does not fix the amount or specify the principles on which and the manner in which the compensation is to be determined and given, for otherwise there would be no necessity for any protection. The question at once arises as to whether there is any legislative entry in List II under which a law for acquisition or taking possession of property without compensation can be made by a State Legislature. To test the validity of Mr. P. R. Das's argument and to avoid the complication arising out of the residuary powers of Parliament under article 248 and entry 97 of List II I have taken the case of a law of acquisition made by the legislatures of a State which also come within article 31(4). Is there, then, any entry in List II under which a State Legislature can make a law for acquisition without compensation or public purpose ? Obviously there is none, except entry 36 in List II. If that entry by itself or read with entry 42 in List III has any implication as suggested, namely, that a law for acquisition of property made under entry 36 in List II without a provision for compensation will be beyond the legislative compentency of the State Legislatures, then there is no other entry under which such a law can be made by a State Legislature and there can, therefore, be no point in making a provision in article 31(4) for protecting, against article 31(2), a law which, on this hypothesis, cannot be made at all. Article 31(4) postulates a law which offends against 31(2) and so far as the State Legislatures are concerned there is no entry in List II except entry 36 under which such an offending law may made by the State Legislatures. This circumstance unmistakably establishes that entry 36 in List II, by itself or read with entry 42 in List III, has not any such implication as is imputed to it. Likewise take article 31(5) (b) (ii) which protects the provisions of any law which the State may hereafter make for the promotion of public health or the prevention of danger to life or property. The law which is thus sought to be protected must also involved acquisition of property without any provision for compensation, for otherwise there can be no occasion or necessity for

any protection against article 31 (2). A law of this kind, in so far as such law provides for acquisition of property, must necessarily be made by a State Legislature, if at all, under entry 36 in List II. If Mr. P. R. Das's contentions were correct, a law for the promotion of health or the prevention of danger to life or property involving the acquisition of property without a provision for compensation, which is what is sought to be protected from article 31 (2), can never be made, for the obligation to provide for compensation is, according to him, implicit in entry 36 in List II, by itself or read with entry 42 in List III, and there is no other entry under which a law may be made by a State Legislature with respect to acquisition of property. It is futile to attempt to get over this anomaly by suggesting that clauses (4) and (5) (b) (ii) of article 31 have been inserted in the Constitution *ex abundanti cautela,* for, if Mr. P. R. Das were correct in his submission, no amount of caution was necessary for protecting a law that, *ex hypothesi,* cannot be made at all. Similar arguments may as well be founded on article 31-A, for that article also protects a law from article 31 (2) which is in Part III of the Constitution. It is suggested that article 31-A postulates a valid law made by a competent legislature within the ambit of its legislative powers. If a State Legislature in making a law for the acquisition of property for a public purpose under entry 36 in List II must provide for compensation then a law made conformably with this supposed requirement of that entry by a State Legislature will require no protection at all against article 31 (2), and article 31-A must be regarded as meaningless and unnecessary. Surely, that conclusion is manifestly untenable. In my opinion clauses (4) and (5) (b) (ii) of article 31 and article 31-A clearly negative Mr. P. R. Das's proposition. In my judgment, for the reasons stated above, the major premise in the arguments advanced by Mr. P. R. Das under the first head, namely, that the obligation to pay compensation is implicit in entry 36 in List II by itself or read with entry 42 in list III is unsound.

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The obligation to provide for compensation being, as I hold, a provision of article 31 (2) and not being implicit in or a part and parcel of the legislative power itself under entry 36 in List II read by itself or in conjunction with entry 42 in List III, the impugned Act cannot, by virtue of article 31 (4), 31-A and 31-B, be called in question on the ground that it contravenes or is inconsistent with or takes away or abridges any of the rights conferred by the provisions of clause (2) of article 31, that is to say, that it does not provide for compensation.

Assuming that the obligation to pay compensation which is expressly provided in article 31 (2) is also implicit in entry 36 in List II by itself or read with entry 42 in List III the respondents cannot, even then, be permitted to call in question the validity of the impugned Act on the ground that it does not provide for compensation, for then they will be doing exactly what they are forbidden to do by article 31 (4) and the newly added articles. Article 31 (4) and the added articles debar the respondents from questioning the validity of the Act on the ground, *inter alia,* that it contravenes or is inconsistent with or takes away or abridges any of the rights conferred by the provisions of clause (2) of article 31. The emphasis in those articles is rather on the "provisions" than on the number of the article or the Part of the Constitution. It is obvious that the real substance of the matter is that articles 31(4), 31-A and 31-B expressly seek to prevent a challenge to the validity of the Act based on the ground, *inter alia,* that it does not provide for compensation. This obligation to provide for compensation is no doubt one of the provisions of articles 31 (2) but if, as contended by Mr. P. R. Das, the self same provision be found elsewhere in the same Constitution, *e.g.,* entry 36 in List II or entry 42 in List III, then that "provision" must also be regarded as having been covered by article 31 (4) and the two added articles, for otherwise those articles will be rendered nugatory. In my opinion, if two constructions are possible, the Court should adopt that which

will implement and discard that which will stultify the apparent intention of the makers of the Constitution. Further, it must be borne in mind that article 31 (4) which applies "notwithstanding anything in this Constitution", will, by force of the very words, protect the Act against even legislative incompetency, if any arising out of the alleged non-compliance with the suggested implied provisions, if any, of entry 36 in List II and entry 42 in List III. In my judgment the respondents are not, by reason of articles 31 (4), 31-A and 31-B, entitled to call the Act in question on the ground that it does not provide for compensation, whether the ground is formulated as a breach of article 31 (2) or of the implied provision, if any, of the legislative heads mentioned above.

It will be noticed that the argument that the Act is unconstitutional is founded on the assumption that it has not laid down any principle for determining compensation as required by entry 42 in List III and that the provision for compensation is wholly illusory. Chapter V of the Act deals with assessment of compensation. Shortly put, the scheme is to start with the gross assets which are taken to be synonymous with the gross income and then to make certain deductions therefrom and to arrive at the net assets. Then the compensation is to be calculated at a sliding scale of rates varying from 20 to 3 times of the net income. To the amount thus determined is to be added a moiety of the accumulated arrears of rent etc. and the compensation for the mines and minerals as determined under section 25. *Ex facie,* it cannot be disputed that the Act does prescribe some principles for determining the compensation payable to the proprietor or tenure-holder. It is, however, pointed out that the deduction of 5 to 20 per cent. of the gross assets as and by way of cost of management is quite arbitrary. It is said that although it is well known that the percentage of cost of management in relation to the income of a small estate is greater than that of a larger estate, yet the Act provides for deducting 20 per-cent. of the gross assets in the case of proprietors

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of the larger estates but only 5 per cent. in the case of the smaller estates. Objection is next taken to the deduction of any amount under the head of works of benefit to raiyats the and also to the scale of such deduction. These arguments, to my mind, do not, on close scrutiny, amount to saying that the Act does not lay down any principle for determining the compensation. The real underlying implication of these arguments, as I understand them, is that the principles are not good enough in that they do not produce fair compensation. I do not think the Court can go into the policy of the legislation. All that the Court is concerned with is to see whether any principle has been laid down as mentioned in entry 42 in List III. It is true that the percentage of costs of management calculated on the basis of the income of a big estate is less than that of a smaller estate, but it is quite clear that the Act has fixed the scale of deducion under this head and under the head of works of benefit according to the capacity of the proprietor or tenure-holder to bear it. It is impossible to say that the provision for deduction for works of benefit to the raiyats is not supported by any principle. A landlord is expected to spend money on works of benefit to his raiyats, *e.g.*, providing tanks and wells, irrigation, charitable dispensary, schools and so forth and be it said to the credit of some of the landlords that in practice they do spend money on this account. Therefore, there is nothing wrong, when calculating the net income of a landlord, to deduct something which the landlords should and some of them often do, in practice, spend under this head. I see no absence of principle in this provision. The rate of deduction, I have said, has been fixed according to the capacity of the proprietors or tenure-holders. It has been shown, and it is not denied that in many cases a calculation of the net income on the basis of the principles laid down in in the Act operates to reduce the gross income to a very small net income. To take only one instance, the gross annual income of the Darbhanga estate is about Rs. 47,85,069, the deduction

allowed by the Act is about Rs. 44,88,585, and the net income computed according to the principles laid down in the Act comes to about Rs. 2,96,484 or say Rs. 3 lacs and the compensation payable to the Maharajadhiraj of Darbhanga will be only rupees 9 lacs. It has also been shown that at least in one case, *e.g.*, in the case of the Raja of Purnea the compensation calculated according to the principle laid down in the Act works out at a deficit figure. The fact that in one isolated case the calculation may work out in this way, does not, however, prove that no principle has been laid down. Indeed, in all other cases the principle laid down in the Act actually produces compensation, however inadequate it may be said to be in some cases. If a principle has been laid down, then the provisions of entry 42 in List III are amply satisfied and no question of legislative incompetency can arise. If a principle has been laid down in the Act but that principle does not in fact produce any compensation in any rare case or adequate compensation in some cases then the real complaint should be, not that no principle has been laid down but, that the principle laid down does not produce what may be called just compensation. That result may offend against the provisions of article 31 (2) but certainly not against entry 42 in List III and in view of articles 31 (4), 31-A and 31-B the Act cannot be challenged for non-compliance with article 31 (2). On the other hand, even if it is held that no principle has, in fact, been laid down by the Act, as contended, then that fact not only amounts to a breach of the provisions of entry 42 in List III but also constitues a breach of the provisions of article 31 (2) which clearly and emphatically requires the law to either fix the compensation or lay down the principles on which and the manner in which the compensation is to be given and a breach of this "provision", call it a provision of article 31 (2) or one of entry 42 in List III, cannot, for reasons already stated be questioned in view of articles 31 (4), 31-A and 31-B. It should also be remembered that article 31 (4) by reason of the words "notwithstanding

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anything in this Constitution" occurring therein will also protect the Act even against the alleged legislative incompetency arising out of the non-compliance with all provisions of the Constitution relating to the payment of compensation or the existence of a public purpose including the supposed requirement of producing actual compensation said to be implicit in the provisions of entry 42 in List III. In my judgment, the Act cannot be called in question on the ground of legislative incompetence of the Bihar Legislature to enact it under entry 36 in List II or entry 42 in List III.

What I have stated above is sufficient to repel the first ground of attack levelled against the Act by Mr. P. R. Das. But before passing on to the second main ground of attack I think it right to deal with a few subsidiary points canvassed before us.

It is said that section 3 of the Act, which is its main operative section, does not contemplate or authorise the acquisition of arrears of rent at all, for the notification under that section only refers to the vesting of the estates or tenures in the State. It is, however, to be noticed that the consequeunce of issuing that notification is that the arrears of rent including all that are mentioned in clause (b) of section 4 are also to vest in, and be recoverable by, the State. This vesting of the arrears of rent in the State necessarily implies the transfer of the rights of the proprietors or tenure-holders to the State and this process must, therefore, amount to the acquisition of that right by the State, Therefore, in effect, the Act does contemplate the acquisition of the arrears of rent by the State.

On the authority of a passage in Willis' Constitutional Law, p. 816, it is argued that the power of eminent domain cannot be exercised with respect to money and choses in action besides certain other unusual forms of property. This passage is founded on certain earlier decisions of the American Courts. It is, however, clear from Nichols on Eminent Domain, Vol. I, p. 99, paragraph 2, and the case of *Cincinnati*

v. *Louisville & N. R. Co.*(1) cited therein that the modern view is that the right of eminent domain can be exercised on choses in action. In any case we are to consider whether arrears of rent are "property" in the sense in which that expression is used in our Constitution and understood in our law. What are the arrears of rent but rents that have fallen due but have not been paid? It is not at all money in the till of the landlord but it is a debt due by the tenants. It is, therefore, nothing but an actionable claim against the tenants which is undoubtedly a species of "property" which is assignable. Therefore, it can equally be acquired by the States as a species of "property."

It is finally urged that the Act makes no provision for payment of compensation for taking this item of property. It is true that in section 24 the word "compensation" is used in connection with the taking of the estates or tenures and also the taking of mines and minerals but not in connection with the fifty per cent. of the arrears of rent which are directed to be added to the compensation. But this provision for adding the fifty per cent. of the arrears also appears in the chapter headed "Assessment of Compensation" and, therefore, the fifty per cent. of the arrears is added in the process of the assessment of the compensation. Further, why is this fifty per cent. given to the proprietors or tenure-holders at all unless it were for compensation? It is pointed out that when the State takes away a lac of rupees and returns 50,000 rupees, it, in reality, pays no compensation but by this shift and contrivance only takes away the other 50,000 rupees for nothing. This argument sounds plausible at first but is not founded on any good principle. This argument arises only because a moiety is paid back, as it were, in the same coin. If compensation for money were made, say, by giving some land of the value of a moiety of the money taken, the same argument would not have been available and all that could be said

(1) 223 U.S. 390; 50 L.Ed. 481.

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would have been that the land so given, not being equivalent in value to the money compulsorily taken away, could not be said to be a just compensation. That argument, in view of articles 31(4), 31-A and 31-B, would , of course, have been futile. But I see no difference in principle or law when compensation for acquisition of arrears is made in money. In such a case if only a moiety of the amount of arrears is returned the obvious complaint will be that the return of 50,000 rupees is not fair or adequate compensation for taking away Rs. 1,00,000 and that complaint may have prevailed had there been no provision like those we have in articles 31(4), 31-A and 31-B. Apart from this, the argument completely overlooks the fact that the arrears of rent are not really cash in the till of the proprietor or tenure-holder but is only a debt due by the tenants. What is the market value of this book debt ? This debt will have to be realised, possibly by suit followed by execution proceedings involving time and money in costs. Part of it, quite conceivably, may not be realised at all. Therefore, the State takes the risk of realising or not realising the arrears of rent but irrespective of the results of its efforts for their realisation the fifty per cent. of the arrears is in a lump added to the compensation. This, to my mind, indicates clearly that compensation is in fact paid for the arrears of rent and I am not prepared to say that the payment of a moiety of the book debts as compensation is so illusory as to amount to nothing, as contended by Mr. P. R. Das. Even if it be inadequate, the grievance will be not that no principle has been laid down in the Act as required by entry 42 in List III but, that the principle so laid down does not produce adequate compensation and there is, therefore, a contravention of the provisions of article 31(2). That defect cannot, however, be made a ground of attack in view of articles 31(4), 31-A and 31-B for reasons explained above.

Re Ground B : The second point urged by Mr. P. R. Das is that even if the Court does not accept the argument as to the necessity for providing for compensation

being implicit in entry 36 in List II and entry 42 in List III and holds that the respondents are, by reason of the provisions of articles 31 (4), 31-A and 31-B, debarred from questioning the validity of the Act on the ground that it does not provide for compensation the respondents are, nevertheless, entitled to challenge the Act on the ground of the absence of a public purpose. That the existence of a public purpose is an essential prerequisite to the exercise of the power of compulsory acquisition has not been disputed by the learned Attorney-General. The contention put forward on behalf of the respondents is that the necessity for the existence of a public purpose as a condition precedent to compulsory acquisition of private property is not a "provision" of article 31 (2) but is a requirement of entry 36 in List II or entry 42 in List III. The words "for public purposes" do occur in article 31 (2) but it is said that there is a distinction between a "provision" and an assumption. It is urged that article 31 (2) assumes a law authorising the taking of possession or the acquisition of property for a public purpose and provides that the property shall not be taken possession of or acquired even for that public purpose unless the law also provides for compensation. It is, therefore, concluded that the only "provision" of article 31 (2) is that the law authorising the taking of possession or the acquisition of property for a public purpose must provide for compensation and it is this "provision" only that cannot be made a ground of attack on the Act by reason of articles 31 (4), 31-A and 31-B of the Constitution. This argument has found favour with Reuben J. and S. K. Das J. The latter learned Judge; after referring to a passage in his own judgment in the earlier case of *Sir Kameswar Singh* v. *The Province of Bihar*(1) concludes as follows :—

"Clause (2), strictly speaking, does not, in express words, make "public purposes" a condition precedent to compulsory acquisition but rather assumes that such acquisition can be for public purposes only ; it does so by necessary implication."

(1) A.I.R. 1950 Pat. 392.

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The learned Judge then refers to the following passage in the judgment of my learned brother Mukherjea J. in *Chiranjit Lal Choudhury* v. *The Union of India & Others*(1) :—

"Article 31 (2) of the Constitution prescribes a two-fold limit within which such superior right of the State should be exercised. One limitation imposed upon the acquisition of taking possession of private property which is implied in the clause is that such taking away must be for public purpose. The other condition is that no property can be taken unless the law which authorises such appropriation contains a provision for payment of compensation in the manner laid down in the clause."

I do not, however, see how the above observations of Mukherjea J. in any way support the argument of Mr. P. R. Das that the existence of a public purpose is not a provision of article 31 (2) but is an inherent condition of any legislation for compulsory acquisition of private property. It is significant that Mukherjea J. recognises that article 31 (2) "prescribes" a two-fold limit. Surely, a limit which is "prescribed" by the articles must be a provision thereof. In any case, what is implied in the clause must, nevertheless, be a provision of the clause, for the expression "provision" is certainly wide enough to include an implied as well as an express provision. Be that as it may, I am prepared to go further and say, for reasons I shall presently explain, that the requirement of a public purpose as an essential prerequisite to compulsory acquisition is, if anything, essentially a provision of that clause and an integral part of it.

Article 31 is one of a group of articles included in Part III of the Constitution under the heading "Fundamental Rights". It confers fundamental right in so far as it protects private property from State action. Clause (1) of the article protects the owner from being deprived of his property save by authority of law. A close examination of the language of clause (1) will

(2) [1950] S.C.R. 869.

show that this immunity is a limited one and this will at once be clearly perceived if we convert the negative language of clause (1) into positive language. In its positive form clause (1) will read :—

"Any person may be deprived of his property by authority of law".

The only limitation put upon the State action is the requirement that the authority of law is a prerequisite for the exercise of its power to deprive a person of his property. This confers some protection on the owner in that he will not be deprived of his property save by authority of law and this protection is the measure of the fundamental right. It is to emphasise this immunity from State action as a fundamental right that the clause has been worded in negative language. Likewise, clause (2) is worded in negative language in order to emphasise the fundamental right contained therein. The enunciation of this fundamental right necessarily requires a statement of the ambit and scope of the State action and to fix the ambit and scope of the State action it is necessary to specify the limitations on the State action, for that limitation alone is the measure of the fundamental right. Clause (2) of the article, in its positive form, omitting words unnecessary for our present purpose, will read as follows :—

"Any property, ... may be taken possession of or acquired for public purposes under any law auhorising the taking of such possession or such acquisition if the law provide for compensation for the property taken possession of or acquired....."

Put in the above form, the clause makes it clear at once and beyond any shadow of doubt that there are three limitations imposed upon the power of the State, namely, (1) that the taking of possession or acquisition of property must be for a public purpose, (2) that such taking of possession or acquisition must be under a law authorising such taking of possession or acquisition and (3) that the law must provide for compensation

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for the property so taken or acquired. These three limitations constitute the protection granted to the owner of the property and is the measure of his fundamental right under this clause. Unless these limitations were provisions of the article, the article would have afforded no immunity at all. I am, therefore, clearly of opinion that the existence of a public purpose as a prerequisite to the exercise of the power of compulsory acquisition is an essential and integral part of the "provisions" of clause (2). If the requirement of a public purpose were not a provision of article 31 (2), then it will obviously lead us to the untenable conclusion that Parliament will be free under its residuary powers under article 248 and entry 97 of List I of the Seventh Schedule to make a law for acquiring private property without any public purpose at all and to the still more absurd result that while Parliament will have to provide for compensation under article 31 (2) in a law made by it for acquisition of property for a public purpose it will not have to make any provision for compensation in a law made for acquisition of property to be made without a public purpose. Such could never have been the intention of the framers of our Constitution. The existence of a public purpose as a condition precedent to the exercise of the power of compulsory acquisition being then, as I hold, a "provision" of article 31 (2), an infringement of such a provision cannot, under articles 31 (4), 31-A and 31-B, be put forward as a ground for questioning the validity of the Act.

Mr. P. R. Das's second line of argument on this main head is that the necessity for the existence of a public purpose is implicit in entry 36 in List II and that the existence of a public purpose is also a requirement of entry 42 in List III which is made a part of entry 36 in List II by virtue of the words "subject to" etc., appearing at the end of that entry and his conclusion is that in the absence of a public purpose the Bihar Legislature had no legislative competency under those two entries to enact the impugned Act and that this ground of attack is still available

to him notwithstanding the provisions of articles 31 (4), 31-A and 31-B. He does not rely on any other part of the Constitution as insisting on the existence of a public purpose as a prerequisite for compulsory acquisition of private property. Entry 36 covers any purpose except the purpose of the Union and is not, in terms, limited to public purpose. Secondly, the argument based on the words "subject to" etc. at the end of entry 36 in List II which are supposed to import the provisions of entry 42 in List III into entry 36 in List II is not well-founded and it becomes obvious when we look at entry 33 in List I. There are no words at the end of that entry as "subject to" etc. and, therefore, the alleged requirement of a public purpose under entry 42 in List III cannot be said to be incorporated in entry 33 in List I. It would, therefore, follow that whereas under entry 36 in List II which is to be read with entry 42 in List III by reason of the words "subject to" etc. in entry 36 in List II the Legislature of a State can only make a law for compulsory acquisition of property for a public purpose, Parliament may, under entry 33 in List I which does not attract entry 42 in List III, make a law for compulsory acquisition of property without a public purpose. Such a result could never have been intended by the Constitution. Besides, turning to entry 42 in List III, I find nothing in support of Mr. P. R. Das's contention. The words "acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose" in that entry are merely words descriptive of the preceding word "property". The matters comprised in entry 42 in List III, as a legislative head, are the principles for the determination of compensation and the form and manner of giving the compensation for property which is described as having been acquired or requisitioned for the stated purposes. That entry cannot possibly be regarded as a legislative head for acquisition of property and much less is the purpose or province of that entry to lay down any requirement of a public purpose as a condition precedent for the

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acquisition of any property. In my opinion entry 42 in List III is of no assistance to Mr. P. R. Das for this part of his argument. Further, the reasons for which I have discarded his arguments as to the obligation to provide for compensation being implied in entry 36 in List II by itself or read with entry 42 in List III will also apply to this contention *mutatis mutandis* and they need not be restated here. To put it shortly, the provisions of article 31 (2) which, as I have explained, require the existence of a public purpose, will exclude the implication sought to be read into entry 36 in List II and entry 42 in List III. Secondly, what articles 31 (4), 31-A and 31-B exclude is a challenge to the Act on the ground of contravention of the "provision" of clause (2). If the "provision" of clause (2) of article 31 as to the necessity for the existence of a public purpose as a prerequisite to compulsory acquisition of property is also to be regarded as implicit in those two legislative entries, surely articles 31 (4), 31-A and 31-B and in particular article 31 (4) which contain the words "notwithstanding anything in this Constitution" will protect the Act from such implied provision, for reasons I have already explained. Mr. P. R. Das's second main point must accordingly be rejected as untenable.

Assuming that the necessity for the existence of a public purpose is not a provision of article 31 (2) but is a provision only of entry 36 in List II and/or of entry 42 in List III and that consequently articles 31 (4), 31-A and 31-B do not preclude the respondents from challenging the validity of the Act on the ground of the legislative incompetency arising out of the absence of a public purpose, the question still remains whether there is in fact a public purpose within the meaning of our Constitution to support the Act. It is to be noted that there is no recital of any public purpose in the Act itself, but it is conceded that this circumstance is not fatal to the validity of the Act. It is, however, urged that this circumstance, nevertheless, shows that the Legislature had, at the time of the passing of the Act, no public purpose in its view. It is claimed

that, apart from the absence of any such recital, there is no indication whatever as to the existence of any public purpose in any of the operative provisions of the Act. It is not disputed that as a result of this enactment a very large sum of money now payable by the tenants as and by way of current rent and arrears of rent to their respective landlords will be intercepted by the State but it is urged, on the authority of certain passages in Cooley's Constitutional Limitations, 8th Edn., Vol. II, p. 1118 (Footnote 1) and in Professor Willis' Constitutional Law, p. 817, that the exercise of the power of taxation and not that of the power of eminent domain is the legitimate means for swelling the public revenue. That the Act has no public purpose to support it is sought to be established by saying that in Bihar the recorded proprietors are about 13,35,919 in number and that assuming that there are four persons in a family, nearly five and a half million people will be ruined as a result of this legislation, although the actual tillers of the soil will derive no benefit whatever therefrom, for they will remain where they are and will have to continue, as heretofore, to pay their rent, instead of to their present landlords, to the State which, they will find, is no better than a ruthless machine unsusceptible to any humane feeling. The contention is that the public purpose must be something definite, something tangible and something immediate and that there must be some indication of its existence in the Act itself and that the State cannot take private property to-day and say that it will think of the public purpose at its leisure. This leads me to a consideration of what is a public purpose within the meaning of our Constitution.

We have been referred to some American authorities for ascertaining the meaning and implication of "public use", an expression which obviously is of a more limited import than the expression "public purpose" used in our Constitution. Apart from this, a perusal of the text books, *e.g.,* Constitutional Law by Professor Willis, p. 817 *et seq.,* will immediately make it clear

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that the notion as to what is a "public use" is rapidly changing in America. Formerly "public use", meant a use by the public. According to the modern view "public use" means useful to the public. The passage in Cooley's Constitutional Limitations, Vol. II pp. 1139-40 quoted by S. K. Das J. of the Patna High Court summarises the position thus :—

"No satisfactory definition of the term "public use" has ever been achieved by the Courts. Two different theories are presented by the judicial attempts to describe the subjects to which the expression would apply. One theory of "public use" limits the application to "employment"—"occupation". A more liberal and more flexible meaning makes it synonymous with "public advantage", "public benefit". A little investigation will show that any definition attempted would exclude some subjects that properly should be included in, and include some subjects that must be excluded from, the operation of the words "public use". As might be expected, the more limited application of the principle appears in the earlier cases, and the more liberal application has been rendered necessary by complex conditions due to recent developments of civilization and the increasing density of population. In the very nature of the case, modern conditions and the increasing inter-dependence of the different human factors in the progressive complexity of a community make it necessary for the Government to touch upon and limit individual activities at more points than formerly".

To the like effect are the following observations to be found in Corpus Juris, Vol. XX, article 39, at pp. 552 and 553 under the caption "What is a public use" :—

"No general definition of what degrees of public good will meet the constitutional requirements for a "public use" can be framed, as it is in every case a question of public policy. The meaning of the term is flexible and is not confined to what may constitute a public use at any given time, but in general it may be said to cover

a use affecting the public generally, or any number thereof, as distinguished from particular individuals. Some Courts have gone so far in the direction of a liberal construction as to hold that "public use" is synonymous with "public benefit", "public utility", or "public advantage", and to authorise the exercise of the power of eminent domain to promote such public benefit, etc., especially where the interests involved are of considerable magnitude, and it is sought to use the power in order that the natural resources and advantages of a locality may receive the fullest development in view of the general welfare".

The learned author thereupon proceeds to discuss the more restricted meaning given to that expression. Mr. P. R. Das has drawn our attention to the decision of the Judicial Committee in *Hamabai Framjee Petit* v. *Secretary of State for India*(1). It should be borne in mind that the Judicial Committee in that case had to consider the meaning of the words "public purposes" occurring in a lease of the 19th century. Even in 1914 the Judicial Committee did not think fit to attempt a precise definition of the expression "public purpose" and was content to quote with approval the following passage from the judgment of Batchelor J.:—

"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned".

And it is well that no hard and fast definition was laid down, for the concept of "public purpose" has been rapidly changing in all countries of the world. The reference in the above quotation to "the general

(1) (1915) L.R. 42 I.A. 44.

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interest of the community", however, clearly indicates that it is the presence of this element in an object or aim which transforms such object or aim ino a public purpose.

From what I have stated so far it follows that whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. With the onward march of civilization our notions as to the scope of the general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community. The emphasis is unmistakably shifting from the individual to the community. This modern trend in the social and political philosophy is well reflected and given expression to in our Constitution. Our Constitution, as I understand it, has not ignored the individual but has endeavoured to harmonise the individual interest with the paramount interest of the community. As I explained in *Gopalan's* case (1) and again in *Chiranjit Lal's* case (supra) our Constitution protects the freedom of the citizen by article 19(1) (a) to (e) and (g) but empowers the State, even while those freedoms last, to impose reasonable restrictions on them in the interest of the State or of public order or morality or of the general public as mentioned in clauses (2) to (6). Further, the moment even this regulated freedom of the individual becomes incompatible with and threatens the freedom of the community the State is given power by article 21, to deprive the individual of his life and personal liberty in accordance with procedure established by law, subject, of course, to the provisions of article 22. Likewise, our Constitution gives protection to the right of private property by article 19 (1) (f) not absolutely but subject to reasonable restrictions to be imposed by law in the interest of the general public

(1) [1950] S.C.R. 88.

under clause (5) and, what is more important, as soon as the interest of the community so requires, the State may, under article 31, deprive the owner of his property by authority of law subject to payment of compensation if the deprivation is by way of acquisition or requisition of the property by the State. It is thus quite clear that a fresh outlook which places the general interest of the community above the interest of the individual pervades our Constitution. Indeed, what sounded like idealistic slogans only in the recent past are now enshrined in the glorious preamble to our Constitution proclaiming the solemn resolve of the people of this country to secure to all citizens justice, social, economic and political, and equality of status and of opportunity. What were regarded only yesterday, so to say, as fantastic formulae have now been accepted as directive principles of State policy prominently set out in Part IV of the Constitution. The ideal we have set before us in article 38 is to evolve a State which must constantly strive to promote the welfare of the people by securing and making as effectively as it may be a social order in which social, economic and political justice shall inform all the institutions of the national life. Under article 39 the State is enjoined to direct its policy towards securing, *inter alia,* that the ownership and control of the material resources of the community are so distributed as to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The words "public purposes" used in article 23(2) indicate that the Constitution uses those words in a very large sense. In the never-ending race the law must keep pace with the realities of the social and political evolution of the country as reflected in the Constitution. If, therefore, the State is to give effect to these avowed purposes of our Constitution we must regard as a public purpose all that will be calculated to promote the welfare of the people as envisaged in these directive principles of State policy whatever else that expression may mean. In

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the light of this new outlook what, I ask, is the purpose of the State in adopting measures for the acquisition of the zamindaries and the interests of the intermediaries ? Surely, it is to subserve the common good by bringing the land, which feeds and sustains the community and also produces wealth by its forest, mineral and other resources, under State ownership or control. This State ownership or control over land is a necessary preliminary step towards the implementation of the directive principles of State policy and it cannot but be a public purpose. It cannot be overlooked that the directive principles set forth in Part IV of Constitution are not merely the policy of any particular political party but are intended to be principles fixed by the Constitution for directing the State policy whatever party may come into power. Further, it must always be borne in mind that the object of the impugned Act is not to authorise the stray acquisition of a particular property for a limited and narrow public purpose but that its purpose is to bring the bulk of the land producing wealth under State ownership or control by the abolition of the system of land tenure which has been found to be archaic and non-conducive to the general interest of the community. The Act also sets up a Land Commission to advise the State Government generally with regard to the agrarian policy which it may from time to time follow. It is impossible to say that there is no public purpose to support the Act. This very Bihar Act was before the Constituent Assembly when it passed article 31 (4) and again when it took the trouble of amending the Constitution for saving this very Act. Would the Constituent Assembly have thought fit to protect these Acts unless it were convinced that this Act was necessary in the general interest of the community ? I find myself in agreement with Reuben J. and S. K. Das J. that these circumstances also clearly indicate that the Constituent Assembly regarded this Act as well supported by a public purpose. To put a narrow construction on the expression "public purpose" will, to my mind, be to

defeat the general purpose of our Constitution and the particular and immediate purpose of the recent amendments. We must not read a measure implementing our mid-twentieth century Constitution through spectacles tinted with early nineteenth century notions as to the sanctity or inviolability of individual rights. I, therefore, agree with the High Court that the impugned Act was enacted for a public purpose.

Mr. P. R. Das then puts up a narrow argument. Assuming, says he, that, there is in the Act a general public purpose for compulsory acquisition of zamindaries and tenures, there cannot conceivably be any public purpose in suport of the Act in so far as it authorises the taking of the arrears of rent or the taking away of 4 to 12½ per cent. of the gross assets on the specious plea that the landlords must be supposed to spend that percentage of their gross income on works of benefit to the rayats of the estates and, therefore, that part of the Act is beyond the legislative competence of the Bihar Legislature. I regard this argument as unsound for more reasons than one. In the first place the existence of a public purpose being, as I hold, a provision of article 31 (2), its absence, if any, in relation to the arrears of rent cannot, by reason of articles 31 (4), 31-A and 31-B be made a ground of attack against the Act. Secondly, it is an entirely wrong approach to pick out an item out of a scheme of land reforms and say that that item is not supported by a public purpose. One may just as well say that there is no public purpose in the acquisition of forests or of mines and particularly of undeveloped mines, for such acquisition has no bearing on a scheme of agrarian reforms in that it does not improve or affect the conditions of the tillers of the surface of the soil. This, I apprehend, is not the right way of looking at things. The proper approach is to take the scheme as a whole and than examine whether the entire scheme of acquisition is for a public purpose. Thirdly, I do not regard the deduction of 4 to 12½ per cent. of the gross assets as acquisition or confiscation

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at all, but I regard it, for reasons stated above, as a part of a principle laid down by the Act for the purpose of determining the amount of compensation as required by article 31 (2) and entry 42 in List III. Finally, I do not see why the taking over of the arrears of rent, in the context of the acquisition of zamindaries, is not for a public purpose. As I have said, the acquisition of zamindaries and tenures is a scheme for bringing about agrarian reforms and ameliorating the conditions of the tenants. The object is, *inter alia,* to bring the tillers of the soil in direct contact with the States so as to free them from the clutches of rapacious landlords and make them the masters of their holdings subject to payments of the dues to the State. It is well-known that the bulk of the tenants are in arrears with their rents and once the rents fall into arrear the tenants find it difficult to pay the current rent after liquidating a part of the arrears so that while they clear part of the old arrears the current rent falls into arrear. According to annexure B (2) to the affidavit of Lakshman Nidhi affirmed on January 22, 1951, the total amount of Raiyati rent payable by the various tenants in the different circles of the Darbhanga Estate alone will exceed rupees three lacs. It is not quite clear whether all these arrears are due from the actual rayats in the sense of actual tillers of the soil. But leaving out from consideration for the present purposes the arrears of rent due by the tenure-holders to their immediate superior tenure-holder or to the zamindar it can safely be taken that the bulk, if not all, of the actual rayats or tillers of the soil are habitually and perpetually in arrear with the rent of their holdings on account of financial stringency resulting from their chronic indebtedness. In these circumstances if the zamindaries and the tenures only are acquired under the Act leaving the zamindars and the tenure holders free to realise the huge arrears of rent due by the actual cultivating tenants by legal process it will eventually results in the sale of the holdings of the actual tenants or, at any rate, of their right, title and

interest therein and the possible purchase thereof by the zamindars or tenure-holders themselves at Court sales in execution of decrees or by private sales forced upon the tenants. The bulk of the actual tillers of the soil will then become landless labourers and the entire scheme of land reforms envisaged in the Act will be rendered wholly nugatory. If the acquisition of the zamindaries and the tenures is, as I hold, dictated or inspired by the sound public purpose of ameliorating the economic and political conditions of the actual tenants, the self same public purpose may well require the acquisition of the arrears of rent so as to avert the undesirable but inevitable consequences I have mentioned The Bihar Legislature obviously thought that the tenants in arears will have better treatment and a more reasonable accommodation, in the matter of the liquidation of the huge arrears, from the State which will act under the guidance of the Land Commission than from the expropriated landlords whose sole surviving interest in their erstwhile tenants will only be to realise as much of the arrears as they can from the tenants and within the shortest possible time without any mercy or accommodation. The same remarks apply to the acquisition of decrees for arrears of rent. The overriding public purpose of ameliorating the conditions of the cultivating rayats may well have induced the Legislature to treat the arrears of rent and the decrees for rent differently from the other ordinary moveable properties of the zamindars or tenure-holders, *e.g.*, their money in the bank or their jewellery or ornaments with which the rayats have no concern and to provide for the acquisition of the arrears and the decrees. In the premises, the second main ground of attack levelled by Mr. P. R. Das against the Act must be rejected. I am, however, free to confess that if I could agree with Mr. P. R. Das that these provisions of the impugned Act are bad for want of a public purpose, I am not at all sure that I would not have found it extremely difficult to resist his further argument that the entire Act was bad, for it might

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not have been very easy to presume that if the Bihar Legislature had known that these provisions of the Act might be held bad it would nevertheless have passed the other parts of the Act in that truncated form. The acquisition of the arrears of rent appears to me to be an integral part of the scheme and inextricably interwoven with it. Indeed, it may well have been that the scheme of agrarian reform was not considered by the Bihar Legislature to be at all capable of easy implementation by the State without the acquisition of the arrears of rent. As, however, I have taken the view that no part of the Act is bad for want of a public purpose, I need not pursue any further the question of the severability of the Act or to refer to the judicial decisions relied on by learned counsel on both sides.

Re Ground C: Mr. P. R. Das's third point is that the Act constitutes a fraud on the Constitution, that is to say, while it purports to be in conformity with the Constitution, it, in effect, constitutes a defiance of it. The Act, according to him, pretends to comply with the constitutional requirements in that it sets out to lay down certain principles on which compensation is to be determined and the form and the manner in which such compensation is to be given but, in effect, makes out a scheme for non-payment of compensation. The Act, he urges, purports to pay back fifty per cent. of the arrears of rent as compensation but in reality confiscates the other fifty per cent. without any compensation. Further, under the guise of deducting 4 to 12½ per cent. of the gross income the State is in reality appropriating a large sum under this head. All this, he concludes, is nothing but pretence or a mere shift and contrivance for confiscating private property. The argument, when properly understood, will be found to resolve itself into an attack on the legislative competency of the Bihar Legislature to pass this Act. On ultimate analysis it amounts to nothing more than saying that while pretending to give compensation the Act does not really give it. It is the absence of a provision

for just and adequate compensation that makes the Act bad, because, according to Mr. P. R. Das, the legislative power under entry 36 in List II and entry 42 in List III requires the making of such a provision. The failure to comply with this constitutional condition for the exercise of legislative power may be overt or it may be covert. When it is overt, we say the law is obviously bad for non-compliance with the requirements of the Constitution, that is to say, the law is *ultra vires*. When, however, the non-compliance is covert, we say that it is a fraud on the Constitution, the fraud complained of being that the Legislature pretends to act within its power while in fact it is not so doing. Therefore, the charge of fraud on the Constitution is, on ultimate analysis, nothing but a picturesque and epigrammatic way of expressing the idea of non-compliance with the terms of the Constitution. Take the case of the acquisition of the arrears of rent. It is said that the provision in the Act for the acquisition of arrears of rent is a fraud on the legislative power given by the Constitution. I ask myself as to why must it be characterised as a fraud? I find nothing in the Constitution which says that the arrears of rent must not be acquired and, therefore, there is no necessity for any covert attempt to do what is not prohibited. I have already explained that in a scheme of land reforms such as is envisaged in the Act the acquisition of the arrears of rent may properly accompany the acquisition of the zamindaries and the tenures. Where, then, does this theory of fraud come in? The answer must eventually be that a moiety of arrears are taken away without compensation. Again, take the case of the acquisition of non-income-yielding properties. Why, I ask, is it called a fraud on the Constitution to take such property? Does the Constitution prohibit the acquisition of such property? Obviously it does not. Where, then, is the fraud? The answer that comes to my mind is that it is fraud because the Act provides for compensation only on the basis of income and, therefore, properties which are at present non-income-yielding but which have very rich

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potentialities are acquired without any compensation at all. Similar answer becomes obvious in connection with the deduction of 4 to 12½ per cent. of the gross assets under the head "Works of Benefit to the Rayats". On ultimate analysis, therefore, the Act is really attacked on the ground that it fails to do what is required by the Constitution to do, namely, to provide for compensation for the acquisition of the properties and is, therefore, *ultra vires*. This, to my mind, is the same argument as to the absence of just compensation in a different form and expressed in a picturesque and attractive language. I have already dealt with the question of absence of a provision for just compensation while dealing with Mr. P. R. Das's first point and I repeat that the obligation to provide for compensation is not implicit in entry 36 List II by itself or read with entry 42 in List III but is to be found only in article 31 (2), that under entry 42 in List III the Act has laid down a principle for determining compensation and, therefore, there can be no question as to legislative incompetency for any alleged non-compliance with any supposed requirement said to be implicit in these entries. If the principles so laid down in the Act do not in any rare case produce any compensation or do not produce adequate compensation in some cases, such absence of compensation may be a contravention of article 31 (2) but in view of articles 31 (4), 31-A and 31-B and particularly due to the words "notwithstanding anything in this Constitution" occurring in article 31 (4) it cannot be made a ground of attack on the Act, even though such ground is formulated in a different but attractive language, namely, as a fraud on the Constitution. Accordingly, this point must also be rejected. I, however, repeat that if I took a different view I would still have the same difficulty as to the inseverability of the different provisions of the Act as I have hereinbefore indicated.

Re. Ground D: Mr. P. R. Das's fourth point is that the Act is unenforceable in that section 32 (2)

provides for compensation in forty equal instalments without specifying the period of interval between the instalments. In course of arguments, however, Mr. P. R. Das has thought fit not to press this point and accordingly it does not require any refutation.

Re. Ground E : Mr. P. R. Das's last main point is that the Act has delegated essential legislative functions to the Effective Government and is, therefore, invalid. Article 31 (2) requires that the law authorising the taking possession or the acquisition of land for public purpose should provide for compensation for the property taken possession of or acquired and should either fix the amount or specify the principles on which, and the manner in which the compensation is to be determined and given. Entry 42 in List III talks of principles on which compensation is to be determined and the form and the manner in which such compensation is to be given. The argument is that the Constitution has left to Parliament or the State Legislature the duty of specifying the principle on which, and the form and manner in which the compensation is to be determined and given but the Bihar Legislature by section 3 (22) of the Act has simply provided that the amount of compensation shall be paid in cash or in bonds or partly in cash and partly in bonds and that the bonds shall be either negotiable or non-negotiable and non-transferable and be payable in forty equal instalments and has not laid down any decisive provision but has left the matter to the State Government to decide. It has, therefore, failed to discharge the duty which was expressly left to its knowledge, wisdom and patriotism. Mr. P. R. Das complains that the Legislature has shirked its responsibility and delegated this essential legislative power to the State Government to be exercised under rules made by itself under its rule-making power under section 43 (2) (p). The question of the propriety and legality of the delegation of legislative power has recently been considered by this Court in *In re The Delhi Laws Act,* 1912 *etc.*(1). If I

(1) [1951] S.C.R. 747.

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were to deal with this matter according to my own notions, I would have dismissed this argument *in limine,* for here the Legislature has not abdicated or effaced itself in the sense I have explained in my opinion in that case. When I look at the matter on the basis of the principles laid down in that case by the late Chief Justice and my learned brothers to which Mr. P. R. Das has referred, I have to overrule his contention all the same. Here section 32 clearly indicates that the Legislature has applied its mind to the problem and it has laid down the principle that the compensation may be paid in cash or in bonds or partly in cash and partly in bonds and that if a payment is to be made either wholly or partly in bonds, these bonds may be either negotiable or non-negotiable and non-transferable. Having laid down the principle, the Legislature has, by a rule made under section 43 (3) (p), left it to the Executive to determine the proportion in which the compensation shall be payable in cash and in bonds and the manner of such payment of compensation. These details, it will be observed, depend on special circumstances, *e.g.,* the extent of the ability of Government to pay, the extent of the necessities of the proprietors and many other considerations, with which the Executive Government would be more familiar than the Legislature itself. I am unable to accept Mr. P. R. Das's contention that this amounts to a delegation of an essential legislative function within the meaning of the decision of my learned brothers.

Mr. Sanjiva Chowdhuri has urged that the Land Acquisition Act, 1894 being continued by the Constitution and that Act which is a Central Act having been extended by notification in 1899 to Ramgarh State for which he appears, the Central Act must apply to Ramgarh until the notification is withdrawn and the impugned Act cannot apply for determining the compensation, for the field is already occupied by the Central Act of 1894. It may, however, be noticed that the provision for compensation in that Act

applies only to lands acquired under that Act. It has no application to lands acquired under other statutes and, therefore, the provision for compensation of the Land Acquisition Act cannot apply to acquisitions under the Bihar Act and, therefore, the doctrine of occupied field can have no application. In my opinion there is no substance in this contention.

For reasons stated above, I allow these appeals.

CHANDRASEKHARA AIYAR J.—The faits which have given rise to these cases have been fully set out in the judgment just now delivered by my learned brother Mahajan J. and need not be repeated. The conclusions reached by him and Mukherjea J. have my concurrence. Ordinarily, I would have stopped with the expression of my agreement, but having regard to the importance of the question argued and the stakes involved, I desire to add a few words of my own on some of the points discussed.

Article 31 (1) of our Constitution provides "No person shall be deprived of his property save by authority of law".

There are three modes of deprivation—(a) destruction, (b) acquisition and (c) requisition. Destruction may take place in the interests of public health or the prevention of danger to life or property, but with this we are not now concerned. In the case of "acquisition", there is an element of permanency, and in the case of "requisition" there is an element of temporariness. Except for this distinction, both modes stand on the same footing, as regards the rights of the State *vis-a-vis* the rights of the private citizens.

Under the Constitution, when property is requisitioned or acquired, it may be for a Union purpose or a State purpose, or for any other public purpose. Entry 33 in List I (Union List) of the Seventh Schedule to the Constitution speaks of acquisition or requisitioning of property for the purposes of the Union. When we come to entry 42 of List III (Concurrent List), we find these words: "Principles on which compensation for property acquired or requisitioned for the purposes

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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."

From very early times, law has recognized the right of Government compulsorily to acquire private properties of individuals for a public purpose and this has come to be known as the law of eminent domain. But it is a principle of universal law that the acquisition can only be on payment of just compensation. Story on the Constitution, Vol. 2, page 534, paragraph 1790, has the following passage in discussing the concluding clause of the Fifth Amendment of the American Constitution :

"The concluding clause is that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the Government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and the rulers."

The payment of compensation is an essential element of the valid exercise of the power to take. In the leading case of *Attorney-General* v. *De Keyser's Royal Hotel, Ltd.* (1) Lord Dunedin spoke of the payment of compensation as a necessary concomitant to the taking of property. Bowen L. J. said in *London and North Western Ry. Co.* v. *Evans* (2) :—

"The Legislature cannot fairly be supposed to intend, in the absence of clear words showing such intention, that one man's property shall be confiscated for the benefit of others, or of the public, without any

(1) [1920] A.C. p. 508. (2) [1893] 1 Ch. pp. 16 & 28.

compensation being provided for him in respect of what is taken compulsorily from him. Parliament in its omnipotence can, of course, override or disregard this ordinary principle.....if it sees fit to do so, but it is not likely that it will be found disregarding it, without plain expressions of such a purpose."

This principle is embodied in article 31 (2) of our Constitution in these terms :—

"No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired 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."

We shall not here trouble ourselves with sub-clauses (3) and (4) of the article and with articles 31-A and 31-B which were introduced by way of amendment under the Constitution First Amendment Act, 1951, dated 18-6-1951. They will be considered later.

The argument of Shri P. R. Das that the payment of compensation is a concomitant obligation to the compulsory acquisition of properties by the State can be accepted as sound ; but when he went further and urged that it was found in an implicit form in entry 42 of the Concurrent List, he was by no means on sure ground. The entries give us the bare heads of legislation. For ascertaining the scope or extent or ambit of the legislation and the rights and the duties created thereby, we must examine the legislation itself or must have resort to general and well-recognized principles of law of jurisprudence. No resort can be had to anything implicit or hidden when the statute makes an express provision on the same subject. As just compensation has to be paid when property is acquired for a public purpose, the legislation has to

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formulate the principles for determining the compensation and the form and the manner in which it is to be given. Entry 42 means nothing more than a power conferred on the Legislature for achieving this end. The power is conferred but there is no duty cast to provide for compensation. For any statement that the payment of compensation is a primary condition for acquisition of property for a public purpose, we have to look at the provisions of the Constitution itself and this we find in article 31(2) as stated already. Mr. Das was obliged to take up the untenable position that entry 42 of its own force implies an obligation to pay compensation, as he could not otherwise jump over the hurdles created in his way by sub-sections (3) and (4) of article 31 and the new articles 31-A and 31-B.

The learned Attorney-General contended in dealing with entry 42 that legislation under entry 42 can also lay down principles that would lead to the non-payment of any compensation and he cited *Atiqa Begum's* case(1) as an authority in his support. This contention appears to me to be as unsound as Mr. Das's argument that the obligation to pay or give compensation was implicit in the said entry. As there can be no acquisition without compensation, the terms of entry 42 enable the legislature to lay down the principles and provide further for the form and manner of payment. If the principles are so formulated as to result in non-payment altogether, then the legislature would be evading the law not only covertly but flagrantly. There is nothing in *Atiqa Begum's* case that supports the argument. It was there held that under the head "payment of rent" there could be legislation providing for remission of rent. Payment of rent is not a legal obligation of every tenure and the legislature can enact that under certain circumstances or conditions there shall be remission of rent. But as regards compensation for State acquisition, its payment is a primary requisite universally recognized by law. This is the essential distinction to remember

(1) [1940] F.C.R. 110.

when we seek to apply the case quoted. The last words in entry 42 "form and the manner in which such compensation is to be given" clearly mean that the principles determining compensation must lead to the giving or payment of some compensation. To negate compensation altogether by the enunciation of principles leading to such a result would be to contradict the very terms of the entry and such a meaning could not be attributed to the framers of the Lists.

This, however, does not carry Shri P. R. Das anywhere near success. Article 31 (4) is the first stumbling block in his way. It provides :—

"If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)."

The Bill which subsequently became "The Bihar Land Reforms Act, 1950" was pending at the commencement of the Constitution in the legislature of the State, and after it was passed by the legislature, it was reserved for the consideration of the President and received his assent. Therefore the bar that it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) becomes applicable. True, compensation has to be provided for, by reason of sub-clause (2) of the article, but sub-clause (4) postulates an exception and the right to challenge the validity of the Act on the ground that no compensation has been provided for or that the compensation is really illusory or inadequate is taken away. As if this were not enough, two more stiles have been erected in his way and they are the new articles 31-A and 31-B brought in by way of amendment. Article 31-A, sub-clause (1) is in these terms :—

"Notwithstanding anything in the foregoing provisions of this Part, no law providing for the

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acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

Article 31-B provides:—

"*Validation of certain Acts and Regulations*:—Without prejudice to the generality of the provisions contained in article 31-A none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

When we look at the Ninth Schedule to the Amending Act, the very first item mentioned is "The Bihar Land Reforms Act, 1950."

In the face of these almost insuperable obstacles, Shri P. R. Das candidly admitted that he could urge nothing as regards the adequacy or the illusory nature of the compensation provided in the Act, if he was not able to convince the Court on his main point that he could challenge the offending Act on grounds other than those mentioned in Part III of the Constitution, and that there was something in entries No. 36 of the State List and No. 42 of the Concurrent List read together which imposed on the State Legislature an obligation to provide for the payment of just or proper compensation and that the non-observance of this

obligation entitles him to challenge the validity of the Act as unconstitutional.

The acquisition of property can only be for a public purpose. Under the Land Acquisition Act, I of 1894, a declaration by the Government that land is needed for a public purpose shall be conclusive evidence that the land is so needed and Courts cannot go into the question whether the public purpose has been made out or not. There is no such provision in any article of the Constitution with which we have to deal. It is true that sub-clause (2) of article 31 speaks of property being acquired for public purposes. The bar created by sub-clause (4) of article 31 relates to the contravention of the provisions of clause (2). The provision of clause (2) is only as regards compensation as can be gathered from its latter part :—

"Unless the law provides for compensation for the property taken possession of or acquired 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."

It is assumed, rightly, that the existence of a public purpose is part and parcel of the law and is inherent in it. The existence of a public purpose is not a provision or condition imposed by article 31 (2) as a limitation on the exercise of the power of acquisition. The condition prescribed is only as regards compensation. Article 31 (4) debars the challenge of the constitutionality of an Act on this ground but no other. Whether there is any public purpose at all, or whether the purpose stated is such a purpose is open, in my opinion, to judicial scrutiny or review.

When the legislature declares that there is a public purpose behind the legislation, we have of course to respect its words. The object of the Act in question is to extinguish the interests of intermediaries like zamindars, proprietors, and estate and tenure-holders etc., and to bring the actual cultivators into direct relations with the State Government. To achieve this end, several provisions have been enacted for the

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transfer and the vesting of such interest in the State as regards various items of properties. It is impossible to deny that the Act is inspired and dominated by a public purpose, but the question still remains whether the taking over of particular items can be said to be for a public purpose. It is in this connection that the two items of "arrears of rent" and "cost of works of benefit to the raiyats" dealt with in section 4, clause (b), and section 23, clause (f), respectively of the Act, have to be considered.

The taking over of "arrears of rent" does not seem to have even a remote connection with any question of land reform. It stands on no better footing than if the Act sought to take over the cash on hand or in the banks of the zamindars, proprietors or tenure-holders. It is only an accident that the rents in question were not realised before the passing of the Act. Whether realised or not, they are his moneys due and payable to him by the ryots. The consequences of vesting of estates must have some relation to the tenures themselves and have some connection, remote though it may be, with the agrarian reforms undertaken or contemplated. Supposing that we have a legislation stating that as it is necessary to eliminate rent collectors and farmers of revenue and to apportion and distribute land on an equitable basis amongst the tillers of the land and confer on them rights of permanent occupancy and also to bring them directly into contact with the State, all moneys which the proprietors had collected as and by way of rent from their estates for three years prior to the commencement of the Act, shall vest in and be payable to the State, could it be said by any stretch of reason that any public purpose had been established for the taking of the moneys? Arrears of rent stand on no better footing. Any public purpose in taking them over is conspicuous by its absence. It is fairly obvious that resort was had to the arrears either for augmenting the financial resources of the State or for paying compensation to the smaller proprietors out of this particular item of acquisition. Property of individuals

cannot be appropriated by the State under the power of eminent domain for the mere purpose of adding to its revenues; taxation is the recognised mode to secure this end. If the latter was the real object, it must be observed that to take one man's property compulsorily for giving it away to another in discharge of Government's obligations is not a legitimate and permissible exercise of the power of acquisition.

Sub-clause (1) of section 24 no doubt provides that 50 per cent. of the arrears of rents shall be added to the amount of compensation. This means one of two things (a) either the other 50% is taken without payment of any compensation, which is confiscation virtually or (b) 50 per cent. is taken as the consolidated value of the arrears of rent—lump sum payment for the acquisition of choses in action or actionable claims. Taken either way, it is difficult to see wherein the public purpose consists. Whether moneys could be compulsorily acquired at all by a State is a moot question. Willis says in his Constitutional Law at page 816:—"While, as stated above, any and all property is in general subject to the exercise of the power of eminent domain, there are certain rather unusual forms of private property which cannot thus be taken. These are corpses, money, choses in action, property used by the government in its governmental capacity, property to be used for a mere substituted ownership unless such substituted ownership is a more necessary use, and perhaps trust property dedicated to a State, mortgage liens, and suits to quiet title." Under the heading "what property is subject to the right", Cooley observes in Vol. II of his book on Constitutional Limitations, at page 1117:—"From this statement, however, must be excepted money, or that which in ordinary use passes as such, and which the Government may reach by taxation, and also rights in action, which can only be available when made to produce money; neither of which can it be needful to take under this power." In the footnote he points out:—

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"Taking money under the right of eminent domain, when it must be compensated in money afterwards, could be nothing more or less than a forced loan, only to be justified as a last resort in a time of extreme peril, where neither the credit of the government nor the power of taxation could be made available."

Nicols in his work on "Eminent Domain" does not disagree with this view; on the other hand, he says at page 100 of Vol. I, paragraph 2. 1 (3) :—

"The question has arisen whether money can be taken by eminent domain and it has been held or intimated, at least in so far as a state or a private corporation is concerned, that it is not subject to such taking. The objection is not based on an implied inherent limitation upon the power of government, but upon the difficulty of effecting a taking of money that would be of any service to the public without violating the Constitution. The use for which it was needed might well be public, but, as compensation must be paid in money, and, if not in advance, at least with such expedition as conveniently may be had, the seizure of money without compensation, or with an offer of payment in notes, bonds or merchandise,—in other words, a forced sale or loan—however it might be justified by dire necessity would not be a constitutional exercise of the power of eminent domain."

The learned Attorney-General sought to justify this acquisition on the ground that it was a compulsory taking of choses in action. Even so, they stand on the same footing as money, of less value no doubt than if they were coin or currency notes. It seems that choses in action too cannot be so acquired; reference has been made already to Cooley's observations.

The two cases *Long Island Water Supply Company* v. *City of Brooklyn*(1) and *City of Cincinnati* v. *Louisville & Nashville Railroad Company* (2) do not support the contrary view. In the former case,

(1) 166 U.S. 685; 41 L. Ed. pp. 1, 165.
(2) 223 U.S. 389; 56 L. Ed. 481.

a Water Supply Company was under a contract to supply water to the town of New Lots (which subsequently became merged in the city of Brooklyn) in consideration of the town paying for hydrants to be furnished and supplied as provided in the contract. The contract was for a term of 25 years. When the merger took place, the city of Brooklyn was given power to purchase or to condemn the property of the company within 2 years but it did neither. In 1892, the legislature passed another Act authorising the City of Brooklyn to condemn the property of the company, provided the necessary proceedings were commenced within one year after the passing of the Act. The procedure for the acquisition was prescribed in the Act itself. The power was exercised by the city and the compensation payable was determined by the Commissioners at a particular figure. The company objected to the acquisition on the strength of article 1, Paragraph 10, of the U. S. Constitution which forbids any State to pass a law impairing the obligation of contracts and was not "due process of law" as required by the 14th Amendment. On error, the Supreme Court confirmed the condemnation and rejected the argument that there was any impairment of the contract. Mr. Justice Brewer points out that the contract is a mere incident to the tangible property and that it is the later which, being fitted for public uses, is condemned. The contract is not the thing which is sought to be condemned and its impairment, if impairment there be, is a mere consequence of the appropriation of the tangible property. In the present cases, it is untenable to state that the taking over of arrears of rent is a natural consequence of the acquisition of the estates.

In the latter case, a railroad company filed a suit to condemn a right of way for an elevated railroad track across the public landing at Cincinnati. The city objected on the ground that the public landing had become property dedicated to the public under an earlier contract and to allow the condemnation under a

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statute of Ohio was an impairment of the contract, forbidden by the 10th section of the first article of the Constitution of the United States. The court through Mr. Justice Lurton held: "The constitutional inhibition upon any state law impairing the obligation of contracts is not a limitation upon the power of eminent domain. The obligation of a contract is not impaired when it is appropriated to a public use and compensation made therefor. Such an exertion of power neither challenges its validity nor impairs its obligation. Both are recognised, for it is appropriated as an existing enforceable contract. It is a taking, not an impairment of its obligation. If compensation be made, no constitutional right is violated."

It would thus be evident that they were not cases of the compulsory acquisition of choses in action. Choses in action unrelated to any tangible property can be useful for a public purpose only when converted into money. Arrears of money are particularly so. When it is said that money and choses in action are exempt from compulsory acquisition, it is not on the ground that they are movable property but on the ground that generally speaking there could be no public purpose in their acquisition.

The provisions in section 23, sub-clause (f) that 4 to 12½ per cent. of the gross assets can be deducted from the amount as representing *"cost of works of benefit to the raiyats"*. This is an obvious device to reduce the gross assets and bring it down to as low a level as possible. The Act does not say that this charge represents the expenditure on works of benefit or improvements which the zamindars and proprietors were under any legal obligation to carry out and which they failed to discharge. Nor are we told anything about the future destination of this deducted sum. It is an arbitrary figure which the legislature has said must be deducted from the gross assets. The deduction is a mere contrivance to reduce the compensation and it is a colourable or fraudulent exercise of legislative power to subtract a fanciful sum from the calculation of gross assets.

Stripped of their veils or vestments, the provisions in the Act about "arrears of rent" and the "cost of works of benefit" amount to naked confiscation. Where the legislative action is arbitrary in the sense that it has no reasonable relation to the purpose in view, there is a transgression by the legislature of the limits of its power. Under the guise of legislating for acquisition, the legislature cannot enable the State to perpetrate confiscation; and if it does so, the Act to that extent has to be declared unconstitutional and void. If the part that is void is so inextricably interwoven into the texture of the rest, the whole Act has to be struck down. Such, however, is not the case here.

It is gratifying to note that the Madhya Pradesh Abolition of Proprietory Rights Act of 1950 and the Uttar Pradesh Zamindari Abolition and Land Reforms Act of 1950 which are also in question are free from this blemish of reaching at arrears of rent due for any period anterior to the date of vesting.

Appeals allowed: Petition No. 612 *dismissed.*

Agent for the appellant (State of Bihar): *P. A. Mehta.*
Agent for the respondents in Cases Nos. 339, 319, 327, 330, 332 of 1951: *J. N. Shroff.*
" " in Cases Nos. 309, 326, 328, 336, 337, 344 of 1951: *Ganpat Rai.*
" " in Cases Nos. 310, 311, and 329 of 1951: *R. C. Prasad.*
" " in Case No. 315 of 1951: *P. K. Chatterjee.*
" " in Cases Nos. 307, 313, 320, 321, and 322 of 1951: *Sukumar Ghose.*
" " in Case No. 331 of 1951: *S. P. Varma.*

Agent for the petitioner in Petition No. 612 of 1951: *Ganpat Rai.*

Agent for respondent No. 2 in Petition No. 612 of 1951: *P. A. Mehta.*