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Dec. 18.

DWARKADAS SHRINIVAS OF BOMBAY
v.
THE SHOLAPUR SPINNING & WEAVING CO. LTD., AND OTHERS.

[PATANJALI SASTRI C.J., MEHR CHAND MAHAJAN, S. R. DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance II of 1950, replaced by Act XXVIII of 1950—Whether ultra vires *art. 31 of the Constitution—Arts. 19 and 31—Scope of—Whether different.*

The Sholapur Spinning and Weaving Co., Ltd., was incorporated under the Indian Companies Act, 1913, with an authorised capital of Rs. 48 lakhs divided into 1590 fully paid up ordinary shares of Rs. 1,000 each, 20 fully paid up ordinary shares of Rs. 500 each and 32,000 partly paid up cumulative preference shares of Rs. 100 each, the paid up capital of the Company being Rs. 32 lakhs comprised of Rs. 16 lakhs fully paid up ordinary shares and Rs. 16 lakhs partly paid up preference shares, Rs. 50 being unpaid on each of the 32,000 cumulative preference shares. The Company did good business and declared high dividends for some time; but in the year 1949 there was accumulation of stocks and financial difficulties. On the 27th July, 1949, the Directors gave notice of

their decision to close the Mills to the workers, and pursuant to this notice the Mills were closed. This created a labour problem and to solve it the Government on he 5th October, 1949, appointed a Controller to supervise the affairs of the Mills under the Essential Supplies Emergency Powers Act, 1946. On the 9th November, 1949, the Controller in order to resolve the deadlock decided to call in more capital and asked the Directors of the Company to make a call of Rs. 50 per share, on the preference shareholders, the amount remaining unpaid on each of the preference shares. The Directors refused to comply with this requisition, as in their judgment, this was not in the interests of the Company. Thereupon the Governor-General on the 9th January, 1950, promulgated the impugned Ordinance, under which the Mills could be managed and run by the Directors appointed by the Central Government. On the 9th January, 1950, the Central Government acting under s. 15 of the Ordinance delegated all its powers to the Government of Bombay. The Government of Bombay then appointed certain Directors who took over the assets and management of the Mills. On the 7th February, 1950, they passed a resolution making a call of Rs. 50 on each of the preference shares payable at the time stated in the resolution. Pursuant to this resolution a notice was addressed on the 22nd February, 1950, to the plaintiff in the suit who held preference shares, to pay Rs. 1,62,000 the amount of the said call on or before the 3rd April, 1950. The plaintiff instead of meeting the demand, filed the present suit on the 28th March, 1950, in a representative capacity on behalf of himself and other preference shareholders against the Company and the Directors appointed by the Government of Bombay challenging the validity of the Ordinance and questioning the right of the Directors to make the call. It was alleged in the suit that the Ordinance was illegal and *ultra vires* and invalid as it contravened the provisions of Section 299(2) of the Government of India Act, 1935, and the provisions of Part III of the Constitution and that the resolution of the Directors dated 7th February, 1950, making a call was illegal and *ultra vires* as the law under which they were appointed was itself invalid. The suit was dismissed by the Trial Judge and his decision was affirmed on appeal by a Division Bench of the Bombay High Court by the Judgment dated 29th August, 1950. The plaintiff preferred the present appeal to the Supreme Court. This appeal concerns the validity of the same Ordinance and the Act replacing it which were considered by the Supreme Court in the case of *Chiranjit Lal Chowdhuri* (1950 S.C.R. 869). There an ordinary shareholder of the defendant Company holding one fully paid up share challenged the validity of the Sholapur Spinning and Weaving Co. (Emergency Provisions) Ordinance II of 1950 and Act XXVIII of 1950, seeking relief under Article 32 of the Constitution on the ground that the said Ordinance and the Act abridged his fundamental rights conferred on him under Articles 14, 19 and 31 of the Constitution. The Supreme Court dismissed the petition by a majoriy of

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3 to 2 holding that the presumption in regard to the Constitutionality of the Act had not been displaced by the petitioner and that it had not been proved that the impugned statute was a hostile or discriminatory piece of legislation as against him or that the State had taken possession of his share. The minority held that impugned statute was void as it abridged the petitioner's fundamental rights under Article 14 of the Constitution. This decision was delivered on 4th December, 1950. The suit giving rise to the present appeal was decided by the Bombay High Court during the pendency of Chiranjit Lal Chowdhuri's petition in the Supreme Court :

Held, (*per* PATANJALI SASTRI C. J., MAHAJAN, BOSE, and GHULAM HASAN JJ.) (i) that the impugned Ordinance and the Act replacing it authorise in effect a deprivation of the property of the Company within the meaning of Article 31 without compensation and are not covered by the exception in clause (5)(b) (ii) of that Article. The Ordinance and the Act thus violate the fundamental rights of the Company under Article 31(2) of the Constitution and the appellant as a preference shareholder who is called upon to pay the moneys unpaid on his shares is entitled to impugn their constitutionality.

(ii) that the previous decision of the Supreme Court in *Charanjit Lal Chowdhuri* v. *The Union of India and Others*(1) is distinguishable and has no application to the present case.

Per MAHAJAN J.

(i) Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of Courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon.

Boyd v. *United States* (2) referred to.

By promulgating the Ordinance, the Government has not merely taken over the superintendence of the affairs of the Company but has in effect and substance taken over the undertaking itself. In the situation the contention has no force that the effect of the Ordinance is that the Central Government has taken over the superintendence of the affairs of the Company and that the impugned legislation is merely regulative in character. In the present case practically all incidents of ownership have been taken over by the State and nothing has been left with the Company but the mere husk of title and in the premises the impugned statute has overstepped the limits of legitimate Social Control Legislation and has infringed the fundamental right of the Company guaranteed to it under Article 31(2) of the Constitution and is, therefore, unconstitutional.

(1) [1950] S. C. R. 869. (2) 146 U. S. 616

(ii) It is significant that Article 31 deals with private property of persons residing in the Union of India, while Article 19 only deals with citizens defined in Article 5 of the Constitution. It is obvious that the scope of these two Articles cannot be the same as they cover different fields. The true approach to this question is that these two Articles really deal with two different subjects and one has no direct relation with the other, namely, Article 31 deals with the field of eminent domain and the whole boundary of that field is demarcated by this Article.

From the language employed in the different sub-clauses of Article 31 it is difficult to escape the conclusion that the words "acquisition" and "taking possession" used in Article 31(2) have the same meaning as the word "deprivation" in Article 31(1).

(iii) Article 31 is a self-contained provision delimiting the field of eminent and clauses (1) and (2) of Article 31 deal with the same topic of compulsory acquisition of property.

Article 31 gives complete protection to private property as against executive action, no matter by what process a person is deprived of possession of it.

It is a narrow view that "acquisition" necessarily means acquisition of title in whole or part of the property and cannot be accepted. The word "acquisition" has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply acquisition of legal title by the State in the property taken possession of.

Minister of State for the Army v. *Dalziel* (68 C.L.R. 261) referred to.

Per Das J.

(I) As the appellant as a preference shareholder is directly affected by the impugned statute, which circumstance distinguishes this case from *Chiranjit Lal's* case, it must be held that the appellant is entitled to challenge the Ordinance which dismissed the Directors elected by the shareholders, authorised the appointment of Directors by the State and made it possible for the Directors so appointed to make the call and thereby impose a liability on all preference shareholders including the appellant.

(II) The provisions of the Ordinance and the Act are drastic in the extreme. The Managing Agents and the elected Directors have been dismissed and new Directors have been appointed by the State. So far as the Company is concerned it has been completely denuded of the possession of its property. All that has been left to the Company is its bare legal title. It is impossible to uphold this law as an instance of the exercise of the State's police power as an emergency measure. It has far overstepped the limits of police power and is, in substance, nothing short of expropriation by way of the exercise of the power of eminent domain and as the law has not provided for any compensation it must be held to offend the provisions of Article 31(2).

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Per BOSE J.

The words "taken possession of" or "acquired" in Article 31(2) have to be read along with the word "deprived" in clause (1). The possession and acquisition referred to in clause (2) mean the sort of "possession" and "acquisition" that amount to "deprivation" within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then clause (2) is attracted.

Per GHULAM HASAN J.

The Act in substance robs the Company of every vestige of right, except what has been laconically called the husk of the title. The impugned Act oversteps the constitutional limits of the power conferred upon the State and offends against the provisions of Article 31 and must therefore be held to be void.

The intention underlying Article 31 being the protection of property against invasion by the State, both parts (1) and (2) of Article 31 should be read together so as to harmonize that intention. The two parts of the Article form an integral whole and cannot be dissociated from each other. Article 31 is wider than Article 19(1)(f) which confers upon a citizen only the right to acquire, hold and dispose of property and is different in scope and content.

Chiranjit Lal Chowdhuri v. *The Union of India and Others* ([1950] S.C.R. 869) distinguished, *The State of West Bengal* v. *Subodh Gopal Bose and Others* ([1954] S.C.R. 587), *Boyd* v. *United States* (116 U.S. 616), *Pennsylvania Coal Co.* v. *Mahon* (260 U.S. 322), *A. K. Gopalan* v. *The State of Madras* ([1950] S.C.R. 88), *State of Bihar* v. *Maharajah Kameswar Singh and Others* ([1952] S.C.R. 889), *Minister of State for the Army* v. *Dalziel* (68 C.L.R. 261), *Tan Bug Tain* v. *Collector of Bombay* (I.L.R. 1946 Bom. 517), and *Jupiter General Insurance Co.* v. *Rajagopalan* (A.I.R. 1952 Punjab 9), referred to.

CIVIL APPELLATE JURISDICTION: CIVIL APPEAL No. 141 of 1952.

Appeal from the Judgment and Order dated the 29th August 1950 of the High Court of Judicature at Bombay (Chagla C.J. and Gajendragadkar J.) in Appeal No. 48 of 1950 arising out of the Judgment and Decree dated the 28th June, 1950, of the said High Court (Bhagwati J.) in its Ordinary Original Civil Jurisdiction in Suit No. 438 of 1950.

M. P. Amin (*M. M. Desai and K. H. Bhabha,* with him) for the appellant.

M. C. Setalvad, Attorney-General for India and C. K. Daphtary, Solicitor-General for India (*G. N. Joshi,* with them) for respondents Nos. 1 to 4 and 6 to 8.

M. C. Setalvad, Attorney-General for India (*G. N. Joshi* and *Porus A. Mehta,* with him) for respondent No. 9.

1953. December 18. The following Judgments were delivered.

PATANJALI SASTRI C.J.—I have fully discussed and explained the meaning and effect of articles 19 and 31 in my Judgment just delivered in Civil Appeal No. 107 of 1952—*The State of West Bengal* v. *Subodh Gopal Bose and Others* [1]. On that view I agree with my learned brothers that the impugned Ordinance authorises, in effect, a deprivation of the property of the Company within the meaning of article 31 without compensation and is not covered by the exception in clause (5) (b) (ii) of that article. The Ordinance thus violates the fundamental right of the Company under article 31(2), and the appellant as a preference shareholder who is now called upon to pay the moneys unpaid on his shares is entitled to impugn the constitutionality of the Ordinance. I also agree with my learned brother Mahajan that the previous of this Court in *Chiranjit Lal Chowdhuri* v. *The Union of India and Others*([2]) is distinguishable and has no application here for the reasons mentioned by him.

MAHAJAN J.—This is an appeal from the judgment and decree of the High Court of Judicature at Bombay passed on the 29th day of August, 1950, in Appeal No. 48 of 1950.

The appeal concerns the validity of the same piece of legislation that was considered by this court in the case of *Chiranjit Lal Chowdhuri* ([2]). There, an ordinary shareholder of the defendant company holding one fully paid up share claimed relief under Art. 32 of the Constitution of India on the ground that the provisions of the Sholapur Spinning & Weaving Company (Emergency Provisions) Act, XXVIII of

(1) [1954] S. C. R 587. (2) [1950] S. C. R. 869.

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1950 abridged his fundamental rights conferred under Articles 14, 19 and 31 of the Constitution. This Court by a majority of 3 to 2 dismissed the petition holding that the presumption in regard to the constitutionality of the Act had not been displaced by the petitioner and that it had not been proved that the impugned statute was a hostile or a discriminatory piece of legislation as against him, or that the State had taken possession of his share. The minority held that the impugned statute was void as it abridged the petitioner's fundamental rights under Art. 14 of the Constitution. This decision was delivered on 4th December, 1950.

The suit out of which this appeal arises was decided by the High Court of Bombay during the pendency of Chiranjit Lal Chowdhuri's petition in this court. Most of the facts furnishing the cause of action for the suit have been detailed in the judgment of this court in that case, but it seems necessary to briefly re-state them from a proper appreciation of the contentions that have been raised in the appeal.

The Sholapur Spinning and Weaving Company Ltd., was incorporated under the Indian Companies Act with an authorized capital of Rs. 48 lakhs divided into 1,590 fully paid up ordinary shares of Rs. 1,000 each, 20 fully paid up ordinary shares of 500 each, and 32,000 partly paid up cumulative preference shares of Rs. 100 each, the paid up capital of the company being Rs. 32 lakhs comprised of Rs. 16 lakhs fully paid up ordinary shares and Rs. 16 lakhs partly paid up preference shares, Rs. 50 being unpaid on each of the 32,000 cumulative preference shares. The company did good business and declared high dividends for some time ; but in the year 1949, there was accumulation of stocks and financial difficulties. In order to overcome this situation the directors decided to close the Mills and on the 27th July, 1949, they gave notice of this decision to the workers. Pursuant to this notice the Mills were closed on the 27th August, 1949. This created a labour problem and to solve it the Government on the 5th October, 1949, appointed a

Controller to supervise the affairs of the Mills under the Essential Supplies Emergency Powers Act, 1946. On the 9th November, 1949, the Controller in order to resolve the deadlock decided to call in more capital and he asked the directors of the company to make a call of Rs. 50 per share on the preference shareholders, the amount remaining unpaid on each of the preference shares. The directors refused to comply with this requisition, as in their judgment that was not in the interest of the company. Thereupon the Governor-General on the 9th January, 1950, promulgated the impugned Ordinance, under which the Mills could be managed and run by directors appointed by the Central Government. On the 9th January, 1950, the Central Government acting under section 15 of the Ordinance delegated all its powers to the Government of Bombay. The Government of Bombay then appointed certain directors who took over the assets and management of the Mills. On the 7th February, 1950, they passed a resolution making a call of Rs. 50 on each of the preference shares payable at the time stated in the resolution. Pursuant to this resolution a notice was addressed on the 22nd February, 1950, to the plaintiff in the suit, who held preference shares, to pay Rs. 1,62,000, the amount of the said call on or before the 3rd April, 1950. The plaintiff instead of meeting the demand, filed the present suit on the 28th March, 1950, in a representative capacity on behalf of himself and other preference shareholders against the company and the directors appointed by the Government of Bombay challenging the validity of the Ordinance and questioning the right of the directors to make the call. On the 19th April, 1950, a notice was given to the Attorney-General of India of the said suit and the Union of India was added as defendant No. 9 therein.

The principal allegations in the suit were that the Ordinance was illegal, *ultra vires* and invalid as it contravened the provisions of section 299 (2) of the Government of India Act, 1935, and all the provisions contained in Part III of the Constitution, and that the resolution of the directors dated 7th February,

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1950, making a call was illegal and *ultra vires,* as the law under which they were appointed was itself invalid. The plaintiff claimed relief in the form of a declaration regarding the invalidity of the Ordinance and prayed for an injunction restraining the directors from giving effect to the resolution. The defendants denied the correctness of the contentions put forward by the plaintiff.

Mr. Justice Bhagwati, who tried the suit, framed the following issues therein :—

1. Whether by the Ordinance the plaintiff and holders of prefernce shares have been deprived of their interest in the 1st defendant company by taking possession of or requisitioning or acquiring the same as alleged in para. 6 of the plaint ;

2. Whether s. 4 (d) of the Ordinance is illegal, *ultra vires,* and void in law as alleged ; and

3. Whether the resolution dated the 7th February, 1950, made by defendants 2 to 6 is illegal, *ultra vires,* void and inoperative in law for the reasons mentioned in para. 6 of the plaint or any of them.

By his judgment dated the 28th June, 1950, the learned Judges answered all the three issues in the negative and dismissed the suit, and this decision was affirmed on appeal. It was held that by force of the Ordinance the State had neither acquired the property of the plaintiff, nor of the company, nor had it taken possession of it, but that the title to the property and its possession were with the respective owners, and the State was only supervising the affairs of the company through its nominated directors. It was further held that the Ordinance had not in any manner infringed the rights of the plaintiff under Art. 14 of the Constitution and there had been to him no denial of equality before the law or equal protection of laws, as the Ordinance was based on a classification which rested upon a ground having a fair and substantial relation to the object of the legislation and that it had a reasonable basis for that classification. It was also held that the restrictions

imposed on the right of the appellant and the company to hold his or its property were imposed in the interests of the general public.

The principal questions for consideration in this appeal are :—

1. Whether the provisions of the Ordinance for taking over the management and administration of the company, contravene the provisions of article 31 (2) of the Constitution ; and

2. Whether the Ordinance as a whole or any of its provisions infringe articles 14 and 19 of the Constitution.

In order to decide these issues it is necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature has really done; the court, when such questions arise, is not overpersuaded by the mere appearance of the legislation. In relation to constitutional prohibitions binding a legislature it is clear that the legislature cannot disobey the prohibitions merely by employing indirect method of achieving exactly the same result. Therefore, in all such cases the court has to look behind the names, forms and appearances to discover the true character and nature of the legislation.

The preamble of the Ordinance states :—

"On account of mismanagement and neglect a situation has arisen in the affairs of the Sholapur Spinning & Weaving Company, Ltd., which has prejudicially affected the production of an essential commodity and has caused serious unemployment amongst a certain section of the community".

Section 3 is the most material section and is in these terms :—

"The Central Government may at any time by notified order appoint as many persons as it thinks fit to be directors of the company for the purpose of taking over its management and administration and may appoint one of such directors to be the chairman."

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The provisions of this section are supplemented by what is subsequently provided for in section 12 which provides that notwithstanding anything contained in the Companies Act or in the memorandum or articles of association of the company, it shall not be lawful for the shareholders of the company or any other person to nominate or appoint any person to be a director of the company, that no resolution passed at any meeting of the shareholders of the company shall be given effect to unless approved by the Central Government, and that no proceeding for the winding up of the company or for the appointment of a receiver in respect thereof shall lie in any court unless by or with the sanction of the Central Government, and subject to such exceptions, restrictions and limitations as the Central Government may by notified order specify, the Companies Act shall continue to apply to the company in the same manner as it applied thereto before the issue of the notified order under section 3. Section 4 states the effect of the order of the Central Government appointing directors. It provides that all the directors of the company who were holding office as such immediately before the issue of the notified order shall be deemed to have vacated their offices. In other words, the directors elected and appointed by the shareholders stand automatically dismissed without more. Not only do the directors stand automatically dismissed by legislative action, the managing agents also share their fate and their contracts come to an end. Section 4 directs the persons appointed under section 3 to take into custody and under their control all the property, effects and actionable claims to which the company is or appears to be entitled and to exercise all the powers of the directors of the company, whether those powers are derived from the Companies Act or from the memorandum or articles of association or from any other source. By section 5 these nominated directors are given powers to raise funds in such manner and offer such security as they may deem fit. They are given the overriding power of cancelling and varying contracts and agreements

entered into between the company and any other person at any time if they are satisfied that the contract or the agreement is detrimental to the interests of the company. Section 10 denies to the managing agents compensation for the premature termination of the contract of management entered into by the company and it also says that no person shall be entitled to compensation in respect of a cancelled or varied contract under this Ordinance, entered into with the company. The Ordinance thus confers powers on the directors of overriding all contracts and deprives persons who had entered into contracts with the company of their right under the ordinary law to recover compensation. Sections 6, 7 and 8 of the Ordinance lay down the method and manner how the existing directors were to give charge of the company's affairs and properties to the directors nominated by the Central Government under section 3 and any default in the matter of handing over charge is made punishable by imprisonment or other punitive action.

The result of these provisions is that all the properties and effects of the company pass into the hands of persons nominated by the Central Government who are not members of the company or its shareholders, or in any way connected with it, and who are merely the creatures of the Central Government or its dummies. The combined effect of the provisions of sections 3, 4 and 12 is that the Central Government becomes vested with the possession, control and management of the property and effects of the company, and the normal function of the company under its articles and the Indian Companies Act comes to an end. The shareholders' most valuable right to appoint directors to manage the affairs of the company and be in possession of its property and effect is taken away. Resolutions passed by them lose all vigour and become subject to the veto of the Central Government. Their power of voluntarily winding up the company formed by them or of winding it up through court also becomes subject to the veto of the Central Government. The Central Government by

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executive action can override, if it likes, all the provisions of the Indian Companies Act. In substance therefore by the provisions of this Ordinance the company and its shareholders as well as its directors and managing agents have been completely deprived of possession of the property and effects of the company, and its possession has been taken by the Central Government, *i.e.,* by the Union of India. The undertaking purports to have been taken over for a public purpose, namely, to keep up the production of an essential commodity, and to avoid serious unemployment amongst a certain section of the people.

The majority of the court in *Chiranjitlal Chowdhuri's* case(1), was inclined to take the view that that was the true effect of the provisions of the Ordinance. Mukherjea J., with whose views Kania C. J., concurred, and to whose views to a certain extent Fazl Ali J. subscribed on this part of the case said as follows :—

"Mr. Chari, on the other hand, has contended on behalf of the petitioner that after the management is taken over by the statutory directors, it cannot be said that the company still retains possession or control over its property and assets. Assuming that this State management was imposed in the interests of the shareholders themselves and that the statutory directors are acting as the agents of the company, the possession of the statutory directors could not, it is argued, be regarded in law as possession of the company so long as they are bound to act in obedience to the dictates of the Central Government and not of the company itself in the administration of its affairs. Possession of an agent, it is said, cannot juridically be the possession of the principal, if the agent is to act not according to the commands or dictates of the principal, but under the direction of an exterior authority.

There can be no doubt that there is force in this contention."

Mr. Justice Patanjali Sastri, as he then was held that the effect of the Act was that all the properties and effects of the company passed into the absolute

(1) [1950] S.C.R. 869.

power and control of the Central Government and the normal function of the company as a corporate body came to an end. Mr. Justice Das on this part of the case said as follows :—

"It is, however, urged by the learned Attorney-General that the mills and all other assets now in the possession and custody of the new directors who are only servants or agents of the said company are, in the eye of the law, in the possession and custody of the company and have not really been taken possession of by the State. This argument, however, overlooks the fact that in order that the possession of the servant or agent may be juridically regarded as the possession of the master or principal, the servant or agent must be obedient to, and amenable to the directions of, the master or principal. If the master or principal has no hand in the appointment of the servant or agent or has no control over him or has no power to dismiss or discharge him, as in this case, the possession of such servant or agent can hardly, in law, be regarded as the possession of the company. In this view of the matter there is great force in the argument that the property of the company has been taken possession of by the State through directors who have been appointed by the State in exercise of the powers conferred by the Ordinance and the Act and who are under the direction and control of the State and this has been done without payment of any compensation..... Here, therefore, it may well be argued that the property of the company having been taken possession of by the State in exercise of powers conferred by a law which does not provide for payment of any compensation, the fundamental right of the company has, in the eye of the law, been infringed."

The learned Attorney-General combated this view and strenuously argued that the Ordinance could not be construed in the manner suggested above and on its true construction its effect was that the Government took under its superintendence the affairs of the company without in any way disturbing its title in the property and that the shareholders have still to a certain extent an effective voice in its affairs. Illustratively

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he said that the company was in the same state as a disqualified owner is under the provisions of the Court of Wards Act and that the provisions of the Ordinance should be construed in that light. To emphasize the same point of view reference was also made to the provisions of the Lunacy Act, the provisions of sections 52-A and 52-B introduced in the Insurance Act by Act 47 of 1950, the provisions of the Railway Companies Emergency Powers Act (51 of 1951), and also to the provisions of Act 65 of 1951 (Development of Industries Act), and it was contended that the impugned Ordinance was a piece of social control legislation as were the provisions contained in the statutes referred to above.

In my opinion, these contentions are not well founded. Reference to illustrative pieces of legislation designed on the same pattern is neither very happy nor apposite ; on the other hand, it is apt to mislead because except in the case of the Court of Wards Act, all the laws to which reference was made were enacted after the enactment of the Ordinance in question. The different Court of Wards Acts being existing laws have been excepted from the fundamental right guaranteed by article 31 (2). That being so, they can afford little assistance in judging the validity of the impugned law. In dealing with constitutional matters of this kind it is always well to bear in mind what Bradley, J., speaking for the court said in *Boyd* v. *United States*(1), at page 635 :—

"Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon."

(1) 116 U.S. 616.

These illustrative pieces of legislation to which the learned Attorney-General made reference may well have to be judged in the light of these observations when occasion arises. Reference may also be made to the observations of Holmes C. J. in *Pennsylvania Coal Co.* v. *Mahon*(1), wherein that learned Judge said as follows :—

"As long recognized, some values were enjoyed under an implied limitation and must yield to police power but obviously the implied limitation must have its limits or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most, if not in all cases, there must be an exercise of eminent domain and compensation to sustain the act."

In my judgment, in the determination of all such cases no abstract standard or general rule can be laid down and the question is really one of degree and hence its determination depends on the facts of each case. In these circumstances, what is to be determined here is whether the provisions of the Ordinance have not overstepped the limits of social legislation and whether they do not come within the ambit of article 31 (2).

The Ordinance in question is not a law of a general character and applicable to all companies that may fall in a particular category or class. It deals only with a single company and it is difficult to say that mismanagement is a vice peculiar to this company alone and good management is a virtue possessed by all other incorporated companies. That being so, can it be reasonably held that by promulgating this Ordinance the Government has merely taken over the superintendence of the affairs of the company ? Or, has it in effect and substance taken over the undertaking itself ? Obviously, the field of superintendence has to be demarcated from the field of eminent domain. It is one thing to superintend the affairs of a concern and it is quite another thing to take over its affairs

(1) 260 U.S. 322

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and then proceed to carry on its trade through agents appointed by the State itself. It seems to me that under the guise of superintendence the State is carrying on the business or trade for which the company was incorporated with the capital of the company but through its own agents who take orders from it and are appointed by it and in the appointment and dismissal of whom the shareholders have absolutely no voice. The purpose of taking over the company's undertaking is a public purpose, namely, to keep the labour going and contended and to maintain the supply of essential commodity. The company is debarred from carrying on its business in the manner and according to the terms of its charter. Its old complexion stands changed by the terms of the Ordinance. The Ordinance overrides the directors, deprives the shareholders of their legal rights and privileges and completely puts an end to the contract of the managing agents. Without there being any vacancy in the number of directors new directors step in and old directors and managing agents stand dismissed. Exercise of any power by them under the articles is subject to heavy penalties. In this situation it is not possible to subscribe to the contention of the learned Attorney-General that the effect of the Ordinance is that the Central Government has taken over the superintendence of the affairs of the company and that the impugned legislation is merely regulative in character. In the present case, practically all incidents of ownership have been taken over by the State and all that has been left with the company is mere paper ownership. This Ordinance, in my judgment, is an apposite illustration of what Holmes C. J. had in mind when he made the following observations in the case already referred to :—

"Where the seemingly absolute protection in respect of private property given by the Constitution is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. We are in danger of forgetting that a strong public desire to improve the public

condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change and that the general rule is that while property may be regulated to a certain extent but if the regulation goes too far it will be recognized as a taking."

For the reasons given above I am of the opinion that the impugned statute has overstepped the limits of legitimate social control legislation and has infringed the fundamental right of the company guaranteed to it under article 31(2) of the Constitution and is therefore unconstitutional.

Next it was contended that the Ordinance in question in any event could not fall within the mischief of article 31 (2) because the State had not acquired title in the property of the company under its provisions and that whatever possession had been taken had been taken for the purpose of managing the company's property on the company's behalf and that it had not been requisitioned for any State purpose. It was said that unless the property of the company by the provisions of the Ordinance was vested in the State or was commandeered by the State for State purposes, article 31 (2) could not be invoked to judge the constitutionality of the Ordinance, that article 31 (2) covered within its ambit only two forms of taking of property by the State, namely, where the State acquired title in the property or where the State temporarily commandeered it, and that all other forms of taking the property were outside the fundamental right guaranteed by article 31 (2). It was suggested that the scope of the protection given to private property by our Constitution was not as large as it was contained in the Fifth Amendment of the Constitution of the United States of America. According to the learned Attorney-General, the true content of the fundamental right guaranteed by article 31 (1) was that a person could not be deprived of his property except by statutory authority, but once a law was made depriving a person of his property then the article afforded no further protection. Support for this

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contention was sought to be derived from the reasoning employed in *Gopalan's* case (1). There it was held that the freedoms relating to the person of a citizen guaranteed by article 19 assume the existence of a free citizen and can no longer be enjoyed if a citizen is deprived of his liberty by the law of preventive or punitive detention. In like manner it was argued that the freedom relating to property guaranteed by article 19 also vanished as soon as a person was deprived of his property under a law enacted by an appropriate legislature. The learned Attorney-General suggested that the two clauses of article 31 were in the nature of two exceptions to the provisions of article 19 (1) (f). The first exception was that the guarantee of freedom given by article 19 (1) (f) could be defeated simply by enacting a statute and the second exception was that it could also be defeated by the State acquiring title in the property in exercise of its power of eminent domain within the limited field prescribed by article 31 (2) but that if a certain deprivation of property did not fall within the prescribed field of article 31 (2) and fell within article 31 (1), then for such deprivation no compensation was payable. As regards clause (5) which excepted certain laws from the ambit of article 31 (2), it was argued that this clause had been inserted in the article by way of abundant caution.

In my judgment, none of these contentions have any validity. The construction sought to be placed by the learned Attorney-General on the language of article 31 is neither borne out by the phraseology employed in that article nor by the scheme of Part III of the Constitution. It seems to me that our Constitution subject to certain exceptions has guaranteed the fullest protection to private property. It has not only provided that no person can be deprived of property by the executive without legislative sanction but it has further provided that even the legislature cannot deprive a person of his property unless there is a public purpose and then only on payment of compensation. This article provides as follows :—

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

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

(2) 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.

(3) 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.

(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.

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(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935."

It bears the heading "Right to Property". It is significant that the different articles in Part III have been put in several groups, each bearing a heading of its own. These headings briefly indicate the nature and character of the fundamental rights thus grouped. The first group of articles 14 to 18, bears the heading "Right to Equality". The fundamental right of equality in matters of law, religion, social status etc. is mentioned in the different articles grouped under this heading. Articles 19 to 22 have been grouped under the heading "Right to Freedom". Not only are the protections given against deprication of personal freedom mentioned in this group but it also mentions cases where personal freedom can be deprived by certain laws. Similarly, other articles in this part have been grouped under the headings "Right against exploitation", "Educational rights" and "Constitutional remedies". Under this scheme the fundamental right regarding property apart from personal and property freedoms has been dealt with in this part separately as a self-contained provision and as a distinct subject from the various freedoms declared by article 19. In considering article 31 it is significant to note that it deals with private property of persons residing in the Union of India, while article 19 only deals with citizens defined in article 5 of the Constitution. It is thus obvious that the scope of these two articles cannot be the same as they cover different fields. It cannot be seriously argued that so far as citizens are concerned, freedoms regarding enjoyment of property have been granted in two articles of the Constitution, while the protection to property qua all

other persons has been dealt with in article 31 alone. If both articles covered the same ground, it was unnecessary to have two articles on the same subject. The true approach to this question is that these two articles really deal with two different subjects and one has no direct relation with the other, namely, article 31 deals with the field of eminent domain and the whole boundary of that field is demarcated by this article. In other words, the State's power to take the property of a person is comprehensively delimited by this article. The article has been split up in six clauses. Moreover, by the amendment of the Constitution certain kinds of laws have been exempted from the operation of the article or from the whole of Part III of the Constitution by the addition of articles 31A and 31B. Article 31(1) declares the first requisite for the exercise of the power of eminent domain. It guarantees that a person cannot be deprived of property by an executive fiat and that it is only by the exercise of its legislative powers that the State can deprive a person of his property. In other words, all that article 31(1) says is that private property can only be taken pursuant to law and not otherwise. A reference to Cooley's Constitutional Limitations fully bears out what the true content of article 31(1) is. This is what he has said at page 1119 (8th edn.) :—

"*Legislative authority requisite*: The right to appropriate private property to public uses lies dormant in the State, until legislative action is had, pointing out the occasions, the modes, conditions and agencies for its appropriations. Private property can only be taken pursuant to law."

Article 31(2) defines the powers of the legislature in the field of eminent domain. It declares that private property shall not be taken by the State under a law unless the law provides for compensation for the property taken. It is also implicit in the language of the article that such taking can only be for public purposes. Clause (3) of the article places an additional limitation on State laws enacted on this subject while clause (4) limits the justiciability of the quantum of compensation in certain cases. Clause (5) is the saving clause. It saves

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from the operation of clause (2) laws made on certain subjects. The scope of the first clause being merely to save private property from being taken purely by executive action and the only clause which limits legislative action in the field of eminent domain being clause (2), the saving clause therefore concerns itself with clause (2) only.

As pointed out in Willis on Constitutional Law, at page 716, police power, power of taxation and eminent domain are all forms of social control and probably include all the forms of social control known to the law: but each differs from the others; though it is possible to distinguish each from the others, yet each has characteristics which resemble the characteristics of others and there are times when it is very difficult to draw a line between the one and the others. The saving clause (5) in article 31 has been designed with the express purpose of saving to a certain extent laws made in exercise of the police power of the State which may lead to deprivation property. It has also saved laws relating to tax. It has thus delimited from the field of eminent domain the field of exercise of police power and the exercise of the power of taxation. Not only has it saved from the mischief of clause (2) of article 31 provisions of laws made for the purpose of imposing or levying any tax or penalty and the laws made for promotion of public health or the prevention of danger to life or property, but it has also saved from the mischief of the clause the provisions of all existing laws which may be construed as amounting to deprivation of property of a person as well as evacuee property laws under which the State takes possession of properties of persons who have left India for Pakistan. In the result the saving clause comprehensively includes within the ambit all the powers of the State in exercise of which it could deprive a person of property without payment of compensation. In other words, all forms of deprivation of property by the State without payment of compensation have been included within the ambit of the exception clause, while other forms of deprivation of property which are outside the ambit of the exception

clause are inevitably within the mischief of clause (2) of the article. From the language employed in the different sub-clauses of article 31 it is difficult to escape the conclusion that the words "acquisition" and "taking possession" used in article 31 (2) have the same meaning as the word "deprivation" in article 31(1). The learned Attorney-General suggested that much weight could not be attached in construing article 31 to the provisions of clause (5) inasmuch as the saving clause had been introduced by the article merely by way of abundant caution. I am unable to accede to this contention as it seems to me that the Constitution while defining and delimiting fundamental rights would not introduce in the articles dealing with those rights some matter merely by way of abundant caution. To my mind, it was essential while delimiting and defining fundamental rights to fully define the field of the right and to say what was not included within that right. As already said, the article read as a whole comprehensively defines the State's power of eminent domain as distinguished from all its other powers the exercise of which may amount to the taking of private property. The argument that these exceptions were incorporated in article 31 by way of abundant caution further stands negatived by the contents of sub-clause (5) (b) (ii) of the article. Only laws made for the promotion of public health or for prevention of danger to life or property have been excluded from the mischief of clause (2) of the article, while other laws made in exercise of power of social control which deprive a person of property have not been saved from the operation of clause (2). Illustratively, laws made by the State dealing with morality and which may lead to deprivation of property are outside the ambit of the exception clause. *A fortiori,* any deprivation of property under a law made for promotion of morality would fall within the mischief of clause (2) of article 31. It is thus clear that only that form of legislation which promotes public health or prevention of danger to life or property is saved from the provisions of article 31(2), while other laws made in exercise of the power of social control, if they deprive a person of

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property, are not saved from the operation of clause (2) of article 31.

In support of his contention that the content of article 31(1) was larger than that of article 31(2) and that except in cases where the form of taking private property took the shape of acquisition of title or requisition for State uses, in all other cases the State could deprive a person of his property by simply making a law, the learned Attorney-General placed reliance on the following observations of my brother Das in *Chiranjit Lal Chowdhuri's* case(1) :—

"Article 31 (1) formulates the fundamental right in a negative form prohibiting the deprivation of property except by authority of law. It implies that a person may be deprived of his property by authority of law. Article 31(2) prohibits the acquisition or taking possession of property for a public purpose under any law, unless such law provides for payment of compensation. It is suggested that clauses (1) and (2) of article 31 deal with the same topic, namely, compulsory acquisition or taking possession of property, clause (2) being only an elaboration of clause (1) There appear to me to be two objections to this suggestion. If that were the correct view, then clause (1) must be held to be wholly redundant and clause (2), by itself, would have been sufficient. In the next place, such a view would exclude deprivation of property otherwise than by acquisition or taking of possession. One can conceive of circumstances where the State may have to deprive a person of his property without acquiring or taking possession of the same. For example, in any emergency, in order to prevent a fire spreading, the authorities may have to demolish an intervening building. This deprivation of property is different from acquisition or taking of possession of property which goes by the name of 'eminent domain' in the American law. The construction suggested implies that our Constitution has dealt with only the law of 'eminent domain', but has not provided for deprivation of property in exercise of

(1) [1950] S.C.R. 869.

'police power'. I am not prepared to adopt such construction, for I do not feel pressed to do so by the language used in article 31. On the contrary, the language of clause (1) of article 31 is wider than that of clause (2), for deprivation of property may well be brought about otherwise than by acquiring or taking possession of it. I think clause (1) enunciates the general principle that no person shall be deprived of his property except by authority of law, which, put in a positive form, implies that a person may be deprived of his property, provided he is so deprived by authority of law. No question of compensation arises under clause (1). The effect of clause (2) is that only certain kinds of deprivation of property, namely, those brought about by acquisition or taking possession of it, will not be permissible under any law, unless such law provides for payment of compensation. If the deprivation of property is brought about by means other than acquisition or taking possession of it, no compensation is required, provided that such deprivation is by authority of law."

Similar observations were made by my brother in *the Bihar Zamindari* case(1). Undoubtedly great weight must be given to the opinion expressed on this question by my learned brother and had I not felt convinced that his approach to this question was illiberal and restricted, I would have hesitated to differ from his views. After a full consideration of the problem and after giving due weight to the reasoning of my learned brother, I am unable, for reasons above stated, to agree with him. The objections envisaged by my brother in *Chiranjit Lal Chowdhuri's* case (2) against the suggestion that clauses (1) and (2) of article 31 deal with the same topic of compulsory acquisition or taking of property do not at all oppress me and do not seem to me to be insurmountable or cogent.

On the assumption that clauses (1) and (2) of article 31 deal with the same topic, it is not clear to me why in that context article 31(1) somehow becomes

(1) [1952] S.C.R. 889.
(2) [1950] S.C.R. 869.

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redundant. This is the only clause in the article which gives protection to private property from being taken under executive orders without legislative sanction behind them. The first requisite for the exercise of the power of eminent domain is that it can only be exercised pursuant to law. It was necessary while delimiting the field of eminent domain to state that in the article. If the State had been entitled by clause (1) to take away private property merely by making a law, then no question of paying compensation would arise, whether the taking assumed one form or another. Acquisition of property or its requisition, on that construction of the article, are merely two modes of depriving a person of property and must be held to be included within the ambit of clause (1) of article 31, and clause (2) has not been drafted in the nature of an exception to the provisions of clause (1) of article 31. On this construction of clause (1) of article 31 the logical conclusion is that what has been done by this clause is that it has declared a fundamental right in the State as against an individual. Such a construction of the article in Part III, in my opinion, has to be avoided, as the purpose of those articles is to declare the fundamental rights possessed by the citizens or other persons residing within the Union, rather than to declare the rights of the State as against them.

Secondly, my learned brother was oppressed with the idea that if a wide construction was not placed on the phraseology employed in clause (1), deprivation of property by the State in cases of emergency, for instance, in order to prevent a fire from spreading, would also have to be paid for. It seems that in that case pointed attention was not drawn during arguments to the comprehensive provisions of the saving clause of the article which seems fully to cover cases of that kind. The Constitution makers were fully alive to cases of that character and considering that all such cases, unless excepted, would fall within the mischief of clause (2), they purposely excepted them from the ambit of the clause.

The majority of the court in *Chiranjit Lal Chowdhuri's* case(1) refrained from expressing any opinion on the scope of article 31 (1). My brother Mukherjea made a reference to this question but declined to express any opinion on it. There is thus no concensus of opinion on the scope of the provisions of clause (1) of article 31 in this court and no final opinion has been pronounced upon it so far.

The result of the above discussion is that, in my opinion, article 31 is a self-contained provision delimiting the field of eminent domain and article 31 clauses (1) and (2) deal with the same topic of compulsory acquisition of property.

The contention of the learned Attorney-General that on the analogy of the decision of this court in *Gopalan's* case(2) it should be held that when a person is deprived of private property by authority of law that deprivation puts an end to all the freedoms regarding property guaranteed under article 19, does not require any detailed examination in the light of the construction placed by me on the language of article 31(1). It was conceded by the learned counsel that that decision would have had no application once it was held that clauses (1) and (2) of article 31 dealt with the same topic of compulsory acquisition of property.

The next contention of the learned counsel that the word "acquisition" in article 31 (2) means the acquisition of title by the State and that unless the State becomes vested with the property there can be no acquisition within the meaning of the clause and that the expression "taking possession" connoted the idea of requisition cannot be sustained and does not, to my mind, affect the decision of the case. As above pointed, both these expressions used in clause (2) convey the same meaning that is conveyed in clause (1) by the expression "deprivation". As I read article 31, it gives complete protection to private property as against executive action, no matter by what process a

(1) [1950] S.C.R. 869.
(2) [1950] S.C.R 88.

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person is deprived of possession of it. In other words, the Constitution declares that no person shall be deprived of possession of private property without payment of compensation and that too under the authority of law, provided there was a public purpose behind that law. It is immaterial to the person who is deprived of property as to what use the State makes of his property or what title it acquires in it. The protection is against loss of property to the owner and there is no protection given to the State by the article. It has no fundamental right as against the individual citizen. Article 31 states the limitations on the power of the State in the field of taking property and those limitations are in the interests of the person sought to be deprived of his property. The question whether acquisition has a larger concept than is conveyed by the expression "taking possession" is really of academic interest in view of the comprehensive phraseology employed by clause (2) of article 31. As the matter was argued at some length, I propose to briefly indicate my opinion on that point.

For the proposition that the expression "acquisition" has the concept of vesting of title in the State reliance was placed on the opinion of Latham C. J. in *Minister of State for the Army* v. *Dalziel*(1). By virtue of the provisions of section 51, placitum (xxxi) of the Constitution of Australia, the Commonwealth Parliament is empowered to make laws with respect to "the acquisition of property on just terms from any state or person for any purpose in respect of which the Parliament has power to make laws." General regulations styled as the National Security Regulations were made under the national Security Act, 1939-1943, section 5. Regulation 54 relates to the taking of possession of land by the Commonwealth and other regulations provide for the ascertainment and payment of compensation for loss or damage suffered by reason of things done in pursuance of the regulation. The Supreme Court of New South Wales held that taking possession of land in pursuance of Reg. 54 amounted to acquisition

(1) 68 C.W.L.R. 261.

of property within the meaning of section 51 (xxxi) of the Constitution, On appeal Latham C. J. made the following observations :—

"The Commonwealth cannot be held to have acquired land unless it has become the owner of land or of some interest in land. If the Commonwealth becomes only a possessor but does not become an owner of land, then, though the Commonwealth may have rights in respect to land, which land may be called property, the Commonwealth has not in such a case acquired property.....

Accordingly, in my opinion, the facts that the right to possession is the most valuable attribute of ownership, that possession is *prima facie* evidence of ownership, and that possession may develop into ownership, do not justify any identification of possession with ownership, but, on the contrary, emphasize the distinction between the two ideas. The fact that the Commonwealth is in possession of land as a result of action under the Regulations does not show that the Commonwealth has become the owner of the land or of any estate in the land".

The majority of the court held otherwise and expressed the opinion that the taking under Regulation 54 of the National Security (General) Regulations by the Commonwealth for an indefinite period of the exclusive possession of property constituted an acquisition of property within the meaning of section 51 (xxxi) of the Constitution. This is what Rich J. said, representing the majority opinion :—

"It would, in my opinion, be wholly inconsistent with the language of the placitum to hold that, whilst preventing the legislature from authorizing the acquisition of a citizen's full title except upon just terms, it leaves it open to the legislature to seize possession and enjoy the full fruits of possession, indefinitely, on any terms it chooses, or upon no terms at all. In the case now before us, the Minister has seized and taken away from Dalziel everything that made his weekly tenancy worth having, and has left him with the empty husk of tenancy. In such circumstances, he may well say :—

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'You take my house, when you do take the prop
That doth sustain my house; you take my life,
When you do take the means whereby I live.'"

In the present case nothing has been left with the company but the mere husk of title.

In my judgment, the true concept of the expression "acquisition" in our Constitution as well as in the Government of India Act is the one enunciated by Rich J. and the majority of the court in *Dalzie's* case(1). With great respect I am unable to accept the narrow view that "acquisition" necessarily means acquisition of title in whole or part of the property. It has been rightly said that a close and literal construction of constitutional provisions made for the security of person and property deprives them of half their efficacy and ends in a gradual depreciation of the right as if the right consisted more in sound than in substance. In other words, such provisions cannot be construed merely by taking a dictionary in hand. The word "acquisition" has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of. The learned Attorney-General combated this view and contended that such a wide concept of the meaning of the word "acquisition" was contrary to legislative practice in India which practice was in accord with the view enunciated by Latham C.J. in the case above cited. It was said that the decided cases in India supported that construction of the word. Reference was made to a decision of Bhagwati J. in *Tan Bug Taim* v. *Collector of Bombay*(2). That case concerned the requisition by the State of the premises of a leading Bombay Chinese restaurant. On a petition presented to court under section 45 of the Specific Relief Act, Bhagwati J. held that having regard to the principles applicable to British jurisprudence which had been enacted in section 299 (1) and (2) of the Government of India Act,

(1) 68 C.W.L.R. 261.

(2) I.L.R. 1946 Bom. 511.

requisition of land could not be considered as being included either in item 9 or item 21 of List II of the 7th Schedule of the Act, that the word "acquisition" implied ownership in the property or rights in or over such property, while "requisition" implied deprivation of the owner of the property for the time being of the use and possession thereof and meant control of the property, and that there was no warrant for holding that so far as legislative practice in India was concerned, "requisition" was included in "acquisition". The learned Judge preferred to follow the view of Latham C.J. and refused to follow the majority judgment in *Dalziel's* case(1). Having considered the matter in full, and with respect to the learned Judge, I prefer to follow the view of the majority of the court, because it seems to me that it is more in consonance with juridical principle that possession after all is nine-tenths of ownership, and once possession is taken away, practically everything is taken away, and that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect. As already said, the correct approach in such cases should be this: what in substance is the loss or injury caused to the owner and not what manner and method has been adopted by the State in taking the property.

That the view expressed by Bhagwati J. did not truly represent the intent of Parliament in drafting entry 9 of List II of the 7th Schedule becomes clear from what happened subsequent to this pronouncement. After this judgment was delivered, an Act was passed by Parliament amending the Government of India Act nullifying the effect of the judgment as regards requisition of property. The Indian (Proclamation of Emergency) Act, 1945, (9 & 10 Geo. 6 Ch. 23) was promulgated on February 14, 1946, the judgment of Bhagwati J. having been delivered on August 9, 1945, section 102 of the Government of India Act was amended and by it the Central Legislature, when a proclamation of emergency was in force,

(1) 68 C.W.L.R. 261.

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was empowered to make laws for a province or a part thereof, in respect of any matters not enumerated in any of the lists of the 7th Schedule. Reference was also made to certain observations of my brother Das in *Chiranjit Lal Chowdhuri's* case(2) in which the opinion was expressed that the word "acquisition" had implicit in it the idea of vesting of property in the State. For the reasons already given, with great respect, I am unable to subscribe to that view.

Reference was also made to a decision of the Punjab High Court in *Jupiter General Insurance Co.* v. *Rajagopalan*(2). This case concerned the provisions of sections 52 and 52(a) of the Insurance Amendment Act, 1950. It was contended there that those provisions abridged the fundamental rights guaranteed by article 31(2) of the Constitution. In view of the decision of this Court in *Chiranjit Lal Chowdhuri's* case(1), the Punjab High Court construed the word "acquisition" in the narrower sense and held that as the beneficial interest in the property remained in the insurer the provisions of the impugned section did not amount to appropriation of the insurer's property and merely amounted to exercise of police power. It was further held that the pith and substance of the impugned legislation was the regulation of insurance companies and winding up such corporations, if that was most advantageous to the general interest of policy holders. It is unnecessary for the purpose of this case to say anything about the correctness of that decision.

In the light of these different decisions the Constitution employed more comprehensive phraseology in article 31 than had been employed in the entries of the 7th Schedule appended to the Government of India Act, 1935, and which became the subject matter of construction in the case decided by Bhagwati J. In the entries of the 7th Schedule appended to the Constitution the word used is "requisition" but the same phraseology has not been employed purposely in clause (2) of article 31, in all

(1) [1950] S.C.R. 869.
(2) A.I.R. 1952 Punjab 9.

probability to avoid any controversy on the scope of the article by giving a limited meaning to these two words.

On the finding that the company's property was in effect taken possession of under the provisions of the Ordinance by the State and that the company was deprived of it, there is no escape from the conclusion that the impugned Ordinance and the statute following it are void as both of them encroach on the fundamental right of the company under article 31(2) of the Constitution.

It was then argued that even so the plaintiff in the suit was not entitled to the relief claimed by him as it was the company alone that could complain about the abridgement of its fundamental rights by the Ordinance in question. It was also contended that the plaintiff's fundamental right to property had not been infringed in any manner as his property in the share had not been taken possession of by the State. Finally it was said that on both these questions the majority decision of this court in *Chiranjit Lal Chowdhuri's* case(1) was conclusive. I am unable to sustain any one of these contentions. Undoubtedly the majority decision in *Chiranjit Lal Chowdhuri's* case (1) has binding force till it is reconsidered or overruled by this court. But this decision, in my opinion, has no apposite application to the facts and circumstances of this case and is clearly distinguishable. My reasons for saying so are these :—

1. The decision in *Chiranjit Lal Chowdhuri's* case(1) was given on a petition presented to this court in exercise of its jurisdiction under article 32 of the Constitution. *Inter alia,* Chowdhuri's grievance was that his fundamental right under article 31(2) of the Constitution had been infringed by the impugned law, inasmuch as the State had taken possession of the company's property and that all the rights and privileges annexed to his share had thereby been lost. The majority of the court took the view that the petitioner was still in possession of his share and that he had power to dispose of that share, that he could

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receive a dividend on that share, and that though he had lost some of the privileges annexed to his share, it could not be said that the State had taken possession of his share or was exercising the privileges which he enjoyed as a shareholder. The situation however of the present plaintiff and of all the preference shareholders whom he represents is quite different. Chiranjit Lal was an ordinary shareholder of a fully paid up share. The plaintiff and the other preference shareholders are in a different situation from Chiranjit Lal. All of them hold partly paid up preference shares on which their liability amounts to a sum of Rs. 16 lakhs, the plaintiff alone being under a liability of Rs. 1,62,000. In case this liability is not met when it is sought to be enforced, the shares are liable to forfeiture. The plaintiff and the other preference shareholders therefore are in imminent danger of losing the shares themselves or losing valuable property in the nature of money which they will have to pay out in order to meet the call. For all practical purposes the plaintiff is in danger of losing valuable property which the State is threatening to take possession of. Not only will these shareholders lose their shares and be deprived of them but they will also be forced to pay large sums of money and all this will be in exercise of the powers conferred on the directors appointed by the State by the Ordinance in question. There can thus be no comparison between the rights and liabilities of Chiranjit Lal with the rights and liabilities of the present plaintiff and the other preference shareholders.

2. The rights and privileges of preference shareholders even in winding up and in earning dividends are somewhat different from the rights and privileges of the ordinary fully paid up shareholders. The court in *Chiranjit Lal Chowdhuri's* case(1) did not at all advert to the case of preference shareholders and the effect the Ordinance had on their rights. It is evident that it was the refusal of the directors to obey the mandate of the Controller appointed by the Central Government to make a call on the preference

(1) [1950] S.C.R. 869.

shareholders that to a certain extent resulted in the making of the Ordinance. On the 5th October, 1949, the Government appointed a Controller to supervise the affairs of this company. On the 9th November, 1949, the Controller asked the directors of the company to make a call on the preference shareholders. Soon after the directors passed a resolution refusing to comply with the command. On the 9th January, 1950, the Ordinance was promulgated, *i.e.*, soon after the refusal, and on the same day powers were delegated by the Central Government to the Bombay Government under the Ordinance. Next day, on the 10th January, 1950, the Bombay Government appointed its nominees as directors of the company. On the 7th February, 1950, these directors passed a resolution to call up the uncalled capital and actually on the 22nd February, 1950, call was made and the plaintiff was called upon to pay a sum of Rs. 1,62,000. In these circumstances, it cannot be held to be an unreasonable inference that one of the purposes of the Ordinance was to raise further finance for the business of the company so that it may start working. In any case, that was clearly the effect of the Ordinance on the property of the preference shareholders. In these circumstances, it cannot be said that on the rule of *stare decisis* the plaintiff is out of court in view of that decision.

3. In the case of *Chiranjit Lal Chowdhuri*(1) the court was influenced considerably by the fact that a solitary shareholder was trying to enforce the company's fundamental right in the exercise of its jurisdiction under article 32 and that he could not do so unless his own fundamental right under article 31(2) had been infringed. It was said that the complainant could not succeed because somebody else was hurt and that it was an elementary principle of law that in order to justify the grant of extraordinary relief the complainant's need of it and the absence of an adequate remedy at law must clearly appear. Das J. also pointed out that article 32 can only be invoked for the purpose of enforcement of the fundamental right and that that article does not permit an application merely

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for the purpose of agitating the competence of the appropriate legislature in passing any particular enactment unless the enactment also infringes any of the fundamental rights. The learned Judge concluded by saying—

"In exceptional cases where the company's property is injured by outsiders, a shareholder may, under the English law, after making all endeavours to induce the persons in charge of the affairs of the company to take steps, file a suit on behalf of himself and other shareholders for redressing the wrong done to the company, but that principle does not apply here for this is not a suit, nor has it been shown that any attempt was made by the petitioner to induce the old directors to take steps nor do these proceedings purport to have been taken by the petitioner on behalf of himself and the other shareholders of the company."

Here it is quite clear that the present contention has been raised in a suit and not in an application for a writ under article 32. That itself distinguishes *Chiranjit Lal Chowdhuri's* case(1) from the present. It is further clear that all the necessary steps visualised by my learned brother have been taken by the preference shareholders. A requisition for calling a meeting of the shareholders of the company was made on 3rd August, 1950, a meeting was actually held on 28th September, 1950, and on subsequent days and on 5th November, 1950, resolutions were passed that the call should not be made. The resolutions were, however, vetoed by the Government. All the preference shareholders are represented in this suit including some of the directors, the company has been impleaded as a defendant and the old directors of the company have made an application that they should be allowed to support the appeal. On these facts the present case is clearly distinguishable from that of *Chiranjit Lal Chowdhuri*(2).

4. In any case, even if it is held that in view of the binding character of this court's decision in *Chiranjit Lal Chowdhuri's* case(1) the point is concluded, that the State has not taken possession of the shareholders property, I am of the opinion that the plaintiff

(1) [1950] S.C.R. 869.

and the other preference shareholders are entitled in this suit to attack the validity of the Ordinance on the basis of the infringement of the fundamental right of the company. The plaintiff has every right to challenge the authority of the directors to make the call and to question their *locus standi* before they can fix a liability on him. The directors seek to derive authority from the Ordinance. If, however, the Ordinance is void as against the company obviously they are not to be regarded as the directors of the company and would thus have no authority to make the call. It would indeed be a strange thing to hold that the plaintiff in a suit cannot question the authority and the credentials of the person who is seeking to enforce a demand against him. Unless the person making the demand makes out his authority or his credentials to do so, he is not entitled to enforce the demand. In all cases where a pecuniary or other similar liability is sought to be enforced by a person, it is always open to the person challenging the liability to raise the question of the *locus standi* and authority of the person making the demand. If that person claims in the status of an agent of some other person, unless his appointment is validly made, he would have no authority. In this case the shareholders under the articles of association were under a contractual liability to meet calls made by the directors of the company appointed by them. They never agreed to meet a call made by persons appointed by an external authority and in these circumstances they are entitled to question the authority of the person making the call. The directors appointed by the Government can only invoke in aid the authority given to them by the Ordinance and if the Ordinance is void as against the company, they cannot be held to be directors of the company and would therefore have no authority to make the call. In my judgment, therefore, it is plain that the plaintiff is entitled to succeed on the basis of the infringement of the company's fundamental right under article 31 (2), because that is the only authority under which the directors have been brought into existence and are exercising powers by virtue of the provisions of the Ordinance. If they are

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not the validly appointed agents of the company qua the company, they cannot function as directors qua the shareholders.

5. The learned Attorney-General drew our attention to a number of cases for the proposition that unless there was a direct infringement of the fundamental right of the shareholders it was not open to them to take advantage of the breach of a fundamental right of the company. In these wide terms I am unable to accede to this proposition. In my opinion, the correct rule on this point has been stated in Willoughby, at page 20, on the authority of the decision in *Massachusetts* v. *Mellon*(1), and is in these terms:—

"We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise, would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be prevented, the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding".

The rule stated above has apposite application to this case. The plaintiff and the other preference shareholders are in imminent danger of sustaining direct injury as a result of the enforcement of this Ordinance, the direct injury being the amount of the call that they are called upon to pay and the consequent forfeiture of their shares. Not only would they lose

(1) 262 U.S. 447.

their shares, if they do not meet the demand, but they would also have to pay the amount of the call. My brother Das elaborately dealt with this question in *Chiranjit Lal's* case(1), and made reference to all the cases that were cited by the Attorney-General on this subject, *viz., McCabe* v. *Atchison* (2); *Jeffrey Manufacturing Co.* v. *Blagg*(3); *Hendrick* v. *Maryland*(4); *Newark Natural Gas & Fuel Co.* v. *The City of Newark*(5); and in which the rule laid down was that in order to justify the granting of extraordinary relief the complainant's need of it and the absence of an adequate remedy at law must clearly appear and that the complainant cannot succeed because some one else was hurt. He also made reference to the cases of *Truax* v. *Raich* (6), and *Buchanan* v. *Warley* (7). There the court allowed the plea to be raised because in both these cases the person raising it was directly affected. In the first of the two last mentioned cases an Arizona Act of 1914 requiring employers employing more than five workers to employ not less than eighty per cent. native born citizens was challenged by an alien who had been employed as a cook in a restaurant. That statute made a violation of the Act by an employer punishable. The fact that the employment was at will or that the employer and not the employee was subject to prosecution did not prevent the employee from raising the question of constitutionality because the statute, if enforced, would compel the employer to discharge the employee and, therefore, the employee was directly affected by the statute. In the second case a city Ordinance prevented the occupation of a plot by a coloured person in a block where a majority of the residences were occupied by white persons. A white man sold his property in such a block to a Negro under a contract which provided that the purchaser should not be required to accept a deed unless he would have a right, under the laws of the city, to occupy the same as a residence. The vendor sued for

(1) [1950] S.C.R. 869.
(2) 235 U. S. 151.
(3) 235 U. S. 571.
(4) 235 U. S. 610.
(5) 242 U.S. 403.
(6) 239 U.S. 33.
(7) 245 U.S. 60.

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specific performance and contended that the Ordinance was unconstitutional. Although the alleged denial of constitutional rights involved only the rights of coloured persons and the vendor was a white person, yet it was held that the vendor was directly affected, because the courts below, in view of the Ordinance, declined to enforce his contract and thereby directly affected his right to sell his property. Reference was also made to the case of *Darnell* v. *The State of Indiana* (1). That is the only case in which a shareholder was not heard to complain in his own name when the Ordinance infringed the fundamental right of the company, his own rights had not been infringed. In view of this decision my brother Das took the view that Chiranjit Lal who was merely a shareholder and did not suffer any direct injury by the result of the law was not entitled to complain. That may very well have been the correct view in the case of a fully paid up shareholder who had no further liability or who was not likely to suffer in any manner by the enforcement of the Ordinance but the situation of a partly paid up preference shareholder as in this case is quite different and distinguishable and in my judgment the apposite rule to apply to the present case is the one laid down in the cases of *Truax* v. *Raich* (2) and *Buchanan* v. *Warley*(3). The result is that the plaintiff is entitled to challenge the constitutionality of the Ordinance on the basis that it abridges the company's fundamental right under article 31 (2). The plaintiff is thus entitled to succeed in this suit which should have been decreed in the terms in which it was laid.

I am further of the opinion that the question of the *locus standi* of the plaintiff to raise the plea that the Ordinance being void against the company the directors had no authority to make the call, is really of academic interest in this case because here the company has been impleaded as a defendant. Its old directors have made an application to this court supporting the case of the plaintiff on the ground that the Ordinance

(1) 226 U.S. 388.
(2) 239 U.S. 33.
(3) 245 U.S. 60.

is void as it infringes the company's fundamental right under article 31 (2). The learned Attorney-General when asked about this application said that it not having been made in the High Court and having only been made at the last stage of the case should not be entertained. In my view, when the question in issue is one concerning constitutional rights, the matter cannot be viewed purely from a technical angle and if in the interests of doing substantial justice it is necessary to grant permission to the old directors to have their say, technical considerations should not stand in the way of doing so. If the Ordinance qua the company is void, I do not see why the old directors should be debarred from saying so and if it is void qua the company, it can certainly not be sustained qua the shareholders. Some of the directors who are preference shareholders are also represented in the suit as well. In *Chiranjit Lal's* case(1) the question of his *locus standi* was left open by the Chief Justice. This is what the learned Chief Justice said :—

"The first question is whether one individual shareholder can, under the circumstances of the case and particularly when one of the respondents is the company which opposes the petition, challenge the validity of the Act on the ground that it is a piece of discriminatory legislation.....I do not think it is necessary to pronounce a definite opinion on the first point."

In that case Patanjali Sastri J., as he then was, also did not pronounce any definite opinion on the question so far as the shareholder's right to question the invasion of the right to property of the company under article 31 was concerned. This is what the learned Judge said :—

"Whatever validity the argument may have in relation to the petitioner's claim based on the alleged invasion of his right of property under article 31, there can be little doubt that, so far as his claim based on the contravention of article 14 is concerned, the petitioner is entitled to relief in his own right."

(1) [1950] S.C.R. 869.

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The learned Judge did not offer any opinion on the other questions. Mukherjea J. decided the question on grounds somewhat different from that taken by Fazl Ali J. This what the learned Judge said :—

"A discussion of the fundamental rights of the company as such would be outside the purview of our enquiry. It is settled law that in order to redress a wrong done to the company, the action should *prima facie* be brought by the company itself. It cannot be said that this course is not possible in the circumstances of the present case. As the law is alleged to be unconstitutional, it is open to the old directors of the company who have been ousted from their position by reason of the enactment to maintain that they are directors still in the eye of law, and on that footing the majority of shareholders can also assert the rights of the company as such. None of them, however, have come forward to institute any proceeding on behalf of the company. Neither in form nor in substance does the present application purport to be one made by the company itself. Indeed, the company is one of the respondents, and opposes the petition."

Even on the basis of this reasoning the situation of the present plaintiff, as already explained, is quite different and so is that of the company. In these circumstances it cannot be said that the decision given in *Chiranjit Lal's* case(1) is binding on this point, as even the judgments of the Judges forming the majority did not speak with the same voice.

For the reasons given above I would allow this appeal, set aside the judgment of the High Court and decree the plaintiff's suit with costs. It is not necessary to give any decision on issue 2 in view of the decision reached above, *viz.*, whether the law is void because it infringes the fundamental rights under articles 14 and 19.

DAS J.—I agree that this apeal should be allowed but I prefer to rest my decision on the grounds and reasonings set forth in detail in my judgment in

(1) [1950] S.C.R. 869.

Appeal No. 107 of 1952 [*The State of West Bengal* v. *Subodh Gopal Bose*(1)].

This is an appeal by the plaintiff in a suit filed in the Bombay High Court on behalf of himself and other preference shareholders of the respondent company praying for a declaration that the power given to the defendants respondents 2 to 8 who had been appointed directors under the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance II of 1950 (hereinafter referred to as the said Ordinance) to make a call and the resolution passed by the defendants respondents 2 to 6 on the 7th February, 1950, for making a call of Rs. 50 per each preference share are illegal, *ultra vires,* void and inoperative in law. The plaintiff-appellant is the registered holder of 3,244 preference shares of the respondent company of the face value of Rs. 100 per share out of which only Rs. 50 had been paid up and consequently if the call has been duly made, he will have to pay Rs. 1,62,200 in respect of his holding. The plaintiff appellant resists the payment of the call on the ground, *inter alia,* that the said Ordinance is illegal, *ultra vires* and invalid under the provisions of the Government of India Act, 1935, and/or the Constitution of India. No oral evidence was adduced on either side. The matters in issue were argued as questions of law governed by the Constitution. The contention was that the Ordinance was inconsistent with or in derogation of the fundamental rights guaranteed by the Constitution. The suit was dismissed by the trial court and that dismissal was affirmed by the appeal court. The plaintiff has now come up on appeal before us after having obtained a certificate under article 132 (1) of the Constitution from the High Court.

The material facts leading up to the institution of the suit and the terms of the impugned Ordinance have been set out in detail in the judgments delivered by this court in the case of *Chiranjitlal Chowdhuri* v. *The Union of India*(2) where this very Ordinance and the Act which replaced it were challenged

(1) [1954] S.C.R. 587. (2) [1950] S.C.R. 869.

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as unconstitutional and also in the judgment just delivered and it is not necessary for me to recapitulate the same. The determination of the matters in issue depends on the correct interpretation of article 19 (1) (f) read with article 19 (5), article 31 and article 14 of the Constitution.

My view about the correlation between article 19 (1) (f) read with article 19 (5) and article 31 and the true meaning and the respective scope and effect of clauses (1) and (2) of article 31 have been set forth in detail in my judgment in *Chiranjitlal's* case (1) and have been more fully explained in my judgment in Appeal No. 107 of 1952 [*The State of West Bengal* v. *Subodh Gopal Bose and others*(2)] and no reiteration of them is called for. In the light of the conclusions reached and the reasons in support thereof given by me in those judgments I proceed to examine the contentions advanced by the appellant.

The appellant seeks to question the validity of the Ordinance on the ground that it infringes the fundamental rights of (a) the company, (b) the shareholders, (c) the managing agents, (d) the directors elected by the shareholders and (e) persons having contracts with the company. The first thing to consider is whether he can raise the question of constitutionality of the Ordinance founded on the breach of the fundamental rights of anybody other than himself.

The above matter was agitated in *Chiranjitlal's* case (1). There Chiranjitlal Chowdhuri, who was the holder of one fully paid up ordinary share, applied to this court under article 32 challenging the validity of this very Ordinance which is now questioned before us and the Act which eventually replaced it. One of the grounds of attack was that the Ordinance had infringed the fundamental rights of the company under article 19 (1) (f) and article 31 in that it dismissed the managing agents and the directors and authorised the State to appoint new directors and authorised the directors so appointed under the Ordinance to take possession of the company's assets without payment of any compensation. On the point

(1) [1950] S.C.R. 869. (2) [1954] S.C.R. 587.

now under consideration Mukherjea J. expressed himself thus, at page 898 :

"An incorporated company, therefore, can come up to this court for enforcement of its fundamental rights and so may be individual shareholders to enforce their own ; but it would not be open to an individual shareholder to complain of an Act which affects the fundamental rights of the company except to the extent that it constitutes an infraction of his own rights as well. This follows logically from the rule of law that a corporation has a distinct legal personality of its own with rights and capacities, duties and obligations separate from those of its individual members. As the rights are different and inhere indifferent legal entities, it is not competent to one person to seek to enforce the rights of another except where the law permits him to do so. A well known illustration of such exception is furnished by the procedure that is sanctioned in an application for a writ of *habeas corpus*."

And again at page 899 :—

"The rights that could be enforced under article 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the court for relief. This being the position, proper subject of our investigation would be what rights, if any, of the petitioner as a shareholder of the company have been violated by the impugned legislation. A discussion of the fundamental rights of the company as such would be outside the purview of our enquiry."

At pages 904-909 the learned Judge discussed the question whether the impugned law had infringed any fundamental right of the shareholders under article 31 (2) or article 19(1) (f) and answered it in the negative. Kania C. J. agreed with the line of reasoning and the conclusion reached by Mukherjea J. on this point. Fazl Ali J. at page 876 referred to a passage in the judgment of Hughes J. in *McCabe* v. *Atchison*(1) and expressly held that no one except those whose rights

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were directly affected by a law could raise the question of the constitutionality of that law. His Lordship said :

"The company and the shareholders are in law separate entities, and if the allegation is made that any property belonging to the company has been taken possession of without compensation or the right enjoyed by the company under article 19 (1) (f) has been infringed, it would be for the company to come forward to assert or vindicate its own rights and not for any individual shareholder to do so."

As to the question whether the petitioner had succeeded in showing that there had been an infringement of his own rights as a shareholder under articles 31 and 19 (1) (f) his Lordship agreed with and adopted the conclusions arrived at by Mukherjea J. without committing himself to the acceptance of all the reasonings of Mukherjea J. My Lord the present Chief Justice rested his decision on article 14 and came to the conclusion that the petitioner as a shareholder had been discriminated against. Having thus decided the question arising under article 14, he did not think it necessary to express any opinion on the questions raised under articles 19 and 31. At pages 927-930 I dealt with the question whether the shareholder could impugn the constitutionality of the law on the ground that the fundamental right of the company had been infringed. After referring to several decisions of the Supreme Court of America I came to the following conclusion at page 930 :

"In my opinion, although a shareholder may, in a sense, be interested to see that the company of which he is a shareholder is not deprived of its property he cannot, as held in *Darnell* v. *Indiana*(1) be heard to complain in his own name and on his own behalf, of the infringement of the fundamental right to property of the company, for, in law, his own right to property has not been infringed as he is not the owner of the company's properties."

In the premises, I think it is quite clear that the majority of the members of the Bench which heard

(1) 226 U.S. 388.

Chiranjitlal's case(1) held that the petitioner was not entitled to question the constitutionality of the Ordinance and the Act on the ground that the fundamental rights of the company under articles 19 (1) (f) and 31 had been infringed. He had, therefore, to rely on the plea of infringement of his own fundamental rights. The majority of the court held that there had been no infringement of his rights as a shareholder under article 19(1)(f) or article 31 and that the petitioner consequently had to fall back on article 14 in order to support his plea of the unconstitutionality of the Ordinance and the Act. Even here the majority of the Bench took the view that the petitioner had not discharged the onus that was on him of showing that in fact there had been any discrimination against him and other shareholders of the company.

Learned Attorney-General submits that in so far as the challenge to the validity of the law is, in the present case, founded on the infringement of the company's fundamental rights, it is concluded by the decision in *Chiranjitlal's* case(1) for the reasons adopted by the majority in that case apply equally to the case now before us and the same conclusion must be drawn, namely, that the present appellant, who is also a shareholder, cannot be permitted to impugn the said Ordinance on the ground that it infringes the fundamental rights of the company, or the managing agents or the directors or other persons having contracts with the company. It is, on the other hand, contended on behalf of the appellant that the present case is distinguishable from *Chiranjitlal's* case(1) in that the question here arises in a regular suit and not on an application under article 32 for the enforcement of fundamental rights. I do not think that this, by itself, is a substantial ground of distinction at all. I cannot see how the mere form of the proceeding can affect the question. The true principle being that only a person who is directly affected by a law can challenge the validity of that law and that a person whose own right or interest has not been violated or threatened cannot impugn the law on the ground that somebody else's right has been infringed,

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the same principle must prevail irrespective of the form of the proceeding in which the question of constitutionality is raised.

Learned counsel for the appellant, however, urges that although on a parity of reasoning there has been no infringement of the fundamental right of the preference shareholders under article 19(1) (f) or article 31 (2), the impugned law, if it stands, certainly subjects the preference shareholders to the risk of being called upon to pay the amount of capital remaining unpaid on their respective shareholding. Indeed, the directors appointed under the said Ordinance have made a call for the payment of Rs. 50 on each preference share and the plaintiff appellant alone will have to pay Rs. 1,62,200 on his shares. There was no such liability on the petitioner in *Chiranjitlal's* case(1) for the was the holder of only one fully paid up ordinary share. The impugned Ordinance, therefore, directly affects the preference shareholders by imposing on them this liability, or the risk of it, and gives them a sufficient interest to challenge the validity of the Ordinance. It is quite true, as submitted by the learned Attorney-General, that the fact of the property of the company or the managing agents, or the directors or the other persons having contracts with the company having been taken possession of by the State through the directors appointed by the State under the Ordinance has no relation to or bearing on the imposition on the preference shareholders of the liability to pay the call, for the directors were not obliged to make the call because they had taken possession of the property of the company or the other persons and that this imposition of liability or risk cannot, therefore, be said to be the direct or even indirect result of the State having through the directors appointed under the Ordinance taken possession of the property of the company or the other persons. It is then urged by him that, that being so, the preference shareholders cannot be allowed to complain of the infringment of the rights of the company or of the other persons which does not concern or affect them. This argument, however, overlooks the purpose

(1) [1950] S.C.R. 869.

and scope of the suit filed by the appellant for himself and all other preference shareholders. The appellant is disputing his liability to pay the call made by the directors appointed under the Ordinance. He is, therefore, entitled to show that the directors who have made the call are not competent to do so. It is open to him to allege and prove, if he can, that the gentlemen who have purported to make the call are not competent to do so because they are not the directors of the company. Take the case of a company which is not governed by this Ordinance. If a call is made on the shareholders of such a company, it is certainly open to a shareholder to resist the payment of the call by proving, if he can, that the persons who have purported to make the call are not the directors of the company. This he may do by showing that those persons have not the requisite qualifications or have not been duly elected. Likewise, on a parity of reasoning, the appellant as a preference shareholder in the respondent company is entitled to show, if he can, that the persons who have made the call are really not the directors of the company. Certainly he can show that the Ordinance under which these persons have been appointed was beyond the legislative competency of the authority which made it or that the Ordinance had not been duly promulgated. If he can, with a view to destroy the *locus standi* of the persons who have made the call, raise the question of the invalidity of the Ordinance on the grounds I have just mentioned, I can see no valid reason why, for the self same purpose, he should not be permitted to challenge the validity of the Ordinance on the ground of its unconstitutionality for the breach of the fundamental rights of the company or of other persons. He may not be interested in or concerned with the facts which constitute the unconstitutionality, *e.g.*, the taking of possession of the property of the company or of the other persons but he is certainly interested in getting out of the law so as to destroy the very foundation of the status of the persons who have made the call and thereby repel the attack on him and avoid his own liability. In *Chiranjitlal's* case(1) the

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petitioner was held to have suffered no loss of his own fundamental right as a shareholder and, therefore, by raising the question of unconstitutionality of the Ordinance on the ground of the breach of the fundamental rights of the company, or of the other persons he was really fighting the battle of the company and the other persons and not of his own. Here the position is different. Here the law has made the imposition of a liability on him and other preference shareholders possible and he is seeking to resist that liability and as in the premises he is directly affected by the statute he has sufficient interest to challenge its validity. If as between the company or the other persons and these persons who, purporting to act as directors, have made the call the law is unconstitutional for breach of the former's fundamental rights then it follows that these persons are not, in the eye of the law, the directors of the company at all and if they are not in law the directors of the company, surely they cannot arrogate to themselves the right to exercise any of the powers of the directors of the company and to make any call. If the said Ordinance stands, the directors appointed thereunder will have authority to make the call which they have done and the appellant's liability to pay it will stand good. Therefore, the appellant as a preference shareholder is directly affected by the statute and this circumstance, in my opinion, distinguishes this case from *Chiranjitlal's* case(1) and it must be held that, in the circumstances of this case, the appellant, who is a preference shareholder and as such liable to pay the call, is entitled to challenge the Ordinance which dismissed the directors elected by the shareholders, authorised the appointment of directors by the State and made it possible for the directors so appointed to make the call and thereby impose a liability on all preference shareholders including the appellant.

On the hypothesis that, with a view to resist his own liability to pay the call, it is open to the appellant to impugn the Ordinance and the Act which has replaced it and for that purpose to call in aid the infringement of the fundamental right under article 31 (2) of the

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company or of the other persons mentioned above, it has yet to be shown that there has in fact been such infringement. Two questions will have to be considered and decided, namely, (1) whether the impugned law has authorised the taking of possession or acquisition of any property and (2) whether what has been taken possession of or acquired is "property" within the meaning of article 31(2). Taking the second question first, there cannot be any doubt that the mills, machineries, stocks etc., of the respondent company are "property" within the meaning of articles 19 and 31. A contract or agreement which a person may have with the company and which may be cancelled by the directors in exercise of powers under the Ordinance will undoubtedly be "property" within the meaning of the two articles. There may be some argument as to whether the office of managing agents or of the directors, though each of such offices carries substantial remuneration, can be said to be "property" which, by itself, can be acquired or taken possession of or disposed of. I need not dilate on this further, for the machinery etc., of the company and the benefits of agreements of persons having contracts with the company are certainly "property" within those articles and if those have been taken possession of or acquired that will be quite sufficient for the plaintiff appellant to sustain his challenge to the constitutionality of the impugned law, whether or no the office of the managing agents or of the directors is "property" or has been taken possession of or acquired.

The next question is whether the impugned law has authorised the taking of possession or acquisition of the property of the shareholders, or of the company. It may be mentioned at the outset that the impugned law has not authorised any acquisition of any property in the sense of divesting the shareholders or the company of any property and vesting that property in the State or its nominee. In other words, there has been no transfer of title, voluntarily or by operation of law. It is, therefore, necessary to enquire and ascertain whether the Ordinance or the Act which replaced it

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has authorised the taking of possession of any property of the shareholders or of the company.

As regards the property of the shareholders the position is the same as in *Chiranjitlal's* case(1). The shares still belong to them. They can hold them or dispose of them. If any dividend is declared they will get them. If there is any winding up and if after payment of all liabilities there remains any surplus then they will participate in that surplus. It is true that from a practical point of view it may be difficult for the shareholders, if they desire to sell the shares, to find a purchaser who will be willing to buy shares in a company which is governed by an Ordinance of this kind but, nevertheless, it cannot be said that the State has taken possession of the shares in the sense in which that expression used in article 31(2) has been explained by me in *Subodh Gopal Bose's* case(2). It is said, as was done in *Chiranjitlal's* case(1), that certain valuable rights of the shareholders, *e.g.*, the right of voting, the right to elect directors and the right to apply for the winding up of the company have been taken away. In the first place, it is doubtful if any of these right can be called "property" within the meaning of article 31(2) for, by itself and apart from the shares, none of them can be acquired or disposed of. In the next place, the State has not taken possession of these rights as explained by Mukherjea J. in *Chiranjitlal's* case (1) at pages 904-906 and by me at pages 923-924. Therefore, there has been no infringement of the shareholders right to property under article 31(2). What has happened is that these rights which are only incidents of the ownership of the shares have been suspended or kept in abeyance and if this may be regarded as amounting to imposing restrictions on the exercise of the rights of ownership of the shares it may possibly be justified as an exercise in any emergency of the State's police power under clause (5) of article 19 by imposing by law reasonable restrictions in the interests of the general public so as to secure the supply of an essential commodity and to prevent unempolyment.

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As regards the property of the company also there has been no transfer of title to any such property, voluntary or involuntary, from the company to the State or its nominee and, therefore, no question arises of any property of the company having been "acquired". The question remains whether any property of the company has been "taken possession of" by the State within the meaning of article 31 (2) as explained by me in *Subodh Gopal Bose's* case(1). In *Chiranjitlal's* case(2) Mukherjea J. at pages 903-904 said :

"Assuming that this State management was imposed in the interests of the shareholders themselves and that the statutory directors are acting as the agents of the company, the possession of the statutory directors could not, it is argued, be regarded in law as possession of the company so long as they are bound to act in obedience to the dictates of the Central Government and not of the company itself in the administration of its affairs. Possession of an agent, it is said, cannot judicially be the possession of the principal, if the agent is to act not according to the commands or dictates of the principal, but under the direction of an exterior authority.

There can be no doubt that there is force in this contention, but as I have indicated at the outset, we are not concerned in this case with the larger question as to how far the inter-position of this statutory management and control amounts to taking possession of the property and assets belonging to the company.

It is fairly clear that his Lordship was inclined to the view that the company's properties had been taken possession of although he did not categorically an explicitly say so. I dealt with the matter at pages 926-927. After pointing out that the possession of directors who were not obedient to or amenable to the company or its shareholders and are not liable to be dismissed or discharged by the company cannot, in the eye of the law, be regarded as the possession of the company I said :

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"In this view of the matter there is great force in the argument that the property of the company has been taken possession of by the State through directors who have been appointed by the State in exercise of the powers conferred by the Ordinance and the Act and who are under the direction and control of the State and this has been done without payment of any compensation."

Then after quoting a passage from the judgment of Holmes J. in *Pennsylvania Coal Company* v. *Mahon*(1) I concluded :

"Here, therefore, it may well be argued that the property of the company having been taken possession of by the State in exercise of powers conferred by a law which does not provide for payment of any compensation, the fundamental right of the company, has, in the eye of the law, been infringed."

It is quite clear that although I used the words "there is great force in the argument" and "it may well be argued", the then inclination of my mind was definitely that the property of the company had been taken possession of as contemplated by article 31 (2). My observations were much more definite than those of Mukherjea J.

Learned Attorney-General contends that the taking of possession of the property of the company that has taken place in this case is clearly not an exercise of the power of eminent domain within article 31 (2) but constitutes an exercise of police power under article 31 (1). Here, according to him, the State has not taken possession of the company's property on its own account to implement a public purpose such as is contemplated by article 31 (2) but the State has taken possession of the company's property to prevent the company from using its own property to the detriment of the interests of the public and to do for the company what the company should itself have done. In order to determine to which category this taking of possession falls, it is necessary to keep in mind the circumstances in which the Ordinance and the Act were passed and to ascertain from their language their immediate

(1) 260 U.S. 399.

purpose and ultimate aim and to consider their effect on the rights of the company. It should be remembered that the Ordinance of 1950 was promulgated on the 9th January, 1950. The preamble to the Ordinance recited as follows :

"Whereas on account of mismanagement and neglect a situation has arisen in the affairs of the Sholapur Spinning and Weaving Company, Limited, which has prejudicially affected the production of an essential commodity and has caused serious unemployment amongst a certain section of the community."

Then came the Act on the 10th April, 1950. There is no preamble to the Act. Although the short title of the Act contains a reference to emergency provisions the full title of the Act is as follows :

An Act to make special provision for the proper management and administration of the Sholapur Spinning and Weaving Company Limited.

There is no suggestion either in this long title or in the body of the Act except in section 12 that the Act is intended only to be a temporary emergency measure. The object of the Ordinance was stated to be to provide employment to a large number of workmen and to keep up the production of an essential commodity. There is no doubt that section 12 of the Act provides that the property of the company and the management and administration of its affairs would be restored to the company or its directors elected by the shareholders but that is left entirely to the unfettered discretion of the Government. The prvisions of the Ordinance and the Act are drastic in the extreme. The managing agents and the elected directors have been dismissed and new directors have been appointed by the State. So far as the company is concerned it has been completely denuded of the possession of its property. All that is left to the company is its bare legal title. The carrying on of a business demands many personal qualities and considerable business acumen and is much more complicated than collecting

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the rents of the estate of a disqualified proprietor. The impugned law has thrust upon the company a board of directors in whose business capacity the company and its shareholders may have no confidence and over whom the company has certainly no vestige of control or authority and who are not answerable to them at all. Although in outward form the directors are the officers of the company and are bound to act under the articles of association in so far as they are not contrary to or inconsistent with the Ordinance and the Act, nevertheless, in effect and in substance, they are the creatures of the State and are answerable to the State and it is the State that has through these directors of its choice taken possession of the undertaking of the company and has been carrying on an experiment in State management of business at the risk and expense of the company and the shareholders. Indeed we are told that under such State management which is going on for pretty nearly four years the business has been running at a loss. At any rate no profit has been made or distributed as and by way of dividend during this long period—a sad commentary on the efficacy of State management. And nobody knows how long this state of affairs will continue, for the Act does not prescribe any definite time limit to this hazardous experiment. It is, in the premises, impossible to uphold this law as an instance of the exercise of the State's police power as an emergency measure. It has far overstepped the limits of police power and is, in substance, nothing short of expropriation by way of the exercise of the power of eminent domain and as the law has not provided for any compensation it must be held to offend the provisions of article 31 (2).

The last contention of the appellant is that the Ordinance is unconstitutional and void in that it infringes the fundamental rights of the shareholders under article 14. In *Chiranjitlal's* case(1) my Lord the present Chief Justice and I were of the opinion that the Ordinance and the Act did not proceed on any rational basis of classification and that this company and its shareholders had been arbitrarily

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singled out for discriminatory treatment and that as equality before the law was denied to this company and its shareholders the Ordinance and the Act offended the equal protection clause of our Constitution. The majority of the Bench, however, took the view that, there being a presumption in favour of the constitutionality of the law and that the onus of displacing that presumption being on him who impugns the law, the petitioner in that case had not discharged that onus and that, therefore, he could not complain of discrimination. In the present case there is nothing more than what there was before the court in *Chiranjitlal's* case(1). Indeed, the question of discrimination does not appear to have been argued before the trial court and the appeal court has rejected it by saying that the plaintiff had not shown that there were other companies which were guilty of the same conduct but had not been similarly dealt with. Learned Attorney-General has submitted that this court is not bound by its previous decision and has pressed us to go behind the majority decision. Accepting that this court is not bound by its own decisions and may reverse a previous decision especially on constitutional questions the court will surely be slow to do so unless such previous decision appears to be obviously erroneous. But in view of the conclusion I have already arrived at on the other point I do not feel called upon to pursue this point of discrimination any further. In my judgment, therefore, this appeal should be allowed and the plaintiff's suit should be decreed. The Union of India must pay the plaintiff his costs throughout.

BOSE J.—I agree with my brother Mahajan that the impugned Ordinance and Act offend article 31 (2) of the Constitution and so are void. But I prefer to rest my decision on simpler foundations. With the utmost respect I deprecate, as I have done in previous cases, the use of doubtful words like "police power," "social control", "eminent domain" and the like. I say doubtful, not because they are devoid of meaning but because they have different shades of meaning in different countries and because they represent powers

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which spring from widely differing sources. In my opinion, it is wrong to assume that these powers are inherent in the State in India and then to see how far the Constitution regulates and fits in with them. We have to interpret the plain provisions of the Constitution and it is for jurists and students of law, not for Judges, to see whether our Constitution also provides for these powers and it is for them to determine whether the shape which they take in India resemble any of the varying forms which they assume in other countries.

Article 19 (1) (f) confers a certain fundamental freedom on all citizens of India, namely, the freedom to acquire, hold and dispose of property. Article 31(1) is a sort of corollary, namely that after the property has been acquired it cannot be taken away save by authority of law. Article 31 is wider than article 19 because it applies to everyone and is not restricted to citizens. But what article 19 (1) (f) means is that whereas a law can be passed to prevent persons who are not citizens of India from acquiring and holding property in this country no such restrictions can be placed on citizens. But in the absence of such a law non-citizens can also acquire property in India and if they do then they cannot be deprived of it any more than citizens, save by authority of law.

I have put the matter broadly and ignored for the moment the restrictions imposed by article 19 (5). The rights conferred by article 19 (1) (f) are not unfettered and the State can impose restrictions provided they are (1) reasonable and (2) are in the interests of either the general public or for the protection of the interests of any Scheduled Tribe. But we are not concerned with article 19 in this case because no one has prevented either the company or the plaintiff from acquiring and holding property. They actually did acquire property and they held it and nobody stopped them. The complaint is that they are now being deprived, in a manner not allowed by the Constitution, of the property which they were lawfully permitted to acquire and hold. That concerns article 31.

Now article 31(1) says that no one shall be deprived of property save by authority of law. That to my mind is straightforward and simple. It means that no one's property can be taken away arbitrarily or by executive action. There must be legal sanction for every act of deprivation.

Now an Act of the legislature is legal sanction, therefore if the rest of the article was not there a man could be deprived of his property by legislative enactment though not by executive action. But that brings in article 31(2). Restrictions are there placed even on the legislature. Unless the Act provides for compensation and either fixes the amount or specifies the principles on which, and the manner in which, it is to be determined it cannot be validly enacted. The only exceptions are those set out in clause (5). Therefore, to my mind, the simple question in this case is, do the impugned Ordinance and Act fall foul of article 31 (2) read with clause (5) ? All we have to do is to examine these provisions.

We start with the word "property". Are the plaintiff's "interests" in this company "property" within the meaning of this clause ? Property includes "any interest" in "any commercial or industrial undertaking." It also includes any interest in "any company owning" any interest in any commercial or industrial undertaking. That is how I read this clumsily drafted clause. The company here certainly has an interest in a commercial and industrial undertaking and the plaintiff has an undoubted interest in the company. He also has a direct interest in the undertaking that the company runs because, as a preference shareholder, he is a member of the company and would, on liquidation, be entitled to share in the distribution of its assets.

Next, have these interests been "taken possession of" or "acquired" ? Here again I have no doubt. In my judgment, the provisions in the Constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred. But in any case, in this instance,

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these words have to be read along with the word "deprived" in clause (1). In my opinion, the possession and acquisition referred to in clause (2) mean the sort of "possession" and "acquisition" that amounts to "deprivation" within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then clause (2) is, in my judgment, attracted. By substantial deprivation I mean the sort of deprivation that substancially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that we must seek.

Has that happened here ? Of course, it has. The plaintiff and the company have been left with the mere husk of title and not only has every form of enjoyment which normally accompanies an interst in this kind of property been taken away from them but to add insult to injury the plaintiff has also been called upon to pay substantial sums of money ; and for what ?—not in compliance with any engagement into which he has entered, not in fulfilment of any duty or obligation which he has incurred, not in furtherance of his interests of which he is the best judge, but blankly and unashamedly because the furtherance of his interests affects "the production of an essential commodity" and has caused "serious unemployment amongst a certain section of the community." If that is not "deprivation" it is difficult to know what is. One of the privileges of a democracy of free men is the right to mismanage one's own affairs within the confines of the law ; and if A can mismanage his concerns in a particular way, so can B, C and D. The production of essential commodities and the employment of labour are matters for the State and statutory bodies to handle. They have the right, when the law so permits it, to take over this responsibility when the public interests so demand but if by doing so they deprive private individuals and non-statutory bodies of their interests in property in the sense explained above they must pay compensation. They cannot evade their own duties by fathering their obligations

on others who are not responsible for carrying on the affairs of the State. My brother Mahajan has dealt with this at length and there is no need for me to add to what he has said.

The only other point I need consider is the applicability of clause (5) of article 31. The exceptions to clauses (1) and (2) lie there. I am clear that none of the exceptions set out there apply. The impugned Ordinance and Act have not been made for the promotion of public health nor to prevent danger to life and property.

In my opinion, *Chiranjit Lal's* case(1) is distinguishable. I do not think it is a bar here. My brother Mahajan has explained this at length and as I agree with him I need say no more. I would therefore also, in agreement with my learned brother, allow the appeal and decree the plaintiff's claim with costs.

GHULAM HASAN J.—I have had the advantage of perusing the judgment of my learned brother Mr. Justice Mahajan and I agree with his conclusion that the appeal should be allowed and the plaintiff's suit decreed with costs. I would like to add a few words.

This appeal raises the question of the constitutional validity of the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance II of 1950, subsequently replaced by Act XXVIII of 1950, which reproduced substantially the same provisions. This question arose originally upon a petition under article 32 of the Constitution filed by one Chiranjit Lal Chowdhuri an ordinary shareholder of the company, challenging the Act as being in violation of his fundamental rights under articles 14, 19 and 31 of the Constitution. By a majority of 3 : 2 it was held that the petitioner had failed to displace the presumption of the constitutionality of the Act or that there had been any abridgement of his fundamental rights. The minority declared the impugned Act as void as it violated the fundamental rights of the petitioner under article 14 of the Constitution.

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My learned brother has distinguished, and if I may say so with respect successfully, the decision in *Chiranjit Lal's* case(1) and has explained the *ratio decidendi* of the majority view in that case and I entirely agree with him. That decision does not, in my opinion, conclude the matter so far as the present case is concerned and no question of invoking the principle of *stare decisis* arises.

The question which we are now invited to consider was raised by the appellant, a preference shareholder holding 3,244 preference shares of the face value of Rs. 100 out of which he had paid up Rs. 50 per share. He was called upon by the statutory directors nominated by the Government under the impugned Act to pay Rs. 1,62,000 as the balance of the amount of the call. Thereupon he filed the suit in a representative capacity on behalf of himself and other preference shareholders challenging the validity of the Act. The suit was dismissed by the trial Judge whose decision was affirmed on appeal by the Division Bench of the Bombay High Court.

My learned brother has analysed in detail the relevant provisions of the impugned Act and I have no hesitation in agreeing with him that the Act in substance robs the company of every vestige of right except what has been laconically called the husk of title. I agree, therefore, that the impugned Act oversteps the constitutional limits of the power conferred upon the State and offends against the provisions of article 31 and must, therefore, be held void.

Article 31 finds a place in Part III of the Constitution which deals with fundamental rights. It is headed "Right to Property". Upon a simple and straightforward construction of its language and the context in which it stands and unhampered by the provisions of the American Constitution the article confers upon every person, whether a citizen or not, a fundamental right of protection of property against encroachment by the executive without the authority of law and against the legislature unless the law passed by it satisfies the two essential conditions

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laid down in (2) that there must be public purpose for taking away private property and that the law must provide for compensation and either fix the amount of such compensation or specify the principles on which and the manner in which the compensation shall be determined and given. Article 31 (1) embodies a categorical declaration proclaiming the right of property and equally categorically prohibits the State from depriving the owner of that property by an executive act or without being backed by the authority of law. The intention underlying the article being the protection of property against invasion by the State, both parts (1) and (2) of article 31 should be read together so as to harmonize with that intention. Article 31, in my opinion, is wider than article 19(1) (f) which confers upon a citizen only the right to acquire, hold and dispose of property and is different in scope and content. Article 31 is self-contained and (1) refers to deprivation of property in general. Acquisition or taking possession in (2) are different modes of deprivation and are comprehensive enough to include all forms of taking away rights of property. Having regard to the setting in which article 31 is placed, the word 'property' used in the article must be construed in the widest sense as connoting a bundle of rights exercisable by the owner in respect thereof and embracing within its purview both corporeal and incorporeal rights. The word 'property' is not defined in the Constitution and there is no good reason to restrict its meaning. Whether the facts in a given case amount to deprivation of property within the meaning of article 31 will depend upon the circumstances of each case and it is not possible, in the nature of things, to lay down any inflexible test which may be universally applicable. When it can be shown that the statute substantially interferes with the right of enjoyment of property, it will, in my opinion, be hit by article 31 (2) and declared void, unless compensation is provided.

I am not prepared to subscribe to the proposition that article 31 (1) stands by itself and should be read separately from (2) and I cannot attribute an intention

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to our Parliament to deprive a person of his property merely by passing an Act. The two parts of the article form an integral whole and cannot be dissociated from each other.

The result is that I agree with the order proposed by my learned brother.

Appeal allowed.

Agent for the appellant: *I. N. Shroff.*

Agent for respondents Nos. 1 to 4 and 6 to 8: *Rajinder Narain.*

Agent for respondent No. 9: *G. H. Rajadhyaksha.*