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April 15

THAKUR AMAR SINGHJI
v.
STATE OF RAJASTHAN
(AND OTHER PETITIONS)

[MUKHERJEA C. J., S. R. DAS, BHAGWATI, VENKATARAMA AYYAR AND JAFER IMAM JJ.]

Rajasthan Land Reforms and Resumption of Jagirs Act (Rajasthan Act VI of 1952)—Validity—Rajpramukh—Competence to enact the law—Covenant of the United State of Rajasthan, arts. VII (3), X (3)—"Ordinance", meaning of—Bill, whether prepared by the Rajpramukh as required by the Constitution—Resumption of jagir lands —Legislative competence—Pith and substance of legislation—Acquisition or resumption—Jagir, meaning of—Legislative practice—Implied grant—Legislative grants—Constitutions of India, Arts. 14, 31-A, 31(2), 212-A(2), 385, Sch. VII, List II, entries 18, 36—Marwar Land Revenue Act (XL of 1949), s. 169—Mewar Government Kanoon Mal Act (V of 1947), s. 106—Bhomicharas, Bhomias Tikanadars, Subeguzars, Marsubdars holders of other tenures.

The Bill which came to be enacted as the Rajasthan Land Reforms and Resumption of Jagirs Act was prepared in the Ministerial Department of the Government of Rajasthan. It was approved by the Rajpramukh on 8-2-1952, and reserved for the consideration of the President, who gave his assent to it on 13-2-1952. By notification issued on 16-2-1952, the Act came into force on 18-2-1952. In pursuance of s. 21(1) of the Act, the State of Rajasthan issued notifications resuming the jagirs specified therein, whereupon petitions under Art. 226 of the Constitution were filed by the persons aggrieved challenging the validity of the Act before the Rajasthan High Court. The petitions were dismissed and thereupon they filed petitions before the Supreme Court under Art. 32 of the Constitution of India, impugning the Act. They contended *inter alia* that the Rajpramukh had no competence to enact the law that the Bill was not prepared by the Rajpramukh as required by Art. 212-A(2), that resumption was not one of the topics of legislation enumerated either in the State List or in the Concurrent List in the Seventh Schedule of the Constitution and that the Act was therefore *ultra vires* the powers of the State, that the Act did not provide for adequate compensation nor was there any public purpose involved in it and therefore it contravened Art. 31(2), and that as the Act was discriminatory it contravened Art. 14. There were some special contentions that the Act was not saved by Art. 31-A, because the lands resumed were neither estates nor jagirs nor grants similar to jagirs, inams or muafi and that some of the properties sought to be resumed were not jagirs as defined in the Act and therefore the notifications under s. 21 of the Act in so far as they related to them were illegal.

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Held that, (i) the Rajpramukh was competent to enact the impugned law (under Art. 385 as he was the authority functioning immediately before the commencement of the Constitution as the legislature of Rajasthan under art. X (3) of the Covenant of the United State of Rajasthan. The expression "Ordinance" in art. X (3) must be construed as meaning "Law". Article VII (3) of the Covenant has reference to the executive power which the Rulers had to resume jagirs and does not operate as a restriction on the legislative powers under art. X (3). The Legislature of the corresponding State mentioned in Art. 385 refers not to the legislature under the Constitution, but to the body or the authority which was functioning as the legislature of the State before the commencement of the Constitution and under Art. X (3) of the Covenant of the United State of Rajasthan, that authority was the Rajpramukh.

Article 385 does not require that that authority should have had absolute and unlimited powers of legislation. If it was functioning as the legislative authority before the Constitution, it would, under the article, have all the powers conferred by the Constitution on the House or Houses of legislature of the States.

(ii) Article 212-A(2) which provides that the Rajpramukh should prepare the Bill, does not require that he should himself draft it. It is sufficient if he decides questions of policy which are of the essence of the legislation. It is open to the Rajpramukh to adopt a Bill prepared by his ministers and the only matter that will have to be considered is whether in fact he did so. There is no provision in Art. 212-A(2) for the Rajpramukh approving of a Bill and an endorsement of approval on the Bill prepared in the ministerial department must therefore signify its adoption by him. When the Bill is produced with an endorsement of approval under his signature the question must be held to be concluded and any further discussion about the legislative or executive state of mind of the Rajpramukh must be ruled out as inadmissible.

(iii) The impugned Act is not *ultra vires* the powers of the State Legislature as the subject-matter of the legislation is in substance acquisition of properties falling under entry 36 of List II of the Seventh Schedule. Resumption and acquisition connote two different concepts, but whether the impugned Act is one for acquisition of jagirs or for their resumption must be determined with reference to the pith and substance of the legislation, the name given to it by the legislature not being decisive of the matter. The resumption for which the Act provides is not in enforcement of the rights which the Rulers had to resume jagirs in accordance with the terms of the grant or the law applicable to it, but in exercise of the sovereign rights of eminent domain possessed by the State. Under the circumstances, the taking of the properties is in substance acquisition notwithstanding that it is labelled as resumption.

The payment of compensation to the Jagirdars is consistent only with the taking being an acquisition and not resumption in

accordance with the terms of the grant or the law applicable to it. Though the legislation also falls under entry 18 of List II of the Seventh Schedule, there being an entry 36 dealing with acquisition, it must be held that the Act falls under that entry and is valid.

(iv) The word 'jagir' connoted originally grants made by Rajput Rulers to their clansmen for military services rendered or to be rendered. Later on grants made for religious and charitable purposes and even to non-Rajputs were called jagirs, and both in its popular sense and legislative practice, the word jagir came to be used as connoting all grants which conferred on the grantees rights in respect of land revenue, and that is the sense in which the word jagir should be construed in Art. 31-A.

The object of Art. 31-A as to save legislation which was directed to the abolition of intermediaries so as to establish direct relationship between the State and the tillers of the soil. Construing the word in that sense which would achieve that object in full measure, it must be held that jagir was meant to cover all grants under which the grantees had only rights in respect of revenue and were not tillers of the soil. Maintenance grants in favour of persons who were not cultivators such as members of the ruling family would be jagirs for purposes of Art. 31-A.

(v) *Bhomicharas.* The Bhomicharas are the representatives of Rajput Rulers who conquered the country and established their sovereignty over it in the thirteenth century. Later on the Ruler of Jodhpur imposed his sovereignty over the territory but permitted the previous rulers to continue in possession of the lands on payment of an annual sum. The question was whether they held the lands as jagirs.

Held that, there could be a jagir only by grant by the Ruling power but that such a grant need not be express, and could be implied and when the Ruler of Jodhpur imposed his sovereignty over the territory of the Bhomicharas but recognised their possession of the lands, it is as if there was annexation by him and re-grant to them of these lands.

Vajesinghji Joravar Singhji and Others v. *Secretary of State* [(1924) L.R. 51 I.A. 357] and *Secretary of State* v. *Sardar Rustam Khan* [(1941) L.R. 68 I.A. 109], referred to.

Though the Bhomicharas enjoyed large powers, their status was only that of subjects. The status of a person must be either that of a sovereign or a subject. There is no *tertium quid.* The law does not recognise an intermediate status of a person being partly a sovereign and partly a subject. And when once it is admitted that the Bhomicharas had acknowledged the sovereignty of Jodhpur their status can only be that of a subject.

Even if the Bhomicharas did not prior to the enactment of the Marwar Land Revenue Act XL of 1949 hold the lands as grantees

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from the State, they must be deemed to have become such grantees by force of s. 169 of the Act which provides that all lands in the State vest in the Maharajah and all proprietary interests therein are deemed to be held under a grant from him. The Bhomicharas had by long usage and recognition and by the legislative practice of the State come to be recognised as jagirdars and their tenure is a jagir within the intendment of s. 169.

For the purposes of Art. 31-A, it would make no difference whether the grant is made by the sovereign in the exercise of his prerogative right or by the legislature in the exercise of its sovereign rights. Grants which are the creatures of statutes called legislative grants are equally within the operation of that article.

Bhomicharas are, accordingly, within the operation of Art. 31-A.

(vi) The position of Bhumias in Mewar is similar to that of Bhomicharas in Marwar and in addition it was a condition of the terms on which their title to the lands was recognised by the rulers of Chittoor and Udaipur, that they had to render military service when called upon and also pay quit rent. Their title to the lands therefore rested on an implied grant and their tenure would be jagir even in its stricter sense.

Section 27 of the Mewar Government Kanoon Mal Act (V of 1947) enacts that all lands belong to His Highness and that no person has authority to take possession of any lands unless the right is granted by His Highness. Section 106(1) of the Act declares that a "Tikanadar, Jagirdar, Muafidar or Bhumia shall have all such revenue rights in the lands comprised in his jagir, muafi, or Bhom under this Act, as are granted to him by His Highness". The effect of these provisions was to impress on the Bhom tenure the characteristics of a grant.

Article 13, Clause (1) of the Constitution of Mewar provided that, "no person shall be deprived of his life, liberty or property without due process of law, nor shall any person be denied equality before the law within the territories of Mewar". It was contended for the petitioners that the impugned Act was void as contravening the above provisions. *Held* that, as the authority which enacted the Constitution of Mewar was His Highness, it could be repealed or modified by the same authority, and the impugned Act must be held to have repealed the Constitution to the extent that it was inconsistent with it.

(vii) The Tikanadars of Shekwati got into possession of lands as ijaradars or lessees and were subsequently treated as jagirdars. Their tenure was; if not jagirs, at least other "similar grants" within Art. 31-A. It is included in Schedule I to the impugned Act as item 6.

The nature of the tenures of lands held by Subeguzars, Mansubdars, maintenance holders (Lawazma and Kothrikarch), Tikanadars and of Naqdirazan, Sansan grants, etc., considered.

(viii) The Khandela estate was granted in 1836 on a permanent lease. The definition of jagir in s. 2(h) includes the tenures mentioned in Schedule I to the Act and Istimrari tenure is item 2 therein. The question was whether the Istimrar-ijara was within item 2.

Held that, the essential features of Istimrari tenure are that the lands are assessed to a nominal quit rent, and that it is permanent. The amount of Rs. 80,001 fixed as assessment under the deed of 1836 cannot be said to be nominal. The grant is, therefore, not an Istimrari tenure, but a permanent Izara.

(ix) Objections raised as to the validity of the Act on the ground that it did not provide for payment of compensation, that there was no public purpose involved in the resumption and that therefore it contravenes Art. 31(2) or that the provisions of the Act offend Art. 14, are barred by the provisions of Art. 31-A of the Constitution.

Even apart from Art. 31-A, the impugned Act must be held to be supported by public purpose and is not in contravention of Art. 31(2). Nor is there a contravention of Art. 14, as under the Act all jagirs are liable to be resumed, on power having been conferred on the Government to grant exemption.

State of Bihar v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others* [(1952) S.C.R. 889] and *Biswambhar Singh* v. *The State of Orissa and Others* [(1954) S.C.R. 842], referred to.

The true scope of the rule of *ejusdem generis* is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow.

ORIGINAL JURISDICTION: Petitions Nos. 354 to 359, 362, 370 to 385, 387 to 469, 471 to 475, 477 to 479, 482 to 486, 488, 490, 491, 493 to 497, 502, 503, 510, 511 to 521, 525, 527 to 529, 535 to 563, 570, 572 to 575, 577 to 584, 586 to 588, 592 to 595, 597, 600 602, 603, 606 to 610, 613 to 619, 624, 626 to 634, 637 to 645, 653, 654, 656 to 659, 661, 662, 668, 672, 675, 679, 684 to 688 of 1954 and 1 to 14, 17, 20, 21, 25 to 27, 35 to 37, 45, 47, 49 52, 55 to 57 and 61 to 66 of 1955.

Petitions under Article 32 of the Constitution for the enforcement of fundamental rights.

Dr. Bakshi Tek Chand (*O. C. Chatterjee* and *K. L. Mehta*, with him) for the Petitioners in Petitions Nos. 354, 362, 382 to 385, 511 to 516, 519, 537,

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541, 543 to 547, 550, 553, 556, 558 to 562, 570, 573 to 575, 582 to 584, 587, 588, 593 to 595, 597, 602, 603, 607 to 609, 613, 614, 616 to 619, 626, 628, 631 to 633, 637, 640 to 642, 644, 645, 653, 657 to 659, 661, 662, 679, 684 to 688 of 1954 and 2 to 7, 9 to 14, 21, 25 to 27, 35, 37, 45, 47, 49, 52, 55, 57, 63 and 65 of 1955.

H. L. Mordia and *K. L. Mehta,* for the Petitioners in Petitions Nos. 55 and 65 of 1955.

Frank Anthony and *K. L. Mehta,* for the Petitioners in Petitions Nos. 56 and 64 of 1955.

U. M. Trivedi, (*K. L. Mehta,* with him), for the Petitioners in Petitions Nos. 615 of 1954 and 20 of 1955.

R. K. Rastogi and *K. L. Mehta,* for the Petitioner in Petition No. 634 of 1954.

K. L. Mehta, for the Petitioner in Petition No. 36 of 1955.

Dr. Bakshi Tek Chand (*O. C. Chatterjee* and *Naunit Lal,* with him), for the Petitioners in Petitions Nos. 356 to 359, 370, 372, 373, 374, 376 to 378, 380, 389, 390, 393 to 400, 415, 417, 463, 469, 482, 484, 521, 563, 577, 578, 586, 592, 606, 610, 627 and 656 of 1954.

Achhru Ram, (*Naunit Lal,* with him) for the Petitioner in Petition No. 391 of 1954.

Naunit Lal, for the Petitioners in Petitions Nos. 355, 371, 375, 379, 416, 455, 468, 483, 485, 488, 491, 493 to 497, 517, 525, 529, 538, 540, 542 and 551 of 1954.

Dr. Bakshi Tek Chand, (*Ganpat Rai* with him), for the Petitioners in Petitions Nos. 381, 387, 388, 402 to 410, 412, 413, 418 to 423, 425, 426, 428 to 454, 456 to 459, 464 to 466, 477, 478, 486, 503, 510, 520, 548, 552, 557, 572, 580, 600, 624, 639, 668 of 1954 and 8 and 17 of 1955.

N. C. Chatterjee, (*Ganpat Rai* and *S. K. Kapur,*

with him), for the Petitioners in Petitions Nos. 462, 536, 549, 579, 630, 638 and 654 of 1954.

U. M. Trivedi, (*Ganpat Rai,* with him), for the petitioners in Petitions No. 629, 643, 672 of 1954 and 66 of 1955.

Achhru Ram, (*Ganpat Rai,* with him), for the Petitioner in Petition No. 424 of 1954.

Frank Anthony and *Ganpat Rai,* for the Petitioners in Petitions Nos. 401, 460, 502, 518, 535 and 539 of 1954.

S. K. Kapur and *Ganpat Rai,* for the Petitioners in Petitions Nos. 411 and 675 of 1954.

R. K. Pastogi and *Ganpat Rai,* for the Petitioners in Petitions Nos. 427 and 461 of 1954.

O. C. Chatterji and *Ganpat Rai,* for the Petitioner in Petition No. 62 of 1955.

J. B. Dadachanji and *Rajinder Narain,* for the Petitioners in Petitions Nos. 473, 479, 490, 527, 528, 554 and 581 of 1954 and Nos. 1 and 61 of 1955.

C. L. Aggarwal and *Rajinder Narain,* for the Petitioners in Petitions Nos. 471, 472, 474 and 475 of 1954.

K. P. Gupta, for the Petitioners, in Petitions Nos. 467 and 555 of 1954.

S. C. Isaacs (*S. D. Sekhri,* with him), for the Petitioner in Petition No. 392 of 1954.

K. S. Hajela, Advocate-General for the State of Rajasthan and *G. S. Pathak,* (*Daulat Ram Bhandari, Porus A. Mehta, P. G. Gokhale* and *Kan Singh,* with them), for the Respondent (State of Rajasthan) in all the petitions.

1955. April 15. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—These are applications under Article 32 of the Constitution impugning the validity of the Rajasthan Land Reforms and Resumption of Jagirs Act No. VI of 1952, hereinafter referred

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to as the Act. The history of this legislation may be briefly stated. On 20-8-1949 the Government of India appointed a Committee presided over by Sri C. S. Venkatachar to examine and report on the jagirdari and land tenures in Rajputana and Madhya Bharat the object avowedly being to effect land reforms so as to establish direct relationship between the State and the tillers of the soil and to eliminate all intermediaries between them. By its report dated 18-12-1949 the Committee recommended *inter alia* the resumption of jagirs and payment of rehabilitation grants in certain cases. (Vide report, page 62). The question of legislation on the subject was taken up by the Government of Rajasthan in 1951, and eventually a Bill called the Rajasthan Land Reforms and Resumption of Jagirs Bill was prepared, and on 31-12-1951 it was approved by the Rajpramukh and reserved for the consideration of the President. On 21-1-1952 the President withheld his assent from the Bill, and in communicating this decision, the Deputy Secretary to the Government of India informed the Rajasthan Government that if certain amendments were made in the Bill as presented and a fresh Bill submitted, the President would be willing to reconsider the matter. In accordance with these suggestions, a fresh Bill was prepared in the Ministerial Department incorporating certain amendments, and it was approved by the Rajpramukh on 8-2-1952, and reserved for the consideration of the President, who gave his assent to it on 13-2-1952. By notification issued on 16-2-1952 the Act came into force on 18-2-1952. Section 21(1) of the Act provides that :

"As soon as may be after the commencement of this Act, the Government may by notification in the Rajasthan Gazette, appoint a date for the resumption of any class of jagir lands and different dates may be appointed for different classes of jagir lands".

Acting under this provision, the State of Rajasthan issued notifications resuming the jagirs specified therein, whereupon petitions under Article 226 of the Constitution were filed by the persons aggrieved challenging the validity of the Act. These petitions were

head by a Full Bench of the Rajasthan High Court, which held overruling the contentions of the petitioners, that the Act was valid. (Vide *Amarsingh* v. *State of Rajasthan* (1).

The present applications have been filed under article 32 impugning the Act on the following grounds :

I. The Rajpramukh had no competence to enact law, and the Act in question is therefore not a valid piece of legislation.

II. The Bill was not prepared by the Rajpramukh as required by article 212-A(2), and therefore the law was not validly enacted.

III. Resumption is not one of the topics of legislation enumerated either in the State List or in the Concurrent List in the Seventh Schedule of the Constitution, and the Act is therefore *ultra vires* the powers of the State.

IV. The Act does not provide for adequate compensation; nor is there any public purpose involved in it, and so it contravenes article 31(2). It is discriminatory, and therefore contravenes article 14. And the legislation is not saved by article 31-A, because the lands resumed are neither estates nor jagirs nor grants similar to jagirs, inams or muafi. This contention is special to some of the petitioners, and has reference to the specific properties held by them.

V. The properties sought to be resumed are not jagirs as defined in the Act, and the notifications under section 21 in so far as they relate to them are illegal. This again is a special contention urged in some of the petitions.

These contentions will now be considered *seriatim*.

I. On the first question as to the competence of the Rajpramukh to enact the law, it is necessary to notice the events which led up to the formation of the State of Rajasthan and the constitution of the Rajpramukh as its head. During the 12th and 13th Centuries, the Rajput rulers who were then reigning

(1) A.I.R. 1854 Rajasthan 291.

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over various parts of Hindusthan were compelled by pressure from the victorious Muhammadan invaders to retreat to the regions to the southwest guarded by the Aravali Hills and interspersed with deserts which if less hospitable were also less vulnerable, and there established several independent kingdoms. The period which followed the foundation of these States was marked by incessant wars, the powerful Sultans of Delhi making determined efforts to subjugate the Rajput princes and the latter offering stubborn and more or less successful resistance thereto. The annals of Rajputana especially of this period, present a story of heroic deeds of men and women and are among the most inspiring and fascinating chapters in the history of this country. The Moghul Emperors who established themselves later saw the wisdom of conciliating the Rajput rulers, and recognised their position as Chiefs getting in return an acknowledgement of their suzerainty from them, and a promise to send troops in support of the Imperial arms whenever required. When the power of the great Moghul waned and the British established themselves as masters of this country, they in their turn recognised the Rajput princes as Sovereigns, and entered into treaties with them during the period between 1803 to 1818. (Vide Aitchison's Treaties, Volume III). By these treaties, the British Government accepted their status as independent rulers reserving to themselves Defence, External Relations and Communications and such other matters as might be agreed upon. The relationship thus created was one of "subordinate union" as it was termed by Mr. Lee Warner, the princes being recognised as Sovereigns and they acknowledging the suzerainty of the British. (Vide Protected Princes of India, Chapter VI).

On 15-8-1947 India became independent, and the paramountcy of the British Crown over the States ceased. The question then arose as to the status of the ruling Chiefs. It was soon realised by them that in the larger interests of the country and in their own, they could not afford to keep out of the Indian Union and must throw in their lot with it. The

problem of fitting them within the framework of the Indian Constitution was beset with considerable difficulties. The number of States which had been recognised as independent prior to 15-8-1947 was 552 excluding Hyderabad, Junagadh and Kashmir. While a few of them were sufficiently large to be able to function as separate State, many of them were too small to be administered as distinct units. While some of them had representative forms of Government, others had not, the rulers being the sole authority, executive, legislative and judicial. The solution which was adopted by the Government of India was that while the bigger States were continued as independent units of the Union, the smaller States were, where they formed islets within a Province, merged within that Province, and where they were contiguous, integrated together so as to form a new State called the Union.

One of the Unions thus newly formed was Rajasthan. There were at that time 18 independent rulers functioning over different parts of Rajasthan. Nine of them, rulers of Banswara, Bundi, Dungarpur Jhalawar, Kishengarh, Kotah, Pratapgarh, Shahpura and Tonk—entered into an agreement in March 1948 merging their States in a single unit called the United State of Rajasthan. The ruler of Mewar joined this Union on 18-4-1948, and the rulers of Jaipur, Jodhpur, Bikaner and Jaisalmere on 30-3-1949. The rulers of Alwar, Bharatpur, Dholpur and Karauli who had formed themselves on 18-3-1948 as Matsya Union dissolved that Union and acceded to the Rajasthan Union on 15-5-1949. With that, the full strength of the State of Rajasthan was made up.

The constitution of the United State of Rajasthan as it finally emerged is to be found in the Covenant entered into by the 14 rulers on 30-3-1949. As the authority of the Rajpramukh to enact the impugned legislation was founded on this Covenant, it is necessary to refer to the material provisions thereof bearing on the question. Under Article II, the Covenanting States agreed "to unite and integrate their territories in one State with a common executive legisla-

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ture and judiciary, by the name of the United State of Rajasthan". Article VI(2) provides that the ruler of each Covenanting State shall "make over the administration of his State to the Rajpramukh, and thereupon all rights, authority and jurisdiction belonging to the ruler which appertain or are incidental to the Government of the Covenanting States shall vest in the United State and shall thereafter be exercisable only as provided by this Covenant or by the Constitution to be framed thereunder. Article VII (3) provides :

"Unless other provision is made by the Act of the Legislature of the United State, the right to resume Jagirs or to recognise succession, according to law and custom, to the rights and titles of the jagirdars shall vest exclusively in the Rajpramukh". Them comes article X(3) which is as follows :

"Until a Constitution so framed comes into operation after receiving the assent of the Rajpramukh, the legislative authority of the United State shall vest in the Rajpramukh, who may make and promulgate Ordinances for the peace and good Government of the State or any part thereof, and any Ordinance so made shall have the like force of law as an Act passed by the legislature of the United State". Article X(3) was subsequently modified by substituting for the words "Until a Constitution so framed comes into operation after receiving the assent of the Rajpramukh", the words "Until the Legislative Assembly of Rajasthan has been duly constituted and summoned to meet for the first session under the provisions of the Constitution of India". This modification was necessitated by the fact that the idea of convening a Constituent Assembly for framing a Constitution for the State as contemplated in article X(1) was dropped, and the Constitution as enacted for the Union of India was adopted. This amendment, however, is of a formal character, and does not affect the substance of the matter.

Then, there is article XIX under which the Rajasthan Government was to act "under the general control of and comply with such particular directions,

if any, as may from time to time, be given by the Government of India". These are the material provisions of the Constitution which was in force in the United State of Rajasthan before the Constitution of India came into operation on 26-1-1950.

Article 385 of the Constitution enacts:

"Until the House or Houses of the Legislature of a State specified in Part B of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before the commencement of this Constitution as the legislature of the corresponding Indian States shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified".

It is the contention of the respondent that the Rajpramukh was by reason of article X(3) of the Covenant "the authority functioning immediately before the commencement of the Constitution as the Legislature" of Rajasthan, and that he could under article 385 exercise the powers which the Legislature of the State could. It is conceded by the petitioners that at the time of the impugned legislation no House of Legislature had been constituted and summoned, and that to that extent the requirements of that Article are satisfied; but their contention is that on a true construction of the articles of the Covenant the Rajpramukh was not an authority functioning as Legislature within the meaning of article 385, and further that article VII(3) of the Covenant imposed a prohibition on his power to enact a law of the kind now under challenge, and that the prohibition had not been abrogated by the Constitution.

The question then is which was the body or authority which was functioning as the Legislature of the United State of Rajasthan under the terms of the Covenant Article X (3) expressly provides that the legislative authority of the State shall vest in the Rajpramukh. The meaning of this provision is clear and unambigu-

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ous; but it is argued for the petitioners that it is controlled and cut down by the expression "Ordinance" in article X(3) and by the terms of article VII(3) and of article XIX. It is contended by Mr. N. C. Chatterjee that the legislative authority of the Rajpramukh was only to "make and promulgate Ordinance", that it is a limited power conferred on him to be exercised in case of emergency pending the constitution of popular legislature, and that accordingly he was not a "legislative authority" for the purpose of article 385. But this is to import into the word "Ordinance" what it connotes under the Government of India Act, 1935 or the Constitution of India. Sections 42 and 88 of the Government of India Act conferred on the Governor-General and the Governor respectively power to promulgate ordinances when the Legislature was not in session. Similar power is conferred on the President and the Governors by articles 123 and 213 of the Constitution. That is a legislative power exercisable by the head of the State, when it is not possible for the Legislature to exercise it. But the United State of Rajasthan had then no Legislature, which had yet to be constituted, and therefore in its context, the word "Ordinance" in article X(3) cannot bear the meaning which it has under the Government of India Act or the Constitution. It should be remembered that before the formation of the United State, the Covenanting rulers enjoyed sovereign rights of legislation in their respective territories; and under article VI(2) (a), they agreed to surrender those rights and vest them in the United State. It was therefore plainly intended that the State of Rajasthan should have plenary legislative authority such as was formerly exercised by the rulers; and where was it lodged, if not in the Rajpramukh

If we are to construe article X(3) in the manner contended for by the petitioners, then the anomalous result will follow that there was in that State no authority in which the legislative power was vested. This anomaly would disappear if we are to construe "Ordinance" as meaning law. That indeed is its etymological meaning. According to the Concise Ox-

ford Dictionary "to ordain" means "to decree, enact"; and "Ordinance" would therefore mean "decree, enactment". In Halsbury's Laws of England, Volume XI, page 183, para 327 it is stated that when the Governor of a colony which has no representative assembly enacts legislation with the advice and consent of the State council, it is designated ordinance or law. That clearly is the sense in which the word is used in article X(3), and that is placed beyond doubt by the words which follow, that the Ordinance is to have "the like force of law, as an Act passed by the Legislature of the United State".

It was next urged that under article VII(3) the Rajpramukh was given authority to resume jagirs only in accordance with law and custom, that he had no authority to enact a law for the resumption of jagirs on grounds other than those recognised by law and custom, that section 22 of the Act provided that the resumption was to take effect notwithstanding any jagir law which as defined in section 2(d) includes also custom, that such a law was directly opposed to what was authorised by article VII(3), that the legislative powers conferred under article X(3) must be exercised subject to the restrictions under article VII(3), and that the Act was therefore beyond his competence. This contention is, in our opinion, untenable. The words "according to law and custom". cannot be held to qualify the words right to resume jagirs", because they are wedged in between the words "right to recognise succession" and the words "to the rights and titles of Jagirdars", and must be construed as qualifying only "the right to recognise succession to the rights and titles of Jagirdars". But this may not, by itself, be of much consequence, as the power to resume provided in this article is what the grantor possesses under law and custom. The real difficulty in the way of the petitioners is that article VII(3) has reference to the power which rulers of States had as rulers to resume jagirs, and what it provides is that it should thereafter be exercised by the Rajpramukh. That power is purely an executive one, and has nothing to do with the legislative power of the ruler, which

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is specially provided for in article X(3). The fields covered by the two articles are distinct and separate and there can be no question of article VII(3) operating as a restriction on the legislative power under article X(3). Indeed, article VII(3) expressly provides that it is subject to any legislation on the subject, whereas article X(3) is not made subject to article VII(3).

Even if the petitioners are right in their contention that article VII(3) imposes a limitation on the powers of the Rajpramukh, that would not, in view of article 385, derogate from the power of the Rajpramukh to enact the present law. The scope of that article is that the body or authority which was functioning before the commencement of the Constitution as the Legislature of the State has first to be ascertained, and when once that has been done and the body or authority identified, the Constitution confides to that body or authority all the powers conferred by the provisions of the Constitution on the House or Houses of Legislature of the State. These powers might be wider than what the body or authority previously possessed or they might be narrower. But they are the powers which are allowed to it under article 385, and the extent of the previous authority is wholly immaterial. The contention that the Act is incompetent by reason of article VII(3) of the Covenant must accordingly fail.

It was next argued that the powers of the Rajpramukh under article X(3) were subject to the general control of the Government of India under article XIX, and that he could not therefore be regarded as legislative authority for the purpose of article 385 We see no force in this contention. Article 385 provides that the authority which was to exercise legislative powers in the interim period under that Article should be the authority which was functioning as the Legislature of the State before the commencement of the Constitution. It does not further require that that authority should have possessed absolute and unlimited powers of legislation. It could not be, and it was not, contended that the effect of article XIX

was to vest the legislative authority of the State in the Government of India, and that being so, the Rajpramukh was the legislative authority of the State, whatever the limitations on that authority.

It was finally contended that article 385 has no application to the present case, because under article 168 the Legislature is to consist of both the Governor and one or more Houses, that article 238(7) extends article 168 to Part B States substituting the Rajpramukh in the place of the Governor that accordingly the Rajpramukh cannot by himself constitute the Legislature, and that when article 385 refers to the body or authority functioning as Legislature, it could only refer to both the Rajpramukh and the House functioning in conjunction. Support for this contention was sought in the terms of article 212-A(1) of the Constitution (Removal of Difficulties) Order No. II, which excluded in relation to Part B States only the first proviso to article 200, but not the body of it. If this contention is sound, then article 385 must be treated as a dead letter as regards such of the Part B States as had no House of Legislature. But, in our opinion, this contention is untenable, because article 385 refers not to Legislatures under the Constitution but to the body or authority which was functioning as the Legislature of the State before the commencement of the Constitution, and article 238(7) is, under the Constitution (Removal of Difficulties) Order subject to article 385. Nor can any argument be founded on the exclusion of the first proviso to article 200 but not of the body of that article under article 212-A(1), because it lays down the procedure to be followed when a Bill has been passed by a Legislative Assembly or Legislative Council of a State, and is by its very terms inapplicable when there is no House of Legislature. The contention of Mr. Frank Anthony that the non-inclusion of the body of article 200 among the articles excluded from application to Part B States under article 212-A(1) imposes by implication a limitation on the power of the Rajpramukh to enact laws unless they are passed by Legislative Assemblies is

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not supported by anything in the article, and must be rejected. We must accordingly hold that the Rajpramukh had legislative competence to enact the law under challenge.

II. The second contention that has been pressed by the petitioners is that the Rajasthan Land Reforms and Resumption of Jagirs Bill was not prepared by the Rajpramukh as required by article 212-A(2), and that the Act was therefore not validly enacted. The facts material for the purpose of this contention are that the Bill was first prepared in the Ministerial Department in accordance with the rules framed under article 166(3) for the "convenient transaction of the business of the State". It was approved by the Council of Ministers on 27-12-1951 and sent to the Rajpramukh with the following note by the Secretary:

"The Bill is submitted for gracious approval and signature and for reserving it for the consideration of the President".

Then there is firstly an endorsement "approved" signed by the Rajpramukh and dated 31-12-1951, and then follows another endorsement, "I hereby reserve this Bill for the consideration of the President" similarly signed and dated. On 21-1-1952 the President endorsed on the Bill, "I withhold my assent from the Bill". Thereafter, a fresh Bill was prepared and submitted to the Rajpramukh on 6-2-1952 with the following note by the Chief Secretary:

"The Bill as finally agreed to is now submitted to His Highness the Rajpramukh for his approval and for reserving the same for the consideration of the President".

The Rajpramukh gave his approval on 8-2-1952, and by a further order he reserved the Bill for the consideration of the President who gave his assent on 13-2-1952. Now, the question is whether on these facts the requirements of article 212-A(2) have been complied with.

Article 212-A(2) was enacted by the Constitution (Removal of Difficulties) Order No. II, and is as follows :

"The Rajpramukh or other authority exercising the legislative powers in any such State as aforesaid under article 385 shall prepare such Bills as may be deemed necessary, and the Rajpramukh shall declare as respects any Bill so prepared either that he assents to the Bill or that he withholds assent therefrom or that he reserves it for the consideration of the President".

The contention of the petitioners is that as the Bill was prepared by the Ministers and not the Rajpramukh, article 212-A(2) had been contravened, and that, in consequence, the law had not been properly enacted. It is conceded that under this article the Rajpramukh has not himself to draft the Bill, and that he might delegate that work to others. But they insist—and in our opinion, rightly—that questions of policy which are of the essence of the legislation should at least be decided by him, and that even that had not been done in the present case. They rely strongly on the statements in the affidavit of Sri Joshi, the Jagir Commissioner, that the Bill was drafted in the Ministerial Department in accordance with the rules framed under article 166(3), approved by the Council of Ministers and sent on to the Rajpramukh for his assent. These allegations, they contend, preclude any supposition that the Rajpramukh had any part or lot in the settlement of the policies underlying the Act, and the Bill must be held therefore not to have been prepared by him.

Taking it that such are the facts, what follows? Only that at the inception the Bill was not prepared by the Rajpramukh. But that does not conclude the question whether there had been compliance with article 212-A(2), unless we hold that it was not open to the Rajpramukh to adopt a Bill prepared by the Ministers as his own, or if it was open, he did not, in fact, do so. It cannot be disputed that whether a Bill is in the first instance prepared by the Rajpramukh or whether he adopts what had been prepared by the Ministers as his own, the position in law is the same. That has not been disputed by the petitioners. Their contention is that such adoption

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should be clearly and unequivocally established, and that the records do not establish it. It was argued that when the Bill was sent to the Rajpramukh, he was not called upon to apply his legislative mind to it but to merely assent to it on the executive side; that when the Rajpramukh endorsed his approval he was, as admitted by Sri Joshi, merely assenting to it, that assent implied that the Act assented to was not that of the person assenting, and that therefore there was nothing to indicate that the Rajpramukh had adopted the Bill prepared by the Ministers as his own. It was argued by Mr. Agarwala that when the word "approve" was used in the Constitution as in articles 146 and 147, it signified that there were two authorities, one of which was authorised to confirm or sanction what the other had authority to do, and that when the latter was not authorised to do the act, there could be no approval of it by the former; and he also relied on the statement of the law in Corpus Juris, Volume I, page 1365 that the word 'approve' does not mean the same thing as 'adopt'.

The fallacy in this argument lies in isolating the word "approved" from out of its setting and context and interpreting it narrowly. It will be noticed that under article 212-A (2) the Rajpramukh has to do two distinct acts. Firstly he has to prepare the Bill, and secondly—leaving out of consideration the first two alternatives, namely, assenting to, or withholding assent from, the Bill as not material for the present discussion—he has to reserve it for the consideration of the President. When he himself prepares the Bill, he has, in order to comply with article 212-A(2) merely to reserve it for the consideration of the President. In such a case, no question of approval to the Bill by him can arise, but when the Bill has not been prepared by him, he has firstly, if he thinks fit, to adopt it before he could pass on to the second stage and reserve the Bill for the consideration of the President; and the very purpose of his endorsing his approval on the Bill is to show that he has thought fit to adopt it. There is no provision in article 212-A (2) for the Rajpramukh approving of a Bill, and in

the context, therefore, an endorsement of approval on the Bill must signify its adoption by him. We are unable to follow the subtle distinction sought to be made by Mr. Frank Anthony between the legislative mind of the Rajpramukh and his executive mind. If it is open to the Rajpramukh to adopt a Bill prepared by his Ministers, the only matter that will have to be considered is whether, in fact, he did so. And when the Bill is produced with an endorsement of approval under his signature, the question must be held to be concluded, and any further discussion about the legislative or executive state of mind of the Rajpramukh must be ruled out as inadmissible.

It must be mentioned in this connection that Mr. Pathak for the respondent took up the position that the function of the Rajpramukh at the stage of preparation of the Bill was purely executive, and that it became legislative only when he had to decide whether he would assent to the Bill or withhold his assent therefrom, or reserve it for the consideration of the President, and that by leaving it to the Ministers to prepare the Bill there had been no violation of article 212-A(2). We are unable to agree with this contention. When a Bill has been passed by the Legislative Assembly of a State, article 200 enacts that it shall be presented to the Governor who is to declare whether he assents to it or withholds his assent therefrom, or reserves it for the consideration of the President. When there is no Legislative Assembly in a State, the matter is governed by article 212-A(2), and there is substituted under that article in the place of the passing of the Bill by the Legislature, the preparation thereof by the Rajpramukh, and then follows the provision that he has to declare whether he assents to or withholds his assent from the Bill or reserves it for the consideration of the President. The position under article 212-A(2) has thus been assimilated to that under article 200, the preparation of the Bill by the Rajpramukh taking the place of the passing of the Bill by the Legislative Assembly, and the one is as much a legislative function as the other.

One other contention attacking the Act on the

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ground of procedural defect may now be considered. It was argued by Mr. Trivedi that under the proviso to article 201, the President had no power to return a Money Bill for further consideration by a House of Legislature, that his order dated 21-1-1952 returning the Rajasthan Land Reforms and Resumption of Jagirs Bill for further consideration was *ultra vires* as it was a Money Bill, that the subsequent presentation of the Bill to him on 8-2-1952 was unauthorised, and that the impugned Act had therefore not been duly passed. This argument is clearly erroneous. Under article 212-A(1), the proviso to article 201 has no application to those Part B States where there was no House of the Legislature; and we are unable to follow the argument of the learned counsel that even so, the limitation imposed by the proviso is implicit in the body of the article itself. Moreover, the order of the President dated 21-1-1952 is not one returning the Bill for further consideration by the House but one refusing assent. It is true that the Deputy Secretary sent a communication to the Rajasthan Government suggesting some amendments. But this does not alter the character of the order of the President as one withholding assent. And finally the Bill which was submitted again to the President for consideration on 6-2-1952 was a fresh Bill, the previous Bill having been modified as regards the scales of compensation. The contention, therefore, that the Act is bad for non-compliance with article 212-A(2) or for other procedural defects must be rejected.

III. We may now consider the third contention of the petitioners that the Act in so far as it provides for resumption of jagir lands is *ultra vires* the powers of the State Legislature, as it is not one of the topics mentioned either in List II or List III of the Seventh Schedule to the Constitution. The contention of the respondent is that the Act is in substance a law relating to acquisition, and is covered by Entry No. 36 in the State List. On the other hand, the petitioners maintain that the subject-matter of the legislation is what it avows itself to be, viz., resumption of jagirs, that resumption is in law totally different from

acquisition, and that the Act is therefore not covered by Entry No. 36.

We agree with the petitioners that resumption and acquisition connote two different legal concepts. While resumption implies that the person or authority which resumes the property has pre-existing rights over it, acquisition carries no such implication, and in general, while the effect of resumption is to extinguish the interests of the person whose property is resumed, that of acquisition is to vest that interest in the acquirer. But the question still remains whether the impugned Act is one for acquisition of jagirs or for their resumption; and to determine that, we must see what the pith and substance of the legislation is, the name given to it by the Legislature not being decisive of the matter.

The provisions of the Act relating to resumption may now be noticed. Chapter V deals with resumption of jagir lands. Section 21 authorises the State to issue notifications for resumption of jagirs, and section 22(1) enacts :

"As from the date of resumption of any jagir lands, notwithstanding anything contained in any existing jagir legislation applicable thereto but save as otherwise provided in this Act,—

(a) the right, title and interest of the jagirdar and of every other person claiming through him.....in his jagir lands including forests, etc..... shall stand resumed to the Government free from all encumbrances".

Section 22(1) (g) is as follows :

"the right, title and interest of the jagirdar in all buildings on jagir lands used for schools and hospitals not within residential compounds shall stand extinguished, and such buildings shall be deemed to have been transferred to the Government".

Section 23 exempts certain properties from the operation of section 22, and provides that they are to continue to belong to the jagirdars or to be held by them Chapter VI deals with compensation. Section 26(1) enacts :

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"Subject to the other provisions of this Act, the Government shall be liable to pay every jagirdar whose Jagir lands are resumed under section 21 such compensation as shall be determined in accordance with the principles laid down in the second schedule". Chapter VII prescribes the procedure for the determination of compensation and for payment of the same. The second Schedule to the Act contains the principles on which compensation is to be determined. That was the scope of the Act as it was passed in 1952. In 1954 certain amendments were introduced by Act No. XIII of 1954, the most important of which was the provision for payment of rehabilitation grant in accordance with the principles enacted in Schedule III to the Act.

Now, the contention of the petitioners is that the basic assumption on which the Act is framed is that jagirdars have no right of property in the lands themselves, but that they possess some ancillary rights in relation thereto, that the State is therefore entitled to resume the lands without compensation, and that it is sufficient to pay for the ancillary rights. These, it is argued, were the views expressed by the Venkatachar Committee in its Report on Land Tenures in Rajasthan, and they formed the basis of the impugned Act. Thus, it is pointed out that the Committee had held that "jagirs are not the property of the jagirdars" (vide page 47, para 5), that "if the jagir system is abolished, jagirdars would not be entitled to any compensation on the ground of the jagirs being private property", and that "even though jagirs are not pro-property.....those rights which have in many cases been enjoyed for centuries have acquired around them an accretion of rights by long custom and prescription which are entitled to due recognition", and that a rehabilitation grant mignt be given to the jagirdars. (Page 47, para 6). It is contended that it is these views that have been adopted in section 22 of the Act, and that when section 22(1) (a) declares that the right, title and interest of the jagirdars shall stand resumed, it could not mean that these rights are acquired by the State, because acquisition implies that the

properties acquired belong to the person from whom they are acquired, whereas the basis of the legislation was that the jagirdars had no property in the lands, and there could be no acquisition of what did not belong to them. Reference is made by way of contrast to the language of section 22(1) (g) under which certain buildings standing on jagir lands presumably constructed by jagirdars should stand transferred to the Government and not resumed as under section 22(1)(a).

This argument proceeds on an inadequate appreciation of the true nature and scope of the right of resumption under the general law and of the power of resumption which is conferred on the State by the impugned Act. Under the law, a jagir could be resumed only under certain circumstances. It can be resumed for breach of the terms of the grant, such as failure to render services or perform the obligations imposed by the grant. It can be resumed for rebellion or disloyalty or for the commission of serious crimes. And again, jagir was originally only a life grant and when the holder died, it reverted back to the State and succession to the estate was under a fresh grant from the State and not by inheritance, even when the successor was the heir of the deceased holder. The right to resume jagirs within the limits aforesaid was founded on grant and regulated by general law. To exercise that right, there was no need to enact any legislation. It was a right which every ruler of the Covenanting State had as a grantor, and that right had become vested in the Rajpramukh under article VII (3) of the Covenant. The contention of the petitioners that resumption was not an acquisition would strictly be accurate, if the resumption was in exercise of the power conferred by that article.

But the resumption for which the Act provides is something different from the resumption which is authorised by article VII(3). It was a resumption not in accordance with the terms of the grant or the law applicable to jagirs but contrary to it, or in the words of section 21 "notwithstanding anything contained in

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any existing jagir law applicable thereto". It was a resumption made not in enforcement of the rights which the rulers had as grantors but in exercise of the sovereign rights of eminent domain possessed by the State. The taking of properties is under the circumstances, in substance, acquisition notwithstanding that it is labelled as resumption. And this conclusion becomes irresistable when regard is had to the provisions for payment of compensation. Section 26(1) imposes on the Government a liability to pay compensation in accordance with the principles laid down in the second Schedule, and as will be presently shown, it is not illusory. The award of compensation is consistent only with the taking being an acquisition and not with its being a resumption in accordance with the terms of the grant or the law applicable to it, for in such cases, there is no question of any liability to pay compensation.

It was argued for the petitioners that the provision for the payment of rehabilitation grant was an indication that what was paid as compensation was in reality *ex gratia*. But the rehabilitation, grant was in addition to the compensation amount, and it was provided by the amendment Act No. XIII of 1954. Nor are we impressed by the contention that the Act had adopted the findings of the Venkatachar Committee that the jagirs were not the properties of the jagirdars, and that no compensation need be paid for them. Under section 22(1)(a), what is resumed is expressly the right, title and interest of the jagirdar in his jagir lands, and provision is made for payment of compensation therefor. Moreover, the opinions in the report of the Venkatachar Committee on the rights of the jagirdars are clearly inadmissible for the purpose of deciding what the pith and substance of the impugned legislation is. That must be decided on an interpretation of the provisions of the statute, and that decision cannot be controlled or guided by the opinions expressed in the report. Reading the provisions of the Act as a whole, it is abundantly plain that what was meant by resumption was only acquisition. Indeed, if the Act purported to be one for

acquisition of jagirs, its provisions could not have been different from what they are.

Such being the true character of the legislation, not much significance could be attached to the use of the word "resumption" in the Act. It should be remembered that the State has a reversion in Jagir lands, and when it takes them back in accordance with the terms of the grant or the law applicable thereto, its action is properly termed resumption. When the statute enacted a law authorising the taking of jagir lands, it is natural that it should have adopted the same term, though the resumption was not made on any of the grounds previously recognised as valid. In view of the peculiar relationship between the jagirdar and the State, it cannot be said that the word "resumption" is inadmissible to signify acquisition. Section 22(1) (a) further enacts that the lands shall stand resumed "to the Government", which words are more appropriate for acquisition by the Government than resumption *simpliciter*.

It was also contended for the respondent that the Act is one relating to land and land tenures, and that it would fall under Entry No. 18 in the State List:

"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization".

It was argued that the heads of legislation mentioned in the Entries should receive a liberal construction, and the decision in *The United Provinces* v. *Atiqa Begum*(1) was quoted in support of it. The position is well settled and in accordance therewith, it could rightly be held that the legislation falls also under Entry No. 18. But there being an Entry No. 36 specifically dealing with acquisition, and in view of our conclusion as to the nature of the legislation, we hold that it falls under that Entry.

IV. Now we come to the contentions special to some of the petitioners that with reference to the

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properties held by them the impugned Act is not saved by article 31-A, and that it is void as being in contravention of articles 14 and 31(2) of the Constitution. On this contention, two questions arise for determination: (A) Is the impugned Act in so far as it relates to the properties of the petitioners within the protection afforded by article 31-A? (B) And is the Act bad as infringing articles 14 and 31 (2) of the Constitution?

IV (A). On the first question, the contention of the petitioners is that the properties held by the them are neither 'estates' nor 'Jagirs' nor 'other similar grants' within article 31-A, and that therefore the impugned Act falls, *quoad hoc,* outside the ambit of that article. At the threshold of the discussion lies the question as to the precise connotation of the words "jagir or other similar grant" in article 31-A, and to determine it, it is necessary to trace in broad outline the origin and evolution of the jagir tenure in Rajasthan. It has been already mentioned that during the period of the Muhammadan invasion the Rajput princes of Hindusthan migrated to Rajputana and founded new kingdoms. The system of land tenure adopted by them was that they divided the conquered territories into two parts, reserved one for themselves and distributed the other in blocks or estates among their followers. In general, the grantees were the leaders of the clan which had followed the King and assisted him in the establishment of the kingdom or his Ministers. Sometimes, the grant was made as a reward for past services. The lands reserved for the King were called Khalsa, and the revenue therefrom was collected by him directly through his officials. The lands distributed among his followers were called jagirs, and they were generally granted on condition that the grantee should render military service to the rulers such as maintaining militia of the specified strength or guarding the passes or the marches and the like. The extent of the grant would depend on the extent of the obligations imposed on the grantee, and it would be such as would enable the grantee to maintain himself and the troops from out of the

revenues from the jagir. It was stated by Mr. Pathak that the grants would in general specify the amount of revenue that was expected to be received from the jagir, and that if the jagirdar received more, he was under an obligation to account to the State for the excess. And the quoted the following passage in Baden-Powell on Land Systems of British India, Volume I, page 257 as supporting him :

"While a strict control lasted, the jagirdar was bound to take no more than the sum assigned ; and if more came into his hands, he had rigidly to account for the surplus to the State treasury".

This statement has value only as throwing light on the jural relationship between the State and the jagirdar, for it does not appear that it was ever observed in practice. It may be deduced from the foregoing that all the lands of the State must fall within one or the other of the two categories, Khalsa or jagir, and that the essential features of a jagir are that it is held under a grant from the ruler, and that the grant is of the land revenue.

Some of the incidents of the jagir tenure have been already touched upon. It was a life grant and succession to it depended on recognition by the ruler. It was impartible, and inalienable. But in course of time, however, grants came to be made with incidents annexed to them different from those of the jagirs. Some of them were heritable, though impartible; a few of them were both heritable and partible. While originally the jagirs were granted to the Rajput clansmen for military service, the later grants were made even to non-Rajputs and for religious and charitable purposes. These grants were also known as jagirs. "The term 'jagir' is used", it is observed in the Report of the Venkatachar Committee, page 18, para 2, "both in a generic and specific sense. In its generic sense it connotes all non-khalsa area". The stand taken by the petitioners in their argument was also that the word 'jagir' had both a wider and a narrower connotation. Thus, after quoting from the Rajputana Gazetteer the passage that "the rest of

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the territory is held on one of the following tenures, *viz,* Jagir, Jivka, Sansan, Doli, Bhum, Inam, Pasaita and Nankar" (Vide Erskine's Rajputana Gazetteers, Volume III-A, Chapter XIII Land Revenue and Tenures), Sri Amar Singh who presented the case of his father Zorawar Singh, a leading Bhoomichara of Mallani, with conspicuous ability, argued that jagir was used in the passage in its specific sense, and that in its generic sense, it would comprise all the other tenures mentioned above. In the impugned Act also, jagir land is defined in section 2(h) as meaning "any land in which or in relation to which a jagirdar has rights in respect of land revenue or any other kind of revenue and includes any land held on any of the tenures specified in the First Schedule", and in the Schedule, jagir is mentioned as the first of the items. It also appears that in the laws enacted in the States of Rajputana to which our attention has been drawn, the word 'jagir' is generally used in its extended meaning. Thus, both in its popular sense and legislative practice, the word 'jagir' is used as connoting State grants which conferred on the grantees rights "in respect of land revenue". (See section 2(h) of the Act.)

It was argued that though the extended definition of jagirs in section 2(h) of the impugned Act might govern questions arising under that Act, the word 'jagir' in article 31-A must be construed as limited to its original and primary meaning of a grant made for military service rendered or to be rendered, and that accordingly other grants such as maintenance grants made in favour of near relations and dependents would not be covered by it. We do not find any sufficient ground for putting a restricted meaning on the word 'jagir' in article 31-A. At the time of the enactment of that article, the word had acquired both in popular usage and legislative practice a wide connotation, and it will be in accord with sound canons of interpretation to ascribe that connotation to that word rather than an archaic meaning to be gathered from a study of ancient tenures. Moreover, the object of article 31-A was to save legislation which was directed to the abolition of intermediaries so as to

establish direct relationship between the State and the tillers of the soil, and construing the word in that sense which would achieve that object in a full measure, we must hold that jagir was meant to cover all grant under which the grantees had only rights in respect of revenue and were not the tillers of the soil. Maintenance grants in favour of persons who were not cultivators such as members of the ruling family would be jagirs for purposes of article 31-A.

We may now proceed to consider the contentions of the several petitioners with reference to the specific properties held by them, and they may be grouped under two categories: (1) those relating to the tenures on which the properties are held, and (2) those relating to particular properties. Under category (1) fall the estates held by (a) Bhomicharas of Marwar, (b) Bhomats of Mewar, (c) Tikanadars of Shekhwati, and (d) Subeguzars of Jaipur.

(1) (a) *Bhomicharas*: This is the subject-matter of Petitions Nos. 462, 579, 630, 638 and 654 of 1954. The Bhomichara tenure is to be found in Jaisalmere, in Shekhawati in Jaipur and in Marwar. (Vide Report of the Venkatachar Committee, page 19, para 13). But we are concerned here only with the Bhomichara tenure in the State of Marwar. Its history goes back to the year 1212 A.D. when the clan of Rathors led by Rao Siaji, grandson of King Jayachander of Kanouj invaded Rajputana, subjugated the territories now known as Mallani, Yeshwantpura and Sanchora and established itself there. Some two centuries later, a section of the Rathors headed by Biram Deo who was the younger brother of Mallinath, the ruling prince of Mallani, expanded eastwards, and established the kingdom of Jodhpur. The elder branch which continued in Mallani, Yeshwantpura and Sanchora gradually sank in power. The descendants of Mallinath went on partitioning the lands treating them as their personal properties and the principality thus came to be broken up into fragments, and its holders became weak and disunited. Their internecine disputes led to the intervention of Jodhpur which had grown to

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be a powerful kingdom, and they were compelled to accept its ruler as their suzerain and to pay him an annual tribute of Rs. 10,000 called "Foujbal" Thereafter, they continued to hold lands subject to the payment of this tribute, and came to be known as Bhomicharas. The area continued to be distracted by disputes and dissensions among its leaders, and fell into so much anarchy and confusion that in 1835 the British had to intervene to restore order. It should be remembered that they had entered into a treaty of alliance with Jodhpur in 1818, and their intervention was presumably by virtue of their obligations under the treaty. Thereafter, the territory was put under the charge of a British superintendent and latterly of the Resident at Jodhpur. The annual tribute was, during this period, collected by the British and paid to the Jodhpur State. Writing on the status of the Bhomicharas during this period, Major Malcolm remarked in his report dated 1849 thus :

"....though the British Government had established a claim to the District themselves, consequent on having reduced them to order and obedience, it was willing, out of kindness and consideration to His Highness, to waive its just rights and to *acknowledge His Highness as entitled to sovereignty over those districts,* and the tribute they might yield....."

In 1891 the British withdrew from the administration of the Province, and handed it over to the Maharajah of Jodhpur who thereafter continued to govern it as part of his Dominions.

On these facts, it is contended by Mr. N. C. Chatterjee and Shri Amar Singh that Bhomicharas are not holders of jagirs or other similar grants within the meaning of article 31-A, because a jagir could be created only by grant by the ruler, and that the petitioners could not be said to hold under a grant from Jodhpur, because they had obtained the territory by right of conquest long before Jodhpur established its suzerainty, and even prior to its foundation as a State, and that though they lost their political independence when Jodhpur established its overlord-

ship, they had not lost their right to property, that their status was that of semi-independent chiefs, not jagirdars, and that "Foujbal" was paid by them not on account of land revenue but by way of tribute.

We agree with the petitioners that a jagir can be created only by a grant, and that if it is established that Bhomichara tenure is not held under a grant, it cannot be classed as a jagir. We do not base this conclusion on the ground put forward by Mr. Achhru Ram that the word 'jagir' in article 31-A should be read *ejusdem generis* with 'other similar grants' because the true scope of the rule of *ejusdem generis* is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow. But we are of opinion that it is inherent in the very conception of jagir that it should have been granted by the ruling power, and that where there is no grant, there could be no jagir. This, however, does not mean that the grant must be express. It may be implied, and the question for decision is whether on the facts of this case a grant could be implied.

What then are the facts? We start with this that the ancestors of the petitioners acquired the lands in question by conquest and held them as sovereigns. Then Jodhpur came on the scene, imposed its sovereignty over them, and exacted annual payments from them. What was their status thereafter? In *Vajesingji Joravar Singji and others* v. *Secretary of State* (1) Lord Dunedin observed :

"When a territory is acquired by a sovereign State for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of

(1) [1924] L. R.51 I. A. 357, 360.

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the territory can make good in the municipal Courts established by the new sovereign only such rights, as that sovereign has, through his officers recognised. Such rights as he had under the rule of predecessors avail him nothing".

Vide also the judgment of the Privy Council in *Secretary of State*. v. *Sardar Rustam Khan*(1). Applying these principles when Jodhpur as a sovereign State imposed its sovereignty over the territory, and permitted the ex-rulers to continue in possession of their lands on payment of an annual sum, the position is that there was, in effect a conquest of the territory and a re-grant of the same to the ex-rulers, whose title to the lands should thereafter be held to rest on the recognition of it by the ruler of Jodhpur. It may be noted that both in *Vajesingji Joravar Singji and others* v. *Secretary of State*(2) and *Secretary of State* v. *Sardar Rustam Khan*(1) the question was whether a subject of the former State could enforce against the new sovereign the right which he had against the former ruler, and it was held that he could not. But here, the claimants are the representatives of the former rulers themselves, and as against them, the above conclusion must follow *a fortiori*. As already stated, it is as if the Maharajah of Jodhpur annexed all the territories and re-granted them to the former rulers. They must accordingly be held to derive their title under an implied grant.

It is argued that notwithstanding that the Bhomicharas had acknowledged the sovereignty of the ruler of Jodhpur, his hold over the country was slight and ineffective, and even the payment of "Foujbal" was irregular, and that in substance therefore they enjoyed semi-sovereign status, and that their relationship to the Jodhpur ruler resembled that of the rulers of Native States to the British Crown. We are unable to accept this argument. The status of a person must be either that of a sovereign or a subject. There is no *tertium quid*. The law does not recognise an intermediate status of a person being partly a sovereign

(1) [1941] L. R. 68 I.A. 109.
(2) [1924] L. R. 51 I. A. 357, 360.

and partly a subject, and when once it is admitted that the Bhomicharas had acknowledged the sovereignty of Jodhpur their status can only be that of a subject. A subject might occupy an exalted position and enjoy special privileges, but he is nonetheless a subject; and even if the status of Bhomicharas might be considered superior to that of ordinary jagirdars, they were also subjects. The contention that the relationship between Bhomicharas and Jodhpur was of the same kind as that which subsisted between the rulers of Native States and the British Crown is untenable. Whether those States could be recognised as sovereign on the well accepted principles of international law was itself a question on which juristic opinion was adverse to such recognition. (See Mr. Lee Warner, Protected Princes of India, 1894 Edn., Chapter XIII, sec. 150, pages 373-376). But those States at least had each a distinct *persona* with a ruler who possessed executive, legislative and judicial power of a sovereign character; but the Bhomicharas had ceased to have a distinct *persona.* There was no State with a ruler acknowledged as its head, but a number of persons holding lands independently of each other. This is what Major Malcolm remarked of them in his report in 1849:

"It is uncertain how long the Rawats of Kher continued to exercise any control over the rest of the Chiefs, or to be considered as the head of a principality; but at the period when we first become acquainted with them, all traces of such power had long ceased and each Chief of the principal families into which the tribe is divided, claimed to be independent".

When the British handed over the administration of the territory to the State of Jodhpur in 1891, it was in recognition of its rights as sovereign, and on the footing that Bhomicharas were its subjects. It is true that in the agreement by which the British handed over the administration they inserted a condition that the appointment of the chief officers for Mallani and imposition of any new tax or cess other than Foujbal by the State of Jodhpur should be made

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with the approval of the Resident or Agent to the Governor-General of Rajputana, but that was a matter between the high contracting parties, and did not affect the status of the Bhomicharas. On the other hand, it emphasises that they were themselves without any semblance of independence.

That the status of the Bhomicharas was that of subjects will also be clear from the subsequent course of legislation in Marwar. In 1922 an Excise Act was passed for the whole of Marwar including this area. On 24-11-1922 "The Marwar Court of Wards Act, 1923". was passed, and that applied to the estates of Bhomicharas. In 1937 rules were framed for the maintenance of the wives of jagirdars, and Bhomicharas also were subject to that Act. In 1938 the Marwar Customs Act was passed, and that applied to these territories. In 1947 rules for assessment of rents on jagir estates were passed and they applied to lands held on Bhomichara tenure. There was again a Customs Act in 1948, and it applied to the whole of Marwar including this area. In 1949 a Tenancy Act was passed, and that applied to the Bhomicharas. It is thus plain that the State of Marwar was exercising full legislative control over the Bhomichara area. This alone is sufficient to differentiate the position of the petitioners from that of the rulers of the Native States. The British Government never exercised legislative authority over those States.

In the argument before us, Sri Amar Singh conceded the authority of the State of Marwar to legislate for Mallani. But he contended that the definition of jagirdars as including Bhomicharas in the several Acts referred to above was only for the purpose of those Acts, and had no bearing on their true status, and referred to the provisions of the Marwar Encumbered Estates Act, . 1922, where the word 'jagir' is defined as excluding Bhomicharas. But the question is not whether the petitioners are jagirdars by force of the definition in those Acts, but whether their status is that of subjects of Jodhpur and the only inference that could be drawn from the course of legislation above noticed is that their status was that of

subjects, and if that is their position, and if they are allowed to continue in possession of lands held by their ancestors as sovereigns, it could only be on the basis of an implied grant, and that is sufficient to attract the operation of article 31-A to their estates.

It was also contended for the respondent that even if on the facts aforesaid a grant from the State could not be implied and the status of the petitioners was different from that of jagirdars, that status had at least been modified by section 169 of the Marwar Land Revenue Act No. XL of 1949, which had the effect of putting them in the same position as State grantees, and that therefore their tenure fell within the operation of article 31-A either as a jagir or other similar grant. Section 169 runs as follows :

"The ownership of all land vests in His Highness and all Jagirs, Bhoms, Sasans, Dolis or similar proprietary interests are held and shall be deemed to be held as grants from His Highness".

Under this section, all lands in the State vest in the Maharajah and all proprietary interests therein are deemed to be held under a grant from him. It cannot be disputed that it is within the competence of the Legislature in the exercise of its sovereign powers to alter and abridge rights of its subjects in such manner as it may decide, subject of course to any constitutional prohibition. In *Thakur Jagannath Baksh Singh* v. *United Provinces*(1) which was cited by Mr. Pathak as authority in support of the above proposition, it was held by the Privy Council that a law of the State curtailing the rights which a talukdar held under a sanad from the Crown was *intra vires*. This decision was followed by this Court in *Raja Suriya Pal Singh* v. *The State of U. P. and Another*(2). But these cases are not exactly in point, because the present contention of the respondent arises only on the hypothesis that the petitioners did not hold under a Crown grant express or implied. But the proposition for which Mr. Pathak contends is itself not open to exception, and it must be held that it was competent

(1) [1945] F. C. R. 111. (2) [1952] S. C. R. 1056.

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for the legislative authority of Marwar to define and limit the rights which the petitioners possessed in Bhomichara lands. It was also contended by Mr. Pathak that if the effect of the legislation was to impress on the tenure the character of a grant, that would be sufficient to attract article 31-A, the argument being that a grant like a contract could be not merely express or implied but also constructive. He quoted the following statement of the law in Halsbury's Laws of England, Volume VII, page 261, para 361:

"Contracts may be either express or implied, and of the latter there are two broad divisions, the term 'implied contract' in English law being applied not only to contracts which are inferred from the conduct or presumed intention of the parties, of which examples have already been given, but also to obligations imposed by implication of law, quite apart from and without regard to the probable intention of the parties, and sometimes even in opposition to their expressed or presumed intention. Strictly speaking, the latter class, or construstive contracts, as they are sometimes called, are not true contracts at all, since the element of consent is absent, but by a fiction of law, invented for the purposes of pleading, they are regarded as contracts, and will be treated here as such".

It must be observed that the Indian law does not recognise constructive contracts, and what are classed under that category in the statement of the law in Halsbury's Laws of England would be known as quasi-contracts under the Indian Contract Act. It will be more appropriate to term grants which are the creatures of statutes as legislative grants. We, however, agree with the respondent that for the purpose of article 31-A, it would make no difference whether the grant is made by the sovereign in the exercise of his prerogative right or by the Legislature in the exercise of its sovereign rights. They were both of them equally within the operation of that article. The question then is, assuming that the Bhomicharas did not prior to the enactment of Marwar Act No. XL of

1949 hold the lands as grantees from the State, whether they must be deemed to hold as State grantees by force of section 169 of that Act; and that will depend on whether they fall within the purview of that section. The language of the section, it will be admitted, is general and unqualified in its terms, and would in its natural sense include them. But it is argued for the petitioners that they are outside its scope, because 'jagir' in that article must be interpreted in a specific sense as otherwise there was no need to mention tenures like Bhom, Sasan and Dolis, which would be jagirs in a generic sense, and that further Bhomicharas could not be brought within the category of similar proprietary interests, because in the context 'similar interests' must mean interests held under a grant.

Having considered the matter carefully, we are not satisfied that there is any ground for cutting down the scope of the section in the manner contended for by the petitioners. We are of opinion that by long usage and recognition and by the legislative practice of the State Bhomicharas had come to be regarded as jagirdars, and that their tenure is a jagir within the intendment of section 169. In the Gazetteer of Mallani by Major Walter published prior to 1891 the Bhomicharas are referred to as jagirdars. (Vide page 94). In the official publication called Brief Account of Mallani, the title given to the history of Bhomicharas is "Brief history of the *jagirdars*". In Sir Drake Brockman's Report of the Settlement Operations, 1921 to 1924, he refers to the *Bhomichara jagir* as "survival from a time antecedent to the establishment of the Raj". Turning next to legislation in Marwar, its general trend was to include Bhomicharas in the definition of jagirdars. Vide section 3(1) of the Marwar Court of Wards Act, 1923; rule 4 of rules regulating claims for maintenance by ladies against jagirdars, 1937. In the Customs Act, 1938, section 64 and Appendix E refer to the Bhomicharas as *jagirdars of Mallani*. In Marwar Tenancy Act No. XXXIX of 1949, section 3(9) defines landlord as including a "*Bhomichara jagirdar*", and in view of the fact that

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both this Act and Act No. XL of 1949 were part of a comprehensive scheme of legislation, that both of them came into force on 6-4-1949 and that section 4(11) of Act No. XL of 1949 enacts that the words and expressions used therein are to have the same meaning as in Act No. XXXIX of 1949, it would be safe to assume that the word 'jagir' was used in section 169 as including Bhomichara tenures.

It was argued that section 171 classifies jagirs as listed jagirs and scheduled jagirs, that there is an enumeration thereof in schedules I and II of the Act, and that no estate held on Bhomichara tenure was mentioned therein, and that that was an indication that it was not intended to be included in section 169. But section 171 does not exhaust all the jagirs or similar proprietary interests falling within section 169. The scheme of the Act is that for purposes of succession and partition, jagirs are divided into three groups, scheduled jagirs, listed jagirs and other jagirs. Scheduled jagirs are those which are governed by the rule of primogeniture. Section 188 and the following sections lay down the procedure for settling succession to them. Listed jagirs are those which are held by co-heirs but are impartible, and section 131 provides that they should not be partitioned but that the income therefrom should be divided among the co-sharers. Then there is the third category of jagirs which devolve on heirs under the ordinary Hindu law, and are partible. Section 172 applies to these jagirs. As the Bhomichara tenure descends like personal property and is divisible among the heirs, it will be governed by section 172, and cannot find a place in the schedule of listed or scheduled jagirs.

It was contended that the Act was one to declare and consolidate the law, and that such an Act should not be construed as altering the existing law; further that clear and unambiguous language was necessary before a subject could be deprived of his vested rights, and that in case of doubt the statute should be construed so as not to interfere with the existing rights; and the statements of law from Maxwell on Interpretation of Statutes, 10th Edition, pages 20 and 24

and Craies on Statute Law, 5th Edition, pages 106, 107 and 111 were quoted in support of the above propositions. These rules of construction are well settled, but recourse to them would be necessary only when a statute is capable of two interpretations. But where, as here, the language is clear and the meaning plain, effect must be given to it. It must also be added that the Act is one not merely to consolidate the law on the subject but also to amend it. On the language of the section, therefore, we must hold that Bhomichara tenure is comprehended within the term 'jagir' in section 169.

We are also of opinion that it will, in any event, be "similar proprietary interests" within the language of the section. It is argued that the only feature common to jagirs, Bhoms, Sasan and Dolis is that they are held under grant, and that therefore "similar proprietary interests" must mean interests acquired under a grant. It is true that Bhom, Sasan and Doli are held under grant from the State. (Vide Rajasthan Gazetteer, Volume III-A, Chapter XIII); but section 169 enacts that the proprietary interests to which it applies, shall be held or deemed to be held as grant from His Highness. The word "deemed" imports that in fact there was no grant, and therefore interests which were held otherwise than under a grant were obviously intended to be included. Therefore, if Bhomichara is a proprietary interest, it cannot be taken out of the section because its origin was not in grant. In the result, it must be held to fall within section 169, and therefore within the operation of article 31-A.

The respondent further contended that Bhomichara tenure was also an estate as defined in section 4(iii) of Act No. XL of 1949 and that therefore it fell within the purview of article 31-A. Under section 4(iii), "estate" means a mahal or mahals held by the same landlord. Section 4(v) defines mahal as any area not being a survey number which has been separately assessed to land revenue; and 'land revenue' is defined in section 4(iv) as "any sum payable to the Govern-

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ment on account of an estate or survey number and includes rekh, chakri and bhombab". It is common ground that the annual payment which is made by the Bhomicharas to the estate is the sum of Rs. 10,000 called "Foujbal". The petitioners contend that this amount is really in the nature of tribute and not land tax. If it is a military cess, it is difficult to say that it is revenue paid on account of land. It is argued for the respondent that Bhomicharas are allowed to continue in possession of the land only on condition that they pay this amount annually and that it is therefore payment made in respect of lands held by them. If this contention is right, every tribute must *per se* be held to be land revenue, and that appears to us to be too wide a proposition. Mr. Pathak relied on the description of this amount in the Administration Report of 1883-1884 in Hindi as "Kar" "Tax", but that is not decisive of the true character of the payment.

The petitioners also contend that even if Foujbal is revenue, there has been no separate assessment of the mahals to it, as what is paid is a consolidated sum of Rs. 10,000 for an area of the extent of 36,000 sq. miles comprised in 550 villages and held by different holders. It appears from the Gazetteer of Mallani by Major Walter at page 94 that the Foujbal amount has been apportioned among the several holders, and it is contended for the respondent that as this apportionment has been communicated to the Jodhpur Durbar and accepted by it and acted upon, there has been separate assessment of revenue. In the view taken by us that Bhomichara is a jagir or other similar grant within the meaning of article 31-A, we do not think it necessary to express any opinion on the above contentions, especially as the materials placed before us are meagre. In the result, it must be held that the legislation in so far as it relates to Bhomichara tenure is protected by article 31-A.

(1) (b) *Bhomats*: This tenure is to be found in Mewar, and of this, the Report of the Venkatachar Committee has the following:

"In Mewar those holding on the Bhom tenure

may be classed under two groups, namely, the Bhomats who pay a small tribute to the State and are liable to be called for local service and Bhumias who pay a normal quit-rent (Bhum-Barar) and perform such services as watch and ward of their villages, guarding the roads, etc." (vide page 19, para 10).

Earlier, the Report had stated that Bhom tenure was to be found in Jodhpur, Mewar and Bundi, and that its holders were always Rajputs. The origin of Bhom tenure is thus stated by Tod in his Annals and Antiquities of Rajasthan:

"It is stated in the historical annals of this country that the ancient clans....had ceased on the rising greatness of the subsequent new divisions of clans, to hold the higher grades of rank; and had, in fact, merged into the general military landed proprietors of this country under the term *bhumia,* a most expressive and comprehensive name, importing absolute identity with the soil: *bhum* meaning 'land'....These Bhumias, the scions of the earliest princes, are to be met with in various parts of Mewar.....These, the allodial tenantry of our feudal system, form a considerable body in many districts, armed with matchlock, sword, and shield....All this feudal militia pay a quit-rent to the crown, and perform local but limited service on the frontier garrison; and upon invasion, when the *Kher* is called out, the whole are at the disposal of the prince on furnishing rations only. They assert that they ought not to pay this quit-rent and perform service also; but this may be doubted, since the sum is so small". (Vol. I, pp. 195-197).

It would appear from this account that the position of the Bhumias in Mewar is in many respects similar to that of Bhomicharas in Marwar. They represent presumably a section which had occupied the territory by conquest at an earlier stage and when later the rulers of Chittoor and Udaipur established their sovereignty over Mewar, they were allowed to continue in possession of their lands as subjects of the new State. Their position is not even as strong as that of the Bhomicharas of Marwar, because it was a condition of the tenure under which they held that

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they had to render military service when called upon and also to pay quit rent. Their title to the lands is thus referable to an implied grant from the State, and their tenure would be jagir even in its stricter connotation.

It was further contended by Mr. Pathak that whatever status the Bhomats might have had prior to the Mewar Government Kanoon Mal Act No. V of 1947, the effect of that enactment was to modify it and to reduce them to the position of grantees from the State in respect of those tenures, and that article 31-A would accordingly apply. The relevant provisions of this Act are sections 27, 106(1) and 116. Section 27 enacts that all lands belong to His Highness, and that no person has authority to take possession of any land unless the right is granted by His Highness. Section 106(1) occurs in Chapter XI which is headed: "The rights of jagirdars, Muafidar, and Bhumias in Tikana jagir, muafi and Bhom lands", and enacts that a "Tikanadar jagirdar, muafidar or Bhumia shall have all such revenue rights in the lands comprised in his jagir, muafi or Bhom under this Act, as are granted to him by His Highness". Then follow provisions relating to succession and transfer of their tenures by jagirdars, muafidars or Bhumias. Section 116 provides that the jagir or bhom is liable to be forfeited in the events specified therein. The argument of the respondent is that under these provisions the ownership of the lands vests in the Maharajah and the tenures mentioned therein including the Bhom are held as grants under him.

It was argued by Mr. Frank Anthony that under section 4(2) of the Act the lands are divided into two categories, one category comprising jagirs, muafi and Bhom and the other Khalsa lands, that section 27 applies only to Khalsa lands, and that section 106(1) applies to grants which may thereafter be made by the State, and that the rights of the persons who held jagirs, muafi or Bhom before this Act were unaffected by it. We are unable to accede to this contention. No statute was needed to declare the rights of the sovereign over Khalsa lands. Nor was resort to legis-

lation necessary to define the rights of the future grantees of those lands, because that could be done by inserting appropriate terms in the grants. The language of the enactment read as a whole leaves no doubt in our mind as to what the legislature intended to do. It declared the State ownership of lands, both Khalsa and non-Khalsa lands, and defined the rights of the holders of the non-Khalsa lands; and the result of that law was clearly to impress on the Bhom tenure the characteristics of grant. It must accordingly fall within the operation of article 31-A either as jagir or as other similar grant.

It was next contended by the petitioners that the Kanoon Mal Act No. V of 1947 was void, because on 23-5-1947 a Constitution had been established in Mewar which provided that "no person shall be deprived of his life, liberty, or property without due process of law, nor shall any person be denied equality before the law within the territories of Mewar". (Article XIII, Clause 1), and that Act No. V of 1947 which came into force on 15-11-1947 was void as being repugnant thereto. Article II(1) of the Constitution itself provides that the Maharajah shall exercise "all rights, authority and jurisdiction which appertain to or are incidental to such sovereignty except in so far as may be otherwise provided for by or under this Constitution or as may be otherwise be directed by Shriji", and when Shriji (the Maharajah) enacted Act No. V of 1947, it must be taken that he had in the exercise of sovereign authority abrogated the Constitutional provisions enacted earlier. The authority which enacted the Constitution on 23-5-1947 being His Highness himself, any Act passed subsequently by the same authority must be taken to have repealed or modified the earlier enactment to the extent that it is inconsistent with the later. It does not also appear that the Constitution was ever put into force. It is not known whether any Legislature was constituted under the Constitution, or any other step taken pursuant thereto; and though acquiescence is not a ground for giving effect to a law which is *ultra vires,* it is not without significance that the validity of Act

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No. V of 1947 was not challenged on the ground that it was repugnant to the Constitution dated 23-5-1947 until the present petitions were filed. There is no substance in this belated contention, and it must be rejected.

Mr. Frank Anthony appearing for some of the Mewar petitioners contended that their status was that of Chiefs with semi-sovereign powers, and that it could not be said that they held the lands under grants from the State. He referred to certain kowls and agreements brought about by the British Government between their ancestors described therein as Chiefs and the Maharajah of Udaipur, providing for their jointly drawing up a code of law subject to approval by the Political Agent and for the settlement in future of all civil and criminal cases in accordance therewith, (vide Aitchison's Treaties, Vol. III, pp. 33 and 35) and for compensation being awarded to them for taking over their right to manufacture salt (vide Aitchison's Treaties, Vol. III, pp. 38 to 42). He argued that the payments made by them to the State were not revenue but their contribution for purposes of common defence, and that that had not the effect of reducing their status as feudatory chiefs to that of subordinate tenure holders. Certain observations in *Biswambhar Singh* v. *The State of Orissa and others*(1) were relied on as supporting this contention.

We have had considerable difficulty in following this argument, as it was general in character and unrelated to specific tenures or the claims of individual petitioners. The kowls which were relied on as showing that their status was not that of subordinates are not conclusive of the matter, because the value to be attached to them would depend on the previous status of the Chiefs with whom they were entered into, and no materials have been placed before us as to what that was. Two hypotheses are possible: they were the successors, either of the conquerors who had occupied the territory earlier than the foundation of the Udaipur Raj in which case they would be Bhoms and their rights would be identical with those of

(1) [1954] S. C. R. 842, 870.

Bhomats, or of the Rajput clansmen who followed the ruling dynasty of Mewar and obtained estates as rewards for their service in the establishment of the kingdom, in which case the grants would clearly be jagirs. The facts forming the background of the agreements as narrated in Aitchison's Treaties, Vol. III, pp. 10 to 13 are that for sometime prior to the treaty which was entered into by the Maharajah of Udaipur with the British in 1818, the authority of the Government of Mewar was rather low. Taking advantage of it, the neighbouring States had occupied most of its territories, and the Chiefs had also become lax in the performance of their obligations to the Durbar. This led to considerable friction between the Maharajah and the Chiefs and after the conclusion of the treaty in 1818, the Political Agent Mr. Tod, with a view to restore good relationship between the Maharajah and his Chiefs, prevailed upon them to settle their differences, and the kowls relied on by Mr. Anthony are the outcome of his efforts. These kowls read in the background of the facts stated above unmistakably establish that the position of the Chiefs had previously been that of grantees from the State, subject to certain obligations. If so, the agreements did not bring about a change in that status. They merely provided for the carrying out of the obligations arising out of that status. On this basis, the properties held by them would be jagirs even according to the original and narrow sense of that word; and in fact, they are so described in the very kowls relied on by Mr. Frank Anthony. (Vide Aitchison's Treaties, Volume III, page 35, article 29). They are clearly within article 31-A. The respondent also contended that the properties held by the Chiefs would be estates as defined in article 31-A. That would *prima facie* appear to be so; but it is unnecessary to express any opinion on the question, as the resumption would be protected by article 31-A on the ground that it related to jagirs or other similar grants.

(1) (c) *Tikanadars of Shekhwati*: The northern section of Jaipur forming the trans-Aravali region of the State is known as Shekhwati. It consists of large

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estates known as Panchpana Singhana, Sikar, Udaipurwati, Khandela and others. These estates are known as Tikanas and their holders as Tikanadars. The petitioner in Petition No. 424 of 1954 is one of them, his estate being the Tikana of Malsisar and Mandrela in Panchpana Singhana. His contention is that he is a ruler with semi-sovereign status subject only to the obligation to render military service and to pay tribute called Maumla to the State of Jaipur, that he is accordingly a Maumlaguzar and not jagirdar, and that he is not grantee from the State.

The history of these estates is narrated in great detail by Mr. Wills in his report on "The Land Tenures and Special Powers of Certain Tikanadars of Jaipur State, 1933". To state it briefly, these estates originally formed part of the Khalsa lands of the Moghuls. During the period of their decline, King Sawai Jai Singh who ruled over Jaipur from 1700-1743 with great distinction acquired them from the Moghul Emperors on izara, and in his turn granted them on sub-leases or izaras to various persons mostly his clansmen, on condition that in addition to the payment of izara amount fixed they should render military service to the rulers. Subject to these obligations they were entitled to collect revenues from the villages comprised in the izara and maintain themselves. In course of time, when the hold of the Moghul Empire on the outlying territories became weak, the Jaipur rulers assumed practically sovereign powers over the izara lands, which came to be regarded as part of the royal domain. There was a corresponding rise in the status of the sub-lessees who continued in possession of the estate as permanent grantees. Towards the end of the 18th Century when the power of Jaipur waned and its authority weakened, the holders of these estates in Shekhwati attempted in their turn to shake off their allegiance to Jaipur, asserted an independent status in themselves, and began to seize the territories belonging to the State. Before their plan succeeded, Jaipur concluded a treaty with the British which recognised its position as sovereign of the whole State

including Shekhwati. "The first duty urged on the Maharaja after the conclusion of the treaty was the resumption of the lands usurped by the nobles and the reduction of the nobles to their proper *relation of subordination* to the Maharaja. Through the mediation of Sir David Ochterlony Agreements were entered into in 1819 similar to those made at Udaipur. The usurped lands were restored to the Maharajah and the nobles were guaranteed in their legitimate rights and possession". (Aitchison's Treaties, Vol. III, p. 55).

Even after the conclusion of the agreement of 1819 there were disputes between the Maharajah and the Chiefs in respect of various matters, such as the right of the ruler to revise the amount payable by the Tikanadars and the right of the latter to minerals and to customs; but this did not affect the nature of the relationship established between them under the agreement of 1819. Thus, the true position of the Tikanadars is that they got into possession of the properties as izaradars under the rulers of Jaipur, improved that position latterly and became permanent holders of the estates and were eventually recognised as chiefs subordinate to the Maharajah. They were not like the Bhomicharas of Marwar or the Bhumias of Mewar the previous conquerors and occupants of the territory before they were subjugated by Jaipur, as erroneously supposed by Col. Tod; nor were they the clansmen of the ruling dynasty who assisted in the establishment of the Raj. They derived their title to the properties only under grants made by the rulers of Jaipur, and even if their estates could not be considered, as they shaped themselves, as jagirs, they were at least "other similar grants" within article 31-A. That was the view which the State took of their position. Section 4(15) of the Jaipur State-Grants Land Tenures Act No. I of 1947 defines "State grant" as including a jagir, muamla, etc. Muamla is, already stated, the amount payable by the Tikanadars of Shekhwati to the ruler of Jaipur. Section 4(7) defines an estate as meaning "land comprised in a State grant".

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According to this definition, the properties in question would be 'estate' as defined in article 31-A of the Constitution. The Matmi Rules of 1945 provide for recognising succession to State grants, and they include Muamlaguzars. (Vide Part III in Appendix A). Describing the tenures in the non-Khalsa area, the Administration Report of Jaipur 1947-1948 states that "Muamla is the grant of an interest in land for which a fixed amount is payable under a settlement arrived at with the State". (Vide page 35). The position taken up by the petitioner both in the petition and in the opening argument that his status is that of an independent Chieftain holding the properties by right of conquest and not under grant cannot therefore be maintained. In his reply, however, Mr. Achhru Ram shifted the ground, and contended that the ancestors of the petitioner having come in as izaradars, the impugned Act had no application to him, as izara is not one of the tenures mentioned in the first schedule to the Act. But Muamla is mentioned as item 6 in the schedule, and that is the name under which the tenure of the petitioner is known. It must accordingly be held that his lands are within the purview or article 31-A.

(1) (d) *Subeguzars* : The question as to the status of subeguzar is raised in Petitions Nos. 471, 472 and 473 of 1954. The petitioner in Petition No. 473 of 1954 is the holder of the estate of Isarda in Jaipur. It is stated that in the beginning of the 18th Century his ancestor Mohansinghji migrated from Bagri, settled in the hilly regions at Sarsop, built a fortress at Isarda and established an independent principality. In 1751 the ruler of Isarda acknowledged the suzerainty of the Maharaja of Jaipur who, in turn, "recognised the ancestor of the petitioner as Subeguzar", subject to a liability to pay tribute every year to Jaipur. (Vide para 2 of the petition). The result of this arrangement was, as in the case of Bhomicharas, to put the Chieftain in the position of a grantee from the State, and that is also the position under the Jaipur State-Grants Land Tenures Act No. I of 1947. Section 4(15) includes within the definition of 'grant'

"suba" tenure, and the Matmi Rules of 1945 also apply to this tenure. (Vide Appendix A, Part III). While the tenure is called 'Sube', its holder is called not Subedar which has a different meaning but Subeguzar. In the Administration Report of Jaipur 1947-48, Sube is described as follows :

"Suba is a tenure peculiar to Nizamat Sawai Madhopur. It is analogous to the istimrar tenure in other parts of the State. The subeguzars pay a fixed annual amount for the grant held by them". (Vide p. 35).

The position therefore is that the petitioner who is admittedly a subeguzar holds under a grant from the State and falls within article 31-A. It was argued that the family of the petitioners had always enjoyed a special distinction in that the adoption of the ruling house of Jaipur was always made from among the members in this family. That, however, would not affect the status of subeguzars who must be held to be grantees from the State.

A special contention was raised with reference to 12 villages which are stated to have been purchased in 1730 by Raja Jaisingh the then holder of Isarda for a sum of Rs. 20,000; and it was argued that these villages at least could not be treated as held under grant from the State. Isarda was a new State founded by Mohansinghji, and its area was extended from time to time by incorporation of fresh villages, and when in 1751 the Chief acknowledged the suzerainty of Jaipur and held the estate as subeguzar under him, that title must have related to the entire estate including these villages, and there is therefore no ground for treating them differently from the rest. It must be mentioned that this contention was raised only in the reply statement. It must be overruled.

Petitions Nos. 471 *and* 472 *of* 1954 : The petitioner in Petition No. 471 of 1954 is the Tikanadar of Jhalai. In para 2 he admits that he is styled as a subaguzar, and for the reasons given in Petition No. 473 of 1954 his estate must be held to fall within article 31-A. But it is argued that the Tikana consists of 18 villages, and that only two of them are held as 'Sube'.

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But what is the case put forward in the petitions as regards the other villages? The schedule to the petition mentions that four of them are held as maintenance grants, and two as muafi. They are clearly within article 31-A. As regards the others, there is no specific case put forward as to the nature of their tenure. But it is admitted that the Tikana is a permanently settled estate paying a fixed annual revenue of Rs. 1,681, and it is therefore an estate both under section 4(7) of the Jaipur State-Grants Land Tenures Act No. I of 1947 and article 31-A. This decision will also govern Petition No. 472 of 1954 in which the petitioner owns the village of Bagina as "Subeguzar" and the village of Siras as jagirdar.

(2) We now come to the second category of cases wherein the contention is that the particular properties held by the petitioners do no fall within the purview of article 31-A.

(a) *Petitions Nos.* 391 *and* 417 *of* 1954: Petition No. 391 of 1954 relates to the estate of Yeshwantgarh in the State of Alwar. It was settled on 11-8-1941 by its then ruler on his son for maintenance. The grant is described in the deed as jagir, and the Gazette Notification dated 25-8-1941 publishing it states:

"We are also faced with the problem of arranging for our second Maharaj Kumar, a Jagir, which in the matter of size and powers, should be on a much higher footing than the existing Jagirs. Accordingly with the object of creating a new Jagir for him, we have today gifted to him in perpetuity and from generation to generation, all the villages included in the Thikana of Thana together with all other properties enjoyed by the deceased Raja Sahib during his lifetime. This new Jagir shall remain free from liability for rates and cesses for all time, and shall also never be required to maintain any horses".

In 1944 some more villages were added to this grant, and the resumption relates to all these properties.

The contention of Mr. Achhru Ram for the petitioner is that the grant is not an estate under the law relating to land tenures in Alwar, and that it is outside article 31-A. Under section 2(a) of the Alwar

State Revenue Code, 'estate' means "an area for which there is a separate record of rights or which is treated as such under orders of His Highness' Government". It is stated by the petitioners that there has been no separate record of rights in the State of Alwar and that therefore there could not be an estate as defined in the Code. The respondent, however, does not admit this, and contends that, in any event, the grants are jagirs and are therefore within article 31-A. The question is whether the grant is a jagir. The deed dated 11-8-1941 describes it as a jagir, and so does the Gazette Notification publishing it; and that is also how the estate is described by the petitioner himself. Section 3(3) of the Alwar State Jagir Rules, 1939 defines jagir as meaning "grant of land or money granted as such by His Highness or recognised as such by His Highness". Section 2(k) of the Alwar Revenue Code defines "assignee of land revenue" as meaning "a Muafidar or a Jagirdar". Thus, all the requirements of a Jagir are satisfied, and the grant would fall within the scope of article 31-A.

It was next argued that even if the grant was a jagir within article 31-A, the rights of the petitioner in it could not be resumed under section 22(1) (a) of the Act, inasmuch as what could be resumed under that section was not the jagir lands, but the right, title and interest of the jagirdars therein, and that the petitioner was not a jagirdar as defined in section 2(g) of the Act, as he had not been recognised as a jagirdar as required therein. This contention was also raised by the petitioners, whose properties would not be jagirs in the specific sense of the word, but would fall within the extended definition of that word under section 2(h) as including the several tenures mentioned in the first schedule to the Act. The contention is that while their estates would be jagirs within the inclusive portion of the definition, they themselves would not be jagirdars as defined in the Act, because they were recognised not as jagirdars but as holders of the specific tenures enumerated in that schedule, and that therefore their interests could not be resumed under section 22(1)(a) even

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though their estates might be notified as jagirs. In other words, for the section to apply, there must not merely be an estate which is a jagir but also a holder who is a jagirdar.

It is conceded that this contention, if accepted, would render Chapter V providing for resumption inoperative except as regards jagirs in the specific sense and mentioned as item 1 in the first schedule to the Act. But it is argued that it is a case of *casus omissus*, and that it is not within the province of this Court to supply it. But the definition of jagir in section 2(h) is, as provided therein, subject to any contrary intention which the context might disclose; and when section 22(1) (a) enacts that on the resumption of jagir lands the rights of the jagirdar in the lands should cease, it clearly means that the holders of jagirs are jagirdars for the purpose of the section. There cannot be jagirs without there being jagirdars, and therefore the word 'jagirdar' in section 22(1)(a) must mean all holders of jagirs including the tenures mentioned in the schedule to the Act. Section 20 exempts from the operation of the Chapter properties whose incomes are utilised for religious purposes. Those properties would be held on tenures such as Sasan, Doli and so forth which are enumerated in the schedule. There was no need for exempting them under section 20 if the Legislature did not understand them as falling within the operation of section 22(1) (a), and they would fall under that section only if the word 'jagirdar' is interpreted as meaning all persons who hold properties which are jagirs as defined in the Act. In the result, the resumption must be held to be valid.

Petition No. 417 of 1954 relates to properties in Alwar, and the contention raised therein is the same as in Petition No. 391 of 1954 that they are not an estate within article 31-A. But the petitioner describes himself in the petition as the "proprietor jagirdar of the jagir known as Garhi", and states in para (9) that his jagir is unsettled and pays neither revenue nor tribute, and the prayer in para 21(3) is that the State should be restrained by an injunction from interfering with the rights of the petitioner as jagirdar.

In view of these allegations, it is idle for him now to contend that the properties do not fall within article 31-A.

(b) *Petitions Nos.* 401, 414, 518, 535 and 539 *of* 1954: The properties comprised in these petitions are situated wholly or in part in the former State of Bikaner, and the contention raised with reference to them is that they are not estates according to the law of Bikaner, and are therefore outside aricle 31-A. Section 3(1) of the Bikaner State Land Revenue Act No. IV of 1945 defines 'estate' as meaning an area (a) for which a separate record of rights has been made, or (b) which has been separately assessed to land revenue or would have been assessed if the land revenue had not been released, compounded for or redeemed. Section 28 of the Act provides for record of rights, and section 45 enacts that "all land, to whatever purposes applied and wherever situated, is liable to the payment of land revenue to His Highness' Government". Then there are provisions for assessment of land revenue. It is argued for the petitioners that the record of right as contemplated by section 28 has not been made, and that the lands have not been assessed to revenue, nor has it been released, compounded for or redeemed, and that therefore the properties are not estates within section 3(1) of the Bikaner Act No. IV of 1945. The contention of the respondent is that they are, at any rate, jagirs, and so fall within article 31-A. The preamble to the Act proceeds on the basis that whatever is not Khalsa is jagir land. In three of the Petitions Nos. 414, 518 and 535 of 1954, the properties are described in the schedule as jagirs and the petitioners as jagirdars. In Petitions Nos. 401 and 539 of 1954 there are no such admissions, there being no schedules to the petitions. But in the petitions for stay of notification filed in all the above petitions, it is alleged that "notification under the impugned Act with respect to the *jagir* of the petitioners has not yet been made". (Vide para (16). In view of these admissions, we are unable to accept the contention of Mr. Frank Anthony based on the narration in Tod's Annals of Rajasthan,

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Volume II, pp. 25, 26, 140 and 141 that the properties of the petitioners are not jagirs.

(c) *Petition No.* 634 *of* 1954: In this petition there are 192 petitioners, some of whom are from Kishangarh. The special contention urged as regards the petitioners from Kishangarh is that their properties are not estates according to the law of Kishangarh, and that they are therefore outside article 31-A. Rule 4(1) of the Jagir Rules for the Kishangarh State, 1945, defines a 'jagirdar' as a person who has been granted a village or land as jagir by the Durbar in consideration of his past and future services, and Rule 5 classifies jagirdars into five categories. The argument of the petitioners is that they have not been shown to fall within any of these categories. Not merely is this contention not distinctly raised in the petitions, but it is admitted in para 1 that "the petitioners' properties are known as Jagirs, Bhoms, Muafi, etc." which will clearly bring them within the operation of article 31-A. In the schedule to the petition also, the petitioners are described as jagirdars, and the particular villages held by them are noted as jagir villages. The contention that they do not fall within article 31-A must be rejected. It is stated that the 128 petitioner, Pratap Singh, does not make any payment in respect of his estate, and that it is not a jagir. If that is so, then on the admission extracted above, it must be muafi, and will be within article 31-A.

(d) *Petition No.* 536 *of* 1954: The petitioner is the holder of an estate in Mewar known as Bhaisrodgarh Tikana, and he alleges that there was a dispute between Rawat Himmat Singhji the then holder of the estate, and the Maharajah of Udaipur, and that it was settled in March 1855 through the mediation of the then Agent to the Government, Sir M. Montgomery, and that under the terms of the settlement, the Tikana was recognised as the exclusive property of the holder. The agreement itself has not been produced, and it could not, even on the allegations in the petition, have had the effect of destroying the character of the estate as a jagir grant. Moreover,

this estate is mentioned as item 8 in the list of jagirs mentioned in the schedule under section 117 in Mewar Act No. V of 1947, and that by itself is sufficient to bring it within article 31-A.

(e) *Petition No. 672 of* 1954: The petitioner is a Bhumia holding an estate called "Jawas". Its history is given "Chiefs and Leading Families of Rajputana", page 36, and the argument of Mr. Trivedi based on it is that the Chiefs of Jawas occupied a special position as feudatories, and that they could not be considered as grantees. But their position is not different from that of the other Bhomats, and indeed it is admitted in para 14 that the lands are comprised in the Bhomat area. This estate is expressly included in the schedule under section 117 in Mewar Government Kanoon Mal Act No. V of 1947 being item No. 25 and is within article 31-A.

(f) *Petitions Nos.* 483, 527, 528 *and* 675 *of* 1954 *and* 1 *and* 61 *of* 1955: The question that is raised in these petitions is whether grants made for maintenance are 'jagirs or other similar grants' falling within the purview of article 31-A. In Petition No. 483 of 1954 the grant was made by the ruler of Uniaara, and in Petition No. 528 of 1954 by the then ruler of Katauli before it was merged in the State of Kotah. We have held that maintenance grants would be jagirs according to their extended connotation, and they are therefore within article 31-A.

In Petition No. 527 of 1954 the grant was made in favour of certain members of the Ruling House of Jaipur. According to the respondent, they were illegitimate issue called Laljis, and the grants were made for Lawazma and Kothrikharch, which expressions mean maintenance of paraphernalia and household expenses. (Vide the Administration Report of Jaipur 1947-1948, page 36). The grant in favour of the 33rd petitioner in Petition No. 1 of 1955 and the 17th petitioner in Petition No. 61 of 1955 are similar in character. Apart from the general contention that maintenance grants are not within article 31-A, the further argument of Mr. Dadachanji on behalf of these

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petitioners is that Lawazma and Kothrikharch are tenures not mentioned in the first schedule to the Act, and that the resumption of these lands was therefore without the authority of law. But these expressions meaning maintenance expenses are indicative of the purpose of the grant and are not descriptive of the tenure. A grant can both be a jagir and a maintenance grant, and the fact that it was granted for Lawazma and Kothrikharch does not militate against its being a jagir. It was suggested that the question whether Lawazma and Kothrikharch are tenures different from those mentioned in the schedule to the Act might be left open and that the right of the petitioners to establish their contention in other proceedings may be reserved. That would undoubtedly be the proper course to adopt when the point for determination is not whether the Act itself is unconstitutional and void, but whether the action taken under it was authorised by its provisions. But then, there are no allegations in the petition that the properties were held under a tenure, which is outside the schedule to the Act. On the other hand, some at least of the petitions proceed on the footing that the estates are jagirs.

In Petition No. 675 of 1954 the petitioner is the Raj Mata of the ruler of Tonk. She was receiving a monthly allowance of Rs. 762/- for her maintenance and in lieu of it, the village of Bagri with its hamlets, Anwarpura and Ismailpura, was granted to her by resolution dated 6-3-1948. Being a maintenance grant it will be a jagir, and that is the footing on which the petition is drafted. Mr. S. K. Kapur who appeared for the petitioner put forward a special contention that the Government was estopped from resuming the lands. The facts on which this plea is founded are that on 28-11-1953 the Secretary to the Government wrote to the Collector of Tonk that the petitioner was not to be disturbed in her enjoyment of the jagir for her lifetime. In a later communication dated 24-11-1954, however, addressed to the petitioner, the Government expressed its inability to stay resumption, and the argument is that the res-

pondent is estopped from going back on the assurance and undertaking given in the letter dated 28-11-1953. We are unable on these facts to see any basis for a plea of estoppel. The letter dated 28-11-1953 was not addressed to the petitioner; nor does it amount to an assurance or undertaking not to resume the jagir. And even if such assurance had been given, it would certainly not have been binding on the Government, because its powers of resumption are regulated by the statute, and must be exercised in accordance with its provisions. The Act confers no authority on the Government to grant exemption from resumption, and an undertaking not to resume will be invalid, and there can be no estoppel against a statute.

One other contention advanced with reference to this petition might be noticed. It was argued that under rule 2(f) in schedule II, no compensation is awarded in respect of the abadi lands, which remain in the possession of the jagirdar, whereas, if they are sold, the income from the sale proceeds is taken into account. This, it was argued, is discriminatory. The principle underlying this provision is that compensation is to be fixed on the basis of the income which the properties produce, and that while abadi lands in the hands of the jagirdar yield no income, if they are sold the sale proceeds are income-producing assets. Whether this principle of assessing compensation is open to attack is another question, and that will be considered in its due place.

(g) *Petitions Nos.* 371, 375, 379, 416, 455 *and* 461 *of* 1954: These petitions raise in general terms the contention that the properties to which they relate are not estates as defined in article 31-A.

Petition No. 371 of 1954 relates to the estate of Doongri in Jaipur, and it is contended that it is not an estate because the liability of the holder is only to pay Naqdirazan, and it is argued that this is not revenue. Naqdirazan is money commutation for the obligation of maintaining a specified number of horses. This is clearly a grant for military service, and will be a jagir, and that is admitted in para 1 where the

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petitioner is described as the jagirdar of Doongri and in para 9 where it is stated that the jagir is unsettled. The prayer is that an injunction might be issued restraining the State from interfering with the rights of the petitioner as jagirdar. It is also alleged in para 19 of the stay petition that "the whole family is to be supported from this jagir". Article 31-A clearly applies.

Petition No. 375 of 1954 relates to the estate of Renwal, and the special contention raised is that the petitioner pays no revenue but only Naqdirazan. But he describes himself in para 1 as jagirdar of Renwal, admits in para 9 that it is a jagir, and claims relief in para 21 (3) on that footing. The properties are clearly jagirs within article 31-A.

The petitioner in Petition No. 379 of 1954 is also stated to be holding the estate on payment of Naqdirazan. He describes himself as owner of the properties in Khera as jagirdar, admits in paras 9, 14, 16 and 19 that the estate is a jagir, and prays for an injunction restraining the State from interfering with his rights as jagirdar. His estate is clearly within article 31-A.

Petition No. 416 of 1954 relates to an estate called Sanderao. The payment made by the holder is called Rekchakri, and the contention is that this is not revenue. But it is admitted in paras 1, 2, 9 and 21 (3) of the petition that the properties are jagir lands. Petition No. 455 of 1954 relates to properties in Mewar. There are 13 petitioners, and it is argued that the payments made by them called *chakri chatund* and *Bhom-barad* are not revenue, and their properties are not estates. But they admit that they are "owners as petty jagirdars" of the properties mentioned in the schedule, and this statement is followed by others which also contain clear admissions that the estates are jagirs. (Vide paras 12, 17(e), 19 and 21(3) of the petition and paras 16 and 19 of the stay petition). In Petition No. 461 of 1954 the petitioner admits that he holds ten villages as jagirs, seventeen as istimrar and two as muafi. Istimrar is one of the tenures mentioned in the first schedule to the Act, and is item No. 2 therein, and that would be "other similar grant"

within article 31-A, while jagir and muafi are expressly included therein. In conclusion, we must hold that the petitioners have failed to establish that the impugned Act, in so far as it relates to properties held by them, is not within the protection of article 31-A.

IV. (B) We may now consider the contention of the petitioners that the Act is bad on the ground that the compensation provided therein is inadequate. The provisions of the Act bearing on this matter may now be reviewed. The second schedule to the Act lays down the principles on which compensation has to be assessed. Rule 2 enacts how the gross income is to be ascertained, and enumerates the several heads of income which are to be included therein, and rule 4 mentions the deductions which are admissible. Rule 4(3) provides that 25 per cent. of the gross income may be deducted for "administrative charges inclusive of the cost of collection, maintenance of land records, management of jagir lands and irrecoverable arrears of rent"; and there is a proviso to that rule that "in no case shall the net income be computed at a figure less than 50 per cent. of the gross income". Under rule 5 compensation payable is seven times the net income calculated under rule 4. Rule 6 provides that any compensation paid to the jagirdar for customs duties during the basic year shall continue to be payable. Under section 26(2) the compensation amount carries interest at $2\frac{1}{2}$ per cent. from the date of resumption, and under section 35 it is payable in instalments. Under section 35(A) the payment may be made in cash or in bond or partly in cash and partly in bond. In addition to this, there is provision for the payment of rehabilitation grant on the scale mentioned in schedule III.

The complaint of the petitioner is that the compensation provided by the rules is inadequate, being far less than the market value of the estate, that rule 2 takes into account only the income which was being actually received from the properties and omits altogether potential income which might arise in future, as for example, from vacant house sites and unopened

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mines; and reliance was placed on the decision of this Court in *State of West Bengal* v. *Bela Banerjea*(1) where it was held that the compensation guaranteed under article 31(2) was just compensation, equivalent of what the owner had been deprived of. But we have held that the impugned Act is protected by article 31-A, and that article enacts that no law providing for acquisition of properties falling within its purview is open to attack on the ground that it violates any of the provisions of Part III. It was held by this Court in *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh*(2) and *Visveshwar Rao* v. *The State of Madhya Pradesh*(3) that an objection to the validity of an Act relating to acquisition of property on the ground that it did not provide for payment of compensation was an objection based on article 31(2), and that it was barred when the impugned legislation fell within articles 31(4), 31-A and 31-B. It was further held in *Raja Suriya Pal Singh* v. *The State of Uttar Pradesh*(4) that when the acquisition was of the whole estate, it was not a valid objection to it that the compensation was awarded on the basis of the income actually received, and that nothing was paid on account of properties which did not yield an income.

It is argued that the compensation payable under the rules is so inadequate as to be illusory, and that the Act must be held to amount to a fraud on the Constitution. We are unable to agree with this contention. Under the Act, the jagirdar is entitled to compensation equal to seven years' net income, and in addition to it he is awarded rehabilitation grant which may vary from 2 to 11 times the net income. Under section 18 of the Act he will also be allotted a portion of the khudkhast lands in the jagir, the extent of the allotment being proportionate to the total extent thereof. He is also to get compensation for loss of customs. The utmost that can be said of these provisions is that the compensation provided thereunder is inadequate, if that is calculated on the basis of the market value of the properties. But that

(1) [1954] S. C. R. 558.
(2) [1952] S. C. R. 889.
(3) [1952] S. C. R. 1020.
(4) [1952] S. C. R. 1056.

is not a ground on which an Act protected by article 31-A could be impugned. Before such an Act could be struck down, it must be shown that the true intention of the law was to take properties without making any payment, that the provisions relating to compensation are merely veils concealing that intention, and that the compensation payable is so illusory as to be no compensation at all. (Vide *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others* ([1])). We are clear that this cannot be said of the provisions of the impugned Act, and the contention that it is a fraud on the Constitution must, in consequence, fail.

It was argued by Mr. Achhru Ram that the impugned Act suffered from a fundamental defect in that it treated all the 41 tenures classed as jagirs in the schedule as of the same character, and on that basis laid down the same principles of compensation for all of them. It is argued that these tenures differ widely from one another as regards several incidents such as heritability, partibility and alienability, and that different scales of compensation should have been provided suitably to the nature and quality of the tenure. There is considerable force in this contention. But this is an objection to the quantum of compensation, and that is not justiciable under article 31-A. We may add that even if it was open to the petitioners to go behind article 31-A and to assail the legislation on the ground that the compensation awarded was not just, they have failed to place any materials before us for substantiating that contention, and on this ground also, the objection must fail.

It was also argued that there was no public purpose involved in the resumption, and that therefore article 31(2) had been contravened. This again is an objection which is barred by article 31-A; and even on the merits, the question is concluded against the petitioners by the decision of this Court in *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga*

(1) [1952] S. C. R. 889, 946-948.

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and others(1) that legislation of the character of the present is supported by public purpose.

It was next urged that the provisions of the Act offend article 14 and are therefore bad. Even apart from article 31-A which renders such an objection inadmissible, we are satisfied that it is without substance. The contention of the petitioners is that the Act according to its title is one to provide for resumption of jagir lands, not all of them; that section 21 provides that the Government "may appoint a date for the resumption of any class of jagir lands", which means that under this section it is not obligatory on it to resume all jagirs, and that it would be within its powers in resuming some of them while leaving others untouched, and thus the Act is discriminatory. The provisions of this Act bearing on this question are sections 20 and 4. Section 20 enacts that "the provisions of this Chapter apply to all jagirs except jagirs the income of which is utilised for the maintenance of any place of religious worship or for the performance of any religious service". We have held that the Act confers no power on the Government to grant exemption. All the jagirs therefore are liable to be resumed under section 20, no option being left with the Government in the matter. Section 4 of the Act enacts that *all* jagir lands become liable to pay assessment from the commencement of the Act, and the liability of the jagirdar to pay tribute also ceases as from that date. There cannot therefore be any doubt that it was the intention of the Legislature that all jagir lands should be resumed under section 21.

It was also urged that under section 21 the State is authorised to resume different classes of jagir lands on different dates, and that must result in the law operating unequally. This provision was obviously dictated by practical considerations such as administrative convenience and facilities for payment of compensation, and cannot be held to be discriminatory. It was held by this Court in *Biswambhar Singh* v. *The State of Orissa and others*(2) that a similar

(1) [1952] S. C. R. 889.
(2) [1954] S. C. R. 842, 855.

provision in the Orissa Estates Abolition Act No. 1 of 1952 was not obnoxious to article 14. The objection must accordingly be overruled.

Petitions Nos. 629 and 643 of 1954: These are petitions by jagirdars of Mewar, and the special contention urged on their behalf by Mr. Trivedi is that their jagirs had been taken possession of by the State in 1949 under section 8(A) of the Rajasthan Ordinance No. 27 of 1948, that by its judgment dated 11-12-1951 the High Court of Rajasthan had held that that enactment was void under article 14, that that judgment had been affirmed by this court in *The State of Rajasthan* v. *Rao Manohar Singhji*(1), that the present Act came into force on 8-2-1952, and that the Government having wrongly taken possession of the jagirs in 1949 under the provisions of the Ordinance, instead of returning them to the petitioners notified them first under section 21 of the Act, and thus managed to continue in possession, and that in the result, these jagirdars had been treated differently from the jagirdars in other States of Rajputana to whom section 8(A) did not apply and article 14 had been contravened. There is no substance in this contention. The Mewar jagirdars having lost possession under a legislation which has been held to be void, the rights which they had over the jagirs until the date of the present notifications would remain unaffected, and no unequal treatment could result therefrom. And, moreover, the present Act makes no discrimination in the matter, as it applies to all the jagirs in Rajasthan. There is no ground, therefore, for holding that the Act in any manner contravenes article 14.

V. It now remains to deal with the contention of some of the petitioners that even if the impugned Act is valid, their estates do not fall within its mischief, and that their resumption is therefore unauthorised.

(a) *Petition No. 392 of 1954*: The subject-matter of this petition is the estate of Khandela in the former State of Jaipur. By a deed of the year 1836, it

(1) [1954] S.C.R. 996.

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was settled by the Maharajah of Jaipur on Raja Abayasingh and Raja Lakshmansingh on izara istimrar on an annual assessment of Rs. 80,001. The present petitioner is the successor-in-interest of Raja Abayasingh, and is entitled to three-fifths share in the estate. The contention that is urged on his behalf by Mr. Isaacs is that the Act does not apply to him, because he is neither a Jagirdar nor a holder of any of the tenures mentioned in schedule I to the Act. The history of this estate is set out in Mr. Wills's Report at pp. 75-79. Khandela was an ancient principality held by the members of the Raisalot family as Mansubdars under the Moghul Emperor. In 1725 Sawai Jaisingh of Amber obtained an izara of Khandela from the Moghul Emperor, and the Raisalot-holders became subordinate to him. In 1797 the Raisalot family lost possession of the estate, which became incorporated in the Khalsa lands of Jaipur, and administered as such till 1812. Thereafter, it was leased to the Chieftain of Sikar and others on short term leases till 1836 when the grant under which the petitioner claims was made. The occasion for the grant was that there were negotiations for marrying a princess of the Bikaner royal family to the ruler of Jaipur, and the Bikaner Durbar insisted that the Khandela estate should be restored to the Raisalot family. Though the marriage itself did not eventually materialise, the princess having in the meantime died, the negotiations which had been going on with the Jaipur State for the handing over of the Khandela estate to its old holders resulted in the izara of 1836. Now the question is whether the grant of 1836 was that of a jagir. It was clearly not a grant for services renderd or to be rendered, nor was there an assignment of any right to collect revenue. The grantees were to enjoy the income from the lands and pay a fixed annual amount to the Durbar. It is true that the estate had some of the incidents of a jagir tenure attached to it. It was impartible, it was inalienable, and in matters of succession it was governed by the Matmi Rules. All this did not affect the true character of the grant which was both in name and in

substance a permanent lease and not a jagir.

Mr. Pathak contends that even if what was granted under the deed was not a jagir, it was at least a grant of istimrari tenure, which is item 2 in schedule I to the Act. This argument is mainly founded on certain proceedings which were taken with reference to the Khandela estate during the years 1932 to 1939. The occasion for these proceedings was a dispute between the Thikanadars of Shekhwati and the Durbar with reference to their respective rights, and the status of the Izaradars of Khandela also came up for investigation. There was an enquiry and report by Mr. Wills in 1933, and on that report the matter was again investigated by a Committee which submitted its report in 1935. Therein, it was held on an examination of all the materials that the status of the holders of Khandela differed from that of other Thikanadars, who paid Muamla and claimed semi-independent status as "Muamlaguzars", that they held merely as *istimrar Izaradars* under a "permanent and specific izar" and not as istimrar Muamlaguzars, that the grant of Mal, Sayer, Bhom and Kuli habubayat under the deed did not add to their status as Izaradars. (Vide para 5). This report was accepted by the Maharajah of Jaipur on 14-4-1939.

Mr. Pathak contends that the effect of the finding of the Committee that the grantees held as istimrar Izaradars was to bring them within item 2 of schedule I to the Act, and that therefore the resumption is within the Act. But the report emphasises that the grantee held as "istimrar Izaradar" and not as "istimrar Muamlaguzar", and in the context the word "istimrar" has reference not to the character of the tenure but its duration as permanent. The precise nature of the tenure called 'istimrari' is thus set out in Venkatachar's Report :—

"*Permanently quit-rented estates and lands*— These are denoted by various terms as Dumba, Chukota, Suba and Istimrari. Of these the Istimrari tenure merits some attention. The largest number of Istimarari estates in Rajasthan lies in Ajmer-Merwara

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which area is outside the scope of this report. The original tenure of the Istimrari estate in Ajmer is exactly like the Jagirs in Rajasthan. None of the Ajmer estates ever paid revenue till 1755, but were held on condition of military service.....Under British rule, the estate holders were made liable to pay an annual fixed and permanent quit-rent and were converted into Istimrari tenure holders". (Page 22, para 24).

"This quit rent or fixed revenue is a nominal assessment, not related to the income from the holding, but with the condition of confirmation of grant; the amount is invariable. This class of persons are known as 'Istimrardars'". (Page 24, para 36).

It is clear from the above that the essential features of istimrari tenure are that the lands are assessed to a nominal quit rent and that is permanent. The amount of Rs. 80,001 fixed as assessment under the deed of 1836 cannot be said to be a nominal amount, and as found in the report of the 1933 Committee, it was not a permanent assessment. It cannot therefore be held that what was created by the deed of 1836 was istimrari tenure.

It was argued for the respondent that Khandela was clearly an estate as defined in article 31-A, that the policy of the law was to abolish all intermediaries, and that section 2(h) should be so construed as to comprehend all holders of intermediate tenures. The answer to this is that whatever the legislature intended, effect can be given only to its expressed intention, and that the definition of "jagir" in section 2(h) is not sufficiently wide to catch the petitioner. The notification under section 21 in so far as it relates to the properties held by the petitioner under the izara of 1836 must be held to be not within the purview of the Act and therefore unauthorised.

(b) *Petition No. 427 of 1954:* Three villages, Haripura, Khata and Niradun, are comprised in this petition. Lands in Haripura belonged to certain Bhumias of Jaipur. The petitioner acquired them under a number of purchases, the last of them being in 1915. Bhom tenure is item 17 in schedule I to the Act, and

these lands would therefore be within the purview of the Act. It is argued by Mr. Rastogi that as the petitioner had acquired lands from the Bhomias long prior to the Act his rights in them could not retrospectively be affected by subsequent legislation. We are unable to see where the question of retrospective operation comes in. If Bhom is a tenure—and that is what it is under the first schedule to the Act, and if the intention of the Legislature was to bring it within the operation of the Act, then the only question to be considered is whether the particular properties notified under the Act are held under that tenure. And if that is answered in the affirmative, the Act would clearly apply, and it would make no difference in the result that the holder derived title to them by purchase and not by inheritance. On the admission of the petitioner that the lands notified belonged to his vendors as Bhom, the Act will clearly apply.

With reference to the lands in the village of Khata, the contention of the petitioner is that it is held on izara tenure, and that it is therefore outside schedule I to the Act. This village is a Thikana in Shekhwati, and though the estates in that area were originally held on izara, they had, as already stated, risen to the status of jagirs and had been recognised as such. This village is stated to have been granted for maintaining horses, and is really a Mansab jagir and must be held to be covered by item 1 in schedule I.

The village of Niradun is stated to be held as Javad, and the contention is that it is not one of the tenures mentioned in schedule I to the Act. The respondent contends that Javad is not the name of any tenure, and that it means only a sub-grant. In the petition it is not stated that Javad is a tenure; nor is there a mention of its incidents. The word 'javad' is not noticed either in Wilson's Glossary or in Ramanatha Iyer's Law Lexicon. In the Jagir Rules of Kishangarh, section 4(xiii) defines 'javad' as "a jagir confiscated by or reverted to the State", and that has reference to the practice of making a grant of a small portion of the jagir to the jagirdar when it is confiscated, or to the members of the family when it

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reverts back to the State. We are satisfied that there is no tenure called Javad, and it will not assist the petitioner whether Javad is a sub-grant or a grant of jagir of the nature mentioned in section 4(xiii) of the Kishangarh Rules. We may add that this contention was raised by the petitioner in a supplemental statement.

(c) *Petition No.* 468 *of* 1954 : The petitioner is the holder of an estate known as Jobner. He contends that he is a Mansubdar and not a jagirdar, and that his tenure is not included in schedule I to the Act. During the Moghul administration persons to whom assignments of land revenue were made subject to an obligation to maintain horses for Imperial service were called Mansubdars. The petitioner states that Akbar the Great granted three paraganas, Narayana, Kolak and Jobner, to his ancestors as Mansub for maintaining 1000 horses, that in 1727 they came under "the subordination of the Amber Durbar"—which was the name of the State prior to the foundation of Jaipur in 1728, and that they had continued to hold the estate thereafter as Mansubdars and not as jagirdars. But the grant will clearly be a jagir as there is an assignment of land revenue for the rendering of military service, and Mansub is only another name for a jagir. It is classified as a jagir in the Jaipur Administration Report 1947-1948, page 35, and even though the Report has not the force of legislation, it is valuable as showing that Mansub is recognised as a jagir. The estate is therefore covered by item 1 in schedule I.

With reference to one of the villages forming part of this estate, Jorpura, a special contention was put forward by Mr. Naunit Lal that it was dedicated for worship of the Devi, and was therefore within the exemption enacted in section 20. A document is also produced in support of this claim. The respondent claims that under this deed the grant is not in its entirety in favour of the Deity, but the petitioner disputes it. This is not a question which can be determined in this petition. It will be open to the petitioner to establish in appropriate proceedings that the

village or any portion thereof is within the exemption of section 20 of the Act.

(d) *Petitions Nos.* 474 *and* 475 *of* 1954: In 1948 the Maharajah of Jaipur granted to the petitioners, who are his sons, the Thikanas of Bhagwatgarh and Mangarh consisting of 20 villages revenue-free. Now the contention that has been urged before us in these and other similar petitions is that in the first schedules to the Act, only Thikanas of Dholpur are mentioned, being item II, and that therefore Thikanas in other States are excluded. But the expression 'Thikanadar' is a honorific and 'Thikana' does not, except in Dholpur, mean anything more than an estate and that estate can as well be a jagir. The petitioners, in fact, admit in their petitions that they are jagirdars. The grant is clearly a jagir, and falls within item 1 in the schedule.

(e) *Petition No.* 488 *of* 1954: The petitioners are interested in two of the villages, Dadia Rampur and Tapiplya comprised in the izara of Khandela of the year 1836, which forms the subject-matter of Petition No. 392 of 1954, and their title rests on Chhut Bhayas or sub-grant from the izaradar. Their rights are therefore precisely those of the izaradars, and for the reasons given in Petition No. 392 of 1954 these petitioners must succeed.

(f) *Petition No.* 56 *of* 1955: The properties to which this petition relates are held as "Sansan" which is one of the tenures mentioned in the first schedule being item 25, and would therefore fall within the operation of section 21. The contention of the petitioner is that they are dedicated for the worship of Lord Shiva and Goddess Shakti, and that he is a Brahmacharan utilising the income from the lands for the above religious service. The properties comprised in the grant are said to be of a small extent, and the dedication is not improbable. There has been no denial by the respondent of the allegation in the petition, and on the materials placed before us, we have come to the conclusion that the dedication pleaded by the petitioner has been established, and that the

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properties are within the exemption enacted in section 20.

To sum up: The impugned Act is not open to attack either on the ground that the Rajpramukh had no legislative competence to enact it, or that the procedure prescribed in article 212-A for enactment of laws had not been followed. The Act is, in substance, one for acquisition of property, and is within the legislative competence of the State, and it is protected by article 31-A. But the notification is bad as regards properties comprised in Petitions Nos. 392 and 488 of 1954, as izaras are not within the impugned Act. The properties mentioned in Petition No. 36 of 1955 are dedicated for religious services, and are exempt under section 20 of the Act. Appropriate writs will issue in these three petitions.

In Petition No. 468 of 1954 the right of the petitioner to claim exemption under section 20 for the village of Jorpura on the ground that it is dedicated for worship of the Deity is reserved, and the petition is otherwise dismissed.

All the other petitions will stand dismissed. The parties will bear their own costs in all the petitions.

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M. K. RANGANATHAN AND ANOTHER
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[S. R. Das, Bhagwati and Sinha JJ.]

Indian Companies Act, (Act VII of 1913), s. 232(1) as amended by Act XXII of 1936—The words "or any sale held without leave of the Court of any of the properties of the Company" added in the section—Whether legislature intended to make alteration in the law as respects sales effected by secured creditor—Secured creditor—Whether outside the winding up—Construction—Presumption against implied alteration of law.

The secured creditor is outside the winding up and can realise his security without the leave of the winding up Court, though if he files a suit or takes other legal proceedings for the realisation of his security he is bound under s. 171 of the Indian Companies Act to obtain the leave of the winding up Court before he can do so although such leave would almost automatically be granted.