BEGULLA BAPI RAJU ETC. ETC.

v.

STATE OF ANDHRA PRADESH ETC. ETC.

August 23, 1983

[A.P. SEN, E.S. VENKATARAMIAH AND R. B. MISRA JJ.]

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, Section 3(f), definition of family unit—Whether the term "minor sons" would include a "separated minor son" long before the coming into force of the Act and whether the lands transferred by such separated minor sons to third parties by separate sale deeds would also form part of a holding for the purposes of Sections 3(f), 3(o), 4, 5(3), 5(4), 7, Explanations I and II to Section 8 and 10—Whether to answer in the affirmative and holding so would be in violation of Articles 14 and 21 of the Constitution—Whether a new plea not taken before the High Court would be allowed to be taken for the first time in the Supreme Court and a petitioner be given liberty to produce a document in future.

The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 was enacted on January 1, 1973. Soon after, its constitutional validity was challenged before the Andhra Pradesh High Court on various grounds but a Full Bench of the said High Court negatived the same on 11th of April 1973. Therefore, the Act was brought into force on January 1, 1975 by virtue of a notification issued by the State Government.

The three petitioners in SLP 6794/1978 filed separate declarations in accordance with Section 8 of the Act on the footing that the minor sons separated long before the enactment or enforcement of the Act did not constitute a "family unit" and their holdings cannot be tagged with the holding of the father and that land transferred to outsiders long before the enactment either under agreement to sale or under gift deed should not be included in the holding of the petitioners. The Land Reforms Tribunal, Kovvur rejected the said pleas and on September 27, 1976 declared that the 'family unit' was in possession of excess land over the ceiling limit. The appeal preferred before the Land Reforms Appellate Tribunal was allowed in part. The revision petition filed before the High Court was dismissed on the 7th of July 1978 and hence the Special Leave petitions to appeal.

During the pendency of the revision petition in the High Court the Andhra Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1977 was enacted with retrospective effect from 1st January, 1975 which introduced Section 4A among other provisions. The constitutional validity of the Amendment) Act was challenged on the grounds, namely, the State Act is void and inoperative by reason of enactment of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act) and that the definition of 'family unit' was violative

of Article 14 of the constitution. This Court upheld the validity of the Act in *Tumati Venkaish* v. *State of Andhra Pradesh etc.*, [1980] 3 SCR 1143.

In the Special Leave petitions under consideration the following contentions were raised :

1. A separated minor son is not a member of the 'family unit' and, therefore, his property cannot be tagged with that of his father.

2. Some of the plots fall in drought-prone area and, therefore, the petitioner should have got an advantage of twelve and a half per cent.

3. The definition of family unit under S. 3(f) as interpreted by the High Court is also violative of Article 14 of the Constitution.

4. Land transferred by the petitioners under various transfer deeds to outsiders and who came in possession also could not be included in the holding of the petitioners.

5. (a) Section 3(f) of the Andhra Pradesh Act coupled with explanation thereto being destructive of Article 21 of the Constitution is violative of the basic structure of the Constitution.

   (b) Life and livelihood go together and, therefore, deprivation of the minors of the land is hit by Article 21 of the Constitution which contemplates not only a mere existence but living with dignity.

Dismissing the petitions, the Court

HELD : 1. There is no infirmity in any of the provisions of the Andhra Pradesh Land reforms (Ceiling on Agricultural Holdings) Act, 1973. All the contentions raised are no longer *res integra*, since they are covered by earlier decisions of this Court. [718 F]

2:1. From a reading of sections 3(f), 3(o), 4, 5(3), 5(4), 8 and 10, it will be clear that the ceiling area in case of an individual who is not a member of the family unit is equivalent to one standard holding and so also in the case of a family unit with not more than five members the ceiling area is the same. But if the family unit consisted of more than five members the ceiling area would stand increased by one-fifth of one standard holding for every additional member of the family unit, subject, however, to the maximum limit of two standard holdings. In view of the explanation added to S. 4 the land held by all the members of the family unit shall be aggregated for the purpose of computing the holding of the family unit. Obviously, therefore, where a family

unit consisted of father, mother, and minor sons or daughters the land held by all these persons would have to be clubbed together and then ceiling area limit applied to the aggregate holding. No distinction has been made in the definition of family unit between a divided minor son and an undivided minor son. Both stand on the same footing and a divided minor son is as much a member of the family unit as an undivided minor son. Family unit is not to be confused with joint family. [710 A-D]

2:2. The definition of family unit alongwith the explanation does not leave the slightest doubt that a separated minor son is as much a member of the family unit as a joint son with his father. [713 B]

Kanuru Venkatakrishna Rao v. *The Authorised Officer, Land Reforms, Bandar & Ors* , [1978] Andhra Law Journal Vol. II, p. 114, approved.

State of Maharashtra v. *Vyasendra*, C.A. No. 4264/83 decided by S.C. on 3-5-1983, followed.

3:1. In order to attract the provisions of clause (iv) of section 5 of the Act, the petitioners have to establish that the Government by notification has declared a particular area to be a drought prone area. Here, the petitioners should have raised a contention to that effect before the High Court and should have produced the necessary notification but they did not do so. Even before this Court they have not been able to produce the specific notification issued by the Government. Under the circumstances they cannot be allowed to urge this new point for want of necessary foundation. [713 F-H]

3:2. This Court cannot give a blank cheque to the petitioners to produce the required notification as and when they like according to their sweet will. [713 G]

4. The definition of family unit under section 3(f) of the Act, as interpreted by the High Court is not violative of Article 14 of the Constitution. Further it is saved by the protective umbrella under Article 31A and 31B of the Constitution. [714 B-C]

Seth Nand Lal & Ors. v. *State of Haryana & Ors.*, [1980] 3 SCR 1181, followed.

5. After taking into consideration the various relevant provisions of the Act, the Court in *State of Andhra Pradesh* v. *Mohd. Ashrafuddin* AIR 1982 S.C. 913 correctly came to the conclusion that the same land can be the land of the tranferor as well as the transferee in view of the definition of the term 'holding' in section 3(1) of the Andhra Pradesh Act and the said view does not require reconsideration. [717 A-B]

6. The contention that life includes livelihood within the meaning of Article 21 of the Constitution was repelled in *In re* : *Sant Ram*, [1960] 3 SCR 499 and *A. V. Nachane* v. *Union of India*, [1982] 1 SCC. 206 and since *Maneka*

Gandhi v. *Union of India* did not take into consideration *Sant Ram's* case, these cases therefore, still hold the field. Besides, the petitioners have been deprived of their holding in the form of surplus land but it was only for the purpose of giving relief to the downtrodden and the poor agricultural labourers. The surplus land would vest in the State and the State in its turn would give it to the poor and the downtrodden and thus such a deprivation will be protected under Article 39 of the Directive Principles. [718 C-E]

Maneka Gandhi v. *Union of India*, [1978] 2 SCR 621, distinguished.

CIVIL APPELLATE JURISDICTION Special Leave Petition (Civil) Nos. 1671, 2631, 3322-23, 3904, 4418, 9796, 9127 of 1979, 6639-40, 6794, 5121-22 of 1978, 10403 of 1979, 3797 of 1980.

From the Judgments and Orders dated the 6-7-77, 19.12.77, 20.12.77, 20-4-78, 28-2-78, 4-7-79, 8-6-78, 7-7-78, 12-7-78, 9-8-79, 18-1-78 and 13-10-77 of the Andhra Pradesh High Court in Civil Revision Petition Nos. 1991/76 & 403/77, 1612/77, 1268 & 1275/77, 4436/77, 2571/77, 7175/78, 7174/78, 70 & 1907/78, 564/78, 1036 & 1126/78, 1686/79, 1387/77 and 2677 of 1977

WITH

Writ Petition No. 4789 of 1982

AND

Writ Petition No. 4703 of 1978

(Under article 32 of the Constitution of India)

FOR THE APPEARING PARTIES

M.N. Phadke, G.V. Sastry and *P. Rama Reddy.*

A. Subba Rao, B. Partha Sarathi, T.V.S.N. Chari, B. Kanta Rao, K.R. Chowdhari, A.V.V. Nair, Mrs. V.D. Khanna and *V.M. Phadke.*

The Judgment of the Court was delivered by

MISRA J. This batch of special leave petitions and writ petitions arising out of proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as the 'Andhra Pradesh Act') is directed against the judgments of the High Court of Andhra Pradesh and raise common questions of

law. They are, therefore, being disposed of by a common judgment. It will suffice to refer to the facts of Special Leave Petition No. 6794 of 1978, *Chinnam Nagabhushnam and others* v. *State of Andhra Pradesh* to bring out the points of controversy in these cases.

Chinnam Jaganmohanrao and Chinnam Sivaramprasad, petitioners Nos. 2 and 3 are the sons of the first petitioner, Chinnam Nagabhushnam. Petitioner No. 2 is still a minor but petitioner No. 3 has become major recently. The first petitioner and the thrid petitioner partitioned their property by metes and bounds by vittue of a registered partition deed dated 12th of April 1960 and since then they are in separate possession of the land falling in their respective shares. By a second partition deed dated 11th of April, 1969 the first petitioner and the second petitioner further partitioned the properties that fell to the share of the first petitioner in the first partition between themselves. On 10th January 1970 the third petitioner sold an area of 12.00 acres of Pangidigudem village to P. Pattabhi. On 10th of April 1970 he sold an area of 10.22 acres and 10.00 acres of village Pangidigudem under sale agreement Ext. A-9, for Rs. 80,000 to G. Veeraju and the vendee was put in possession. On 12th of June 1970 the first petitioner sold an area of 22.63 acres of Pangidigudem village to one B. Appa Rao under sale agreement Ext. A-12. Again on 16th of June 1970 the third petitioner sold an area of 8.00 acres of Pangidigudem village to B. Balaram Singh under sale agreement Ext. A-10.

The Andhra Pradesh Act came into force on 1st of January 1975 by virtue of a notification issued by the State Government. By April 1, 1975 all the three petitioners filed separate declarations in accordance with s. 8 of the Act on the footing that separated minor sons did not constitute a 'family unit' and their holdings cannot be tagged with the holding of the father and that land transferred to outsiders either under agreement of sale or under gift deed should not be included in the holding of the petitioners. The Land Reforms Tribunal, Kovvur, however, treated the holding in question as the holding of the 'family unit' on the finding that divided minor sons also constituted a 'family unit', and the part of holding transferred to various persons either under agreements of sale or under gift deed formed a part and parcel of the holding of the 'family unit'. Accordingly, on 27th of September, 1976 the Tribunal declared that the 'family unit' was in possession of excess land over the ceiling limit. The petitioners filed an appeal before the Land Reforms Appellate

Tribunal. The Appellate Tribunal, in its turn, allowed the appeal in part. The petitioners still feeling aggrieved filed a revision to the High Court of Andhra Pradesh. The High Court dismissed the same on 7th of July, 1978. The petitioners have now filed the special leave petition to challenge the order of the High Court.

Shri M.N. Phadke appearing for the petitioners has raised the following contentions :

1. A separted minor son is not a member of the 'family unit' and, therefore, his property cannot be tagged with that of his father.

2. Some of the plots fall in drought-prone area and, therefore, the petitioner should have got an advantage of twelve and a half per cent.

3. The definition of family unit under s. 3 (f) as interpreted by the High Court is also violative of Article 14 of the Constitution.

4. Land transferred by the petitioners under various transfer deeds to outsiders and who came in possession also could not be included in the holding of the petitioners.

5.(a) Section 3 (f) of the Andhra Pradesh Act coupled with explanation thereto being destructive of Article 21 of the Constitution is violative of the basic structure of the Constitution.

5.(b) Life and livelihood go together and, therefore, deprivation of the minors of the land is hit by Article 21 of the Constitution which contemplates not only a mere existence but living with dignity.

The argumant by the counsel for the parties was over on 23rd of March, 1983 when the judgment was reserved. Two weeks were, however, allowed to Shri Phadke to file written submissions and three weeks time to file the notification with respect to drought-prone areas in the above matter. Time for filing written submissions was extended up to 14th April, 1983. The petitioners, however, were

not able to get the exact notification in respect of the drought-prone area. They have, therefore, in their written arguments sought permission to withdraw the said contention for the present with liberty to raise the same before the appropriate authority whenever the said notification is available.

Before dealing with the points raised by the learned counsel for the petitioners it may be pointed out that the Andhra Pradesh Act was enacted by the Andhra Pradesh Legislature on 1st of January, 1973. Soon after, its constitutional validity was challenged before the Andhra Pradesh High Court on various grounds but a Full Bench of the High Court negatived the challenge and held the Act to be constitutionally valid on 11th of April, 1973. Effective steps for implementation of the Act could not, however, be taken till the 1st of January, 1975.

The Andhra Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1977 was enacted with retrospective effect from 1st January, 1975 which introduced s. 4 A among other provisions. As soon as the amending Act was passed another round of litigation was started by the land holders by filing writ petitions in this Court challenging again the constitutional validity of the Andhra Pradesh Act. One of the grounds taken was that by reason of enactment of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Central Act') the Andhra Pradesh Act had become void and inoperative. The other ground taken in those cases was that the definition of 'family unit' was violative of Article 14 of the Constitution. The ground of discrimination under Article 14 was, however, negatived by the Court. Certain other questions involving the interpretation of the provisions of the Andhra Pradesh Act were also raised in some of the writ petitions. But this Court in *Tumati Venkaish etc.* v. *State of Andhra Pradesh*(1) observed that the other questions could be agitated by the land holders in the appeals filed by them against the orders determining surplus land. This Court did not invalidate the whole of the Andhra Pradesh Act but only in respect of the provisions which were found repugnant to the provisions of the Central Act.

This is the third attempt on the part of the land holders to challenge the constitutional validity of some of the provisions of the Andhra Pradesh Act.

(1) [1980] 3 S.C.R. 1143.

All the points raised by Shri Phadke are covered by some decision or the other of the Supreme Court. Shri Phadke, however, tried to distinguish those cases on the ground that the specific pleas sought to be raised by him in the present petition were not actually considered in those decisions, and, therefore, he cannot be precluded from raising the contentions which were conspicuous by their absence in those decisions. We take up the first ground first.

In *Tumati Venkaish's case* (supra) this Court made it clear, as stated earlier, that it would examine only the constitutional validity of the Andhra Pradesh Act and other questions could be agitated the land holders in the petitions filed by them against the orders determining the surplus land. In spite of the aforesaid observation the Court did consider the question whether a separated minor son will or will not be construed as a member of the fiamily unit, as will be evident from the following observations made by the Court :

> "The next contention urged on behalf of the land-holders was that on a proper construction of the relevent provisions of the Andhra Pradesh Act, a divided minor son was not liable to be included in "family unit" as defined in section 3 (f) of that Act.,,

and eventually the Court held :

> "We do not therefore see how a divided minor son can be excluded from the family unit. That would be flying in the face of sections 3 (f) and 4 of the Andhra Pradesh Act."

It will be relevant at this stage to refer to certain material provisions of the Act in order to appreciate the arguments :

> "3. In this Act, unless the context otherwise requires— (f) 'family unit' means —
>
> (i) in the case of an individul who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and their unmarried minor daughters, if any;
>
> (ii) in the case of an individual who has no spouse such individual and his or her minor sons and and unmarried minor daughters;

(iii) in the case of an individual who is a divorced husband and who has not remarried, such individual and his minor sons and unmarried minor daughters, whether in his custody or not; and

(iv) where an indivldual and his or her spouse are both dead, their minor sons and unmarried minor daughters.

Explanation :— Where a minor son is married, his wife and their off-spring, if any, shall also be deemed to be members of the family unit of which the minor son is a member."

Section 3 (o) defines 'person' as including *inter alia* an individual and a family unit. Section 10 is a key section which imposes ceiling on the holding of land by providing that if the extent of the holding of a person is in excess of the ceiling area, the person shall be liable to surrender the land held in excess. If, therefore, an individual or family unit holds land in excess of the ceiling area, the excess land would have to be surrendered to the State Government. The extent of the ceiling area has been provided by s. 4 (1) of the Andhra Pradesh Act, which reads :

"4(1) The ceiling area in the case of a family unit consisting of not more than five members shall be an extent of land equal to one standard holding.

(2) the ceiling area in the case of a family unit consisting of more than five members shall be an extent of land equal to one standard holding plus an additional extent of one-fifth of one standard holding for every such member in excess of five, so however, that the ceiling area shall not exceed two standard holdings.

(3) The ceiling area in the case of every individual who is not a member of a family unit, and in the case of any other person shall be an extent of land equal to one standard holding.

Explanation :— In the case of a family unit, the ceiling area shall be applied to the aggregate of the lands held by all the members of the family unit."

It will thus be clear that the ceiling area in case of an individual who is not a member of the family unit is equivalent to one standard holding and so also in the case of a family unit with not more than five members the ceiling area is the same. But if the family unit consisted of more than five members the ceiling area would stand increased by one-fifth of one standard holding for every additional member of the family unit, subject, however, to the maximum limit of two standard holdings. In view of the explanation added to s. 4 the land held by all the members of the family unit shall be aggregated for the purpose of computing the holding of the family unit. Obviously, therefore, where a family unit consisted of father, mother, and minior sons or daughters the land held by all these persons would have to be clubbed together and then ceiling area limit applied to the aggreate holding. No distinction has been made in the definition of a family unit between a divided minor son an undivided minor son. Both stand on the same footing and a divided minor son is as much a member of the family unit as an undivided minor son. Family unit is not to be confused with joint family.

The contention of Shri Phadke is that the definition of various terms as given in s. 3 of the Andhra Pradesh Act opens with the words . "In this Act, unless the context otherwise requires." According to the learned counsel the context 'otherwise requires' that the word 'minor' in s. 3 (f) cannot include a divided minor son. Section 4 (2), argued the learned counsel, deals with the ceiling area of a family unit and s. 4 (3) deals with the ceiling area of an individual who is not a member of a family unit. A divided minor son, submits the counsel, is an individual and is no longer a member of the family unit in as much as a partition has not only the effect of division of the property but a complete severance from membership of the joint family. Thus a minor who is separated under a partition deed cannot be a member of the family unit but becomes an individual.

The counsel supported his argument by reference to cls. (3) and (4) of s. 5 of the Andhra Pradesh Act. Clause (3) deals with the holding of an individual who is not a member of a family unit but is a member of joint family, and reads :

"(3) In computing the holding of an individual who is not a member of a family unit, but is a member of a

joint family, the share of such an individual in the lands held by the joint family shall be taken into account and aggregated with the lands, if any, held by him separately and for this purpose, such share shall be deemed to be the extent of land which would be allotted to such individual had there been a partition of the lands held by the joint family.'' A B

Clause (4) deals with the member of a family unit who is also a member of a joint family, and reads :

"(4) In computing the holding of the member of a family unit who is also a member of a joint family, the share of such member in the lands held by the joint family shall be taken into account and aggregated with the lands, if any, held by him separately and for this purpose, such share shall be deemed to be the extent of land which would be allotted to such member, had there been a partition of the land held by the joint family." C D

On the strength ef these clauses it is sought to be argued for the petitioners that joint family is recognised as a legal entity in the computation of holding. Reference was also made to s. 3 (f), cl. (iv) which provides that where an individual and his or her spouse are both dead, their minor sons and unmarried daughters will be a constituent of 'family unit'. The contention of Shri Phadke is that in view of cl. (iv) of s. 3 (f) an orphan constitutes a family unit and is a member thereof, and in the light of these provisions if one looks at s. 8, Explanation I regarding declaration of holding it will be clear that it speaks of "where the land is held or is deemed to be held by a minor not being a member of a family unit, the declaration shall be furnished by his guardian". Explanation II deals with the land held by the family unit and the declaration on behalf of the family unit is to be made by a person in the management of the property of such family unit. Such a minor not being a member of the family unit, says the counsel, can only be a separated member of the joint family. E F G

Shri Ram Reddy, learned counsel for the respondent State relied on *Kanuru Venkatakrishna Rao* v. *The Authorised Officer, Land Reforms, Bandar & Ors.*(1) in support of his contention that a sepa- H

(1) [1978] A.L.J. Vol. II, p. 114.

rated minor son is as much a member of the family unit as a non-separated minor son. The precise argument of the learned counsel in that case was that since no provision is made in the Act to indicate the holding of a 'family unit', the other provisions of the Act cannot have any application with regard to a family unit. The High Court held :

> "According to the definition of the term 'person' a family unit is also a person. All the provisions of the Act are intended by the Legislature to apply to the family unit like the other categories of the term 'person' as per its definition. Therefore, the legislature intended the family unit also to have a holding for the purpose of applying provisions of the Act relating to determination of the ceiling limit and excess land, if any, over it. It is true the provision is not specific that such and such land constitutes the holding of a family unit. But from what was said in the explanation to section 4, it is clear what is meant by the Legislature to be the holding of a family unit. The implication is very clear that the holding of a family unit is the aggregate of all the lands held by all the members of the family unit .....By means of the Explanation itself the Legislature intended to make that provision."

A similar question arose in a recent case before this Court in Civil Appeal No. 4264 of 1983 : *State of Maharashtra* v. *Vyasendra* decided on 3rd May, 1983 by a Division Bench on Section 4 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 dealt with 'family unit' and the land held by it. Dealing with the question Hon'ble the Chief Justice speaking for the Court observed :

> "The circumstance that the land held by a constituent member of the family unit is separate property or stridhan property is a matter of no consequence whatsoever for the purpose of determining the ceiling area which the family unit can retain. The respondent, his wife and their minor sons and minor unmarried daughters, if any, are all constituent members of the family unit and all the lands held by them have to be pooled together for the purpose of determining the ceiling area which is permissible to the family unit. The nature or character of their interest in

the land held by them is irrelevant for computing the ceiling area which the family unit may retain.

In our opinion, therefore, the definition of family unit along with the explanation does not leave the slightest doubt that a separated minor son is as much a member of the family unit as a joint son with his father.

This leads us to the second group relating to drought-prone area. It may be pointed out at the very outset that no such plea had been taken before the High Court. The petitioners seek to get an advantage of 12½ per cent on account of the land lying in drought-prone area in view of s. 5 (iv) of the Andhra Pradesh Act. Section 5 (iv) provides :

> "5 (iv) In the case of any dry land situated in any area declared by the Government by notification to be a drought prone area, the extent of standard holding shall be increased,—
>
> (a) by twelve and a half per centum, in the case of any dry land falling under Class G or Class H of the Table below ;
>
> (b) by twenty per centum, in the case of any dry land falling under Class I, Class J or Class K of the said Table."

In order to attract the provisions of cl. (iv) of s. 5 the petitioners have to establish that the Government by notification has declared a particular area to be a drought prone-area. The petitioners were given an opportunity to produce the notification which they have failed to do and now the petitioners seek that they should be given an opportunity to produce the specific notification as and when they are able to procure the same. We are not inclined to give such a blank cheque to the petitioners to produce the required notification as and when they like. Indeed they should have raised a contention to that effect before the High Court and should have produced the necessary notification but that they did not do. Even before this Court they have not been able to produce the specific notification issued by the Government. Under the circumstances they cannot be allowed to urge this point for want to necessary foundation for the

argument. We also decline to accede to their request that they may be allowed to produce the required Government notification according to their sweet will and as and when they are able to produce the same.

We now take up the third ground that the definition of family unit under s. 3 (f), as interpreted by the High Court is violative of Art. 14 of the Constitution. This point is also covered by a decision of this Court in *Seth Nand Lal & Anr.* v. *State of Haryana & Ors.*(1) and the Court repelled the argument firstly on the ground that it was saved by the protective umbrella under Art. 31A and Art. 31B of the Constitution and also on other considerations as will be evident from the following observation :

> "It has been pointed out that adopting 'family' as a unit as against 'an individual' was considered necessary as that would reduce the scope for evasion of law by effecting mala fide partitions and transfers since such transactions are usually made in favour of family members that normally in rural agricultural set up in our country the family is the operative unit and all the lands of a family constitute a single operational holding and that therefore ceiling should be related to the capacity of a family to cultivate the lands personally. It has been pointed out that keeping all these aspects in view the concept of family was artificially defined and double standard for fixing ceiling, one for the primary unit and other for the adult son living with the family was adopted In fact, a provision like s. 4(3) which makes for the augmentation of the permissible area for a family when the adult sons do not own or hold lands of their own but are living with the family has one virtue, that it ensures such augmentation in the case of every family irrespective of by what personal law it is governed and no discrimination is made between major sons governed by different systems of personal laws. So far as an adult son living separately from the family is concerned, he is rightly regarded as a separate unit who will have to file a separate declaration in respect of his holding under s. 9 of the Act and since he is living separately and would not be contributing his capacity to the family to cultivate the family lands

(1) [1980] 3 S.C.R, 1181.

personally, there is no justification for increasing the permissible area of the primary unit of the family. The case of an unmarried daughter or daughters living with the family, counsel pointed out, was probably considered to be a rare case and it was presumed, that daughters would in normal course get married and would become members of their husbands' units and that is why no separate provision was made for giving additional land for every unmarried major daughter living with the family. On the materials placed and the initial presumption of constitutionality, we find considerable force in this submission. It is, therefore, not possible to strike down an enactment particularly the enactment dealing with agrarian reform which has been put on the Statutes Book with the avowed purpose of bringing about equality or rather reducing the inequality between the haves and the have nots, as being violative of Art. 14 of the Constitution simply because it has failed to make a provision for what was regarded as an exceptional case or a rare contingency. In our view, the material furnished on behalf of the State Government by way of justification for adopting an artificial definition of family and a double standard for fixing ceiling is sufficient to rebel the attack on these provisions under Art. 14."

We fully concur with the view of the Court.

We now take up the fourth ground. The learned counsel for the petitioners contends that the land transferred by the petitioners in favour of outsiders under various deeds could not be included in their holdings, especially when those transfers were not hit by s. 7 of the Andhra Pradesh Act in as much as the transfers were made much before 24th of January, 1971. This point is again covered by a decision of this Court in *State of Andhra Pradesh* v. *Mohd. Ashrafuddin*[1] to which one of us was a party. In that case the Court had to construe the expression 'held' as defined in s.3 (i) of the Andhra Pradesh Act. It reads :

"3(i) 'holding' means the entire land held by a person,—

(i) as an owner ;

(3) A.I.R. 1982 S.C. 913.

(ii) as a limited owner ;

(iii) as a usufructuary mortgage ;

(iv) as a tenant ;

(v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise, or in one or more of such capacities ;

and the expression 'to hold land' shall be costrued accordingly.

Exalanation :—Where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons."

Dealing with the expressions 'held' the Court observed :

"The word 'held' is not defined in the Act. We have, therefore, to go by the dictionary meaning of the term. According to Oxford Dictionary 'held' means : to possess to be the owner or holder or tenant of ; keep possession of ; occupy. Thus, 'held' connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession. For example, if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale, the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not an actual possession will also be taken to be a holder of the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of the term 'holding'. The explanation clearly contemplates that the same land can be the holding of two different persons holding the land in two different capacities. The respondent in view of the definition certainly is holding as an owner, althongh he is not in possession."

Shri Phadke, however, contends that s. 3(i) of the Andhra Pradesh Act being unreasonable is *ultra vires* because the same land

cannot be the land of the transferor as well as of the transferee and that *Mohd. Ashrafuddin's case* (supra) requires reconsideration. That case has taken into consideration the various relevant provisions of the Act and the Court came to the conclusion the same land can be the land of the transferor as well as the transferee in view of the definition of the term 'holding' in s. 3(i) of the Andhra Pradesh Act and in our opinion the view taken in that case is fully warranted by the provisions of the Act. We are not persuaded to accept the contention that the case requires re-consideration.

This leads us to the last point but not the least in importance, in that the petitioners have been deprived of a substantial portion of their holding in the form of surplus land and thereby they have been deprived of their livelihood affecting their right to live, which is violative of Art. 21 of the Constitution. In support of this contention strong reliance was placed on the case of *Maneka Gandhi* v. *Union of India*(1) which has given a new dimension to Art. 21 of the Constitution. It was held in that case that right to live is not merely confined to physical existence, but it includes within its ambit the right to live with basic human dignity and the State cannot deprive anyone of this valuable right. It was further submitted that s. 3(f) of the Andhra Pradesh Act with the explanation added to it is destructive of Art. 21 and, therefore, violative of the basic structure of the Constitution. This point is also covered by two decisions of this Court. In *re Sant Ram*(2) dealing with Art. 21 of the Constitution a Bench of Five Judges of this Court held :

> "The argument that the word "life" in Art. 21 of the Constitution includes "livelihood" has only to be stated to be rejected."

"The same view was reiterated by a Bench of three Judges in *A. V. Nachane* v. *Union of India*(3). In that case the validity of the Life Insurance Corporation (Amendment) Act, 1981 (I of 1981) and the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness Allowance) Rules, 1981, were challenged on several grounds including Art. 21 of the Constitution and the Court dealing with this aspect of the matter quoted with approval the case of *Sant Ram* (supra) in the following words :

(1) [1978] 2 S.C.R. 621.
(2) [1960] 3 S.C.R. 499.
(3) [1982] 1 S.C.C. 206.

"As regards Article 21, the first premise of the argument that the word 'life' in that Article includes livelihood was considered and rejected in *In re Sant Ram*."

Shri Phadke, however, brushed these cases aside on the simple ground that they are not relevant for the decision of the question whether the right to live includes the right to live with human dignity, and the decision on *Maneka Gandhi's case* (supra) must be deemed to be the correct exposition of the law on the subject. The contention that life includes livelihood within the meaning of Art. 21 of the Constitution was repelled in these two cases and *Maneka Gandhi's case* did not take into consideration the case of *Sant Ram* (supra). These cases, therefore, still hold the field.

Besides, the petitioners have been deprived of their holding in the form of surplus land but it was only for the purpose of giving relief to the downtrodden and the poor agricultural labourers. The surplus land would vest in the State and the State in its turn would give it to the poor and the downtrodden and thus such a deprivation will be protected under Art. 39 of Directive Principles. The case of *Maneka Gandhi* (supra), in our opinion, is not relevant for the decision of the point under consideration.

The counsel for the petitioners in other cases adopted the same argument of Shri Phadke.

Having given our best consideration to the questions involved in the cases we find no infirmity in any of the provisions of the Andhra Pradesh Act.

For the foregoing discussion all the special leave petitions and the writ petitions must fail. They are accordingly dismissed.

S.R. *Petitions dismissed.*