learned counsel for the petitioner that this post has been filed up right from the beginning of the constitution of Chandigarh as a Union Territory on and from 1st November, 1966 by deputationists and never before was there any consultations with the Union Public Service Commission. Also the third respondent has since been promoted as Chief Engineer in the parent Department and no question of any selection for promotion arises and he is in the category of a person who is already a member of the service. It is also doubtful whether Article 320(3) will apply in respect of cases of deputationists filling up posts in other Departments in *ex-cadre* posts. In the circumstances, we are of the view that there is no necessity for consulting the Union Public Service Commission before filling up the post of Chief Engineer, Chandigarh Administration. Even if there was any requirement of considerations with the Union Public Service Commission, having regard to the fact that the post was being filled up by deputationists right from the inception without consulting the Union Public Service Commission and, by reason of the doubt in the need for such consultations, we would consider that the non-consultations with the Union Public Service Commission, in the circumstances, shall be considered to be a mere irregularity not affecting the selection and posting. As held by the Supreme Court in *Manbodhan Lal Srivastava's case* (supra), this irrigularity will not also give any right or cause of action to the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution.

(9) In the result, the writ petition fails and it is dismissed There will, however, be no order as to costs.

R.N.R.

Before V. Ramaswami, C.J. and J. S. Sekhon, J.

BAL RAJ AHUJA,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 5828 *of* 1983
May 10, 1988.

Constitution of India, 1950—*Arts.* 14, 31-*A*, 31-*C and* 300 *A*—*Punjab Land Reforms Act* (*Punjab Act No. X of* 1973)—*S.* 10—*Constitutional validity of Land Reforms Act—Act included in Ninth*

Schedule—Maintainability of such challenge—Land—Meaning of—Whether includes superstructures and trees—Vesting of surplus land in State—Amount of compensation—Method of determination of amount—Validity of such method.

Held, that the petitioners are not entitled to invoke guarantee under Article 14 of the Constitution of India, 1950 in this particular case as the Punjab Land Reforms Act, 1972 in question has been included in the Ninth Schedule and it is also covered by Article 31-A and 31-C. We are, therefore, unable to agree with the learned counsel that by deletion of Article 31 and incorporating Article 311-A the petitioner became entitled to be paid market value for the surplus land vested in the Government or that the Act has now become *ultra vires* of the provisions of Article 300-A of the Constitution. We are also unable to agree that the petitioner has any inherent right to be paid just compensation apart from what the valid law confers on him. (Para 13).

Held, that the definition of the word 'land' includes 'sites of buildings, and other structures on such land'. In the context in which clause (a) appears in Section 2(5) and in view of the fact that there is a comma after the words 'sites of buildings' we are of the view that the words 'sites' in clause (a) does not qualify the words "other structures on such land." It should be interpreted as including other structures on such land as also sites of buildings. Further, normally the word 'land would include the rights in or over the land and thus construed, all that is standing on the land would also be taken as included in the definition.

(Para 14).

Held, that in providing the principles for the determination of the amount to be paid for the land which has vested in the Government under Section 8, the Act provides for the determination of the amount in terms of multiples of fair rent. If the surplus area lands in which there are fruit-bearing trees or there are any super-structures, it could not be stated that the 'fair rent' would be only for the land and would not take note of the super-structures or the fruit-bearing trees. If any fair rent is determined that could only be with reference to the totality of the interest of the owner and not with reference to distinct rights of the owner in the property.

(Para 14).

Writ petition under articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to :—

(i) *issue a writ of certiorari or such other writ, order or direction which may be deemed appropriate, calling for the records of respondent No. 2 relating to determination of surplus area case of the petitioner under Punjab Land Reforms Act 1972 (Act No. 10 of 1973) and after a perusal*

of the same to hold that the provisions of the Act authorising declaration, utilisation and taking of possession of land declared surplus, without making any provision for payment of compensation for structural improvements, cemented khals and for most valuable standing timber, garden and crops and of S-10 of the Act providing only illusory compensation for the land itself, are illegal, void and ultra-vires of Article 300-A of the Constitution and the inherent right of the petitioner to be paid just compensation and directing the respondent No. 2 not to declare, utilise or take possession of the land of the petitioner without making compensation for the aforesaid improvements etc. and without payment of just compensation for the land that may be declared surplus.

(ii) allow the costs of this writ petition to the petitioner against the respondents.

(iii) It is further prayed that pending disposal of this writ petition, further proceedings before respondent No. 2 may please be stayed.

(iv) Exemptions may please be granted from the production of certified copy of Annexure P/1 and issue of notice of this writ petition to the respondents.

K .C. Puri, Advocate with Ish Singh and R. C. Puri, Advocates, for the Petitioners.

K. P. Bhandari, A.G. (Pb.) with Himinder Lal, Advocate, for the Respondents.

JUDGMENT

V. Ramaswami, C.J.

The petitioner is said to have owned an extent of 1317 Kanals 14 Marlas of land in three villages in Tehsil Muktsar, District Faridkot. This included a fruit garden measuring 328 Kanals 14 Marlas. A portion of this fruit garden is protected by a boundary wall constructed by the petitioner and there are a number of fruit bearing trees. The Punjab Land Reforms Act, 1972, (Punjab Act No. 10 of 1973) received the assent of the President on March 24, 1973, and came into force on its publication in the Punjab Government Gazette (Extraordinary) on April 2, 1973. The long title of the Act states that it is an act to consolidate and amend the law relating to ceiling on land holdings, acquisition of proprietary rights

by tenants and other ancillary matters in the State of Punjab. Section 2 contains a declaration to the effect that the Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution of India. The Act, among others, provided for vesting the State Government all the surplus area as determined under the provisions of the Act. Section 10 of the Act provided for principles in accordance with which the amount payable for the land is to be determined by the Collector or authorised officer.

(2) The writ petition in this case has questioned the constitutional validity of the provisions of the Act authorising the declaration, utilization and taking possession of the land declared surplus without making any provision for payment of compensation for structural improvements, cemented khals, valuable standing timber, garden and crops and the amount provided for the land declared surplus and taken possession under section 10 is illusory and the provisions are illegal, void and *ultra vires* the Articles 300-A of the Constitution and the inherent right of the petitioner to be paid just compensation.

(3) On an earlier occasion in *Sucha Singh Bajwa* v. *The State of Punjab* (1), a Full Bench of this Court had considered the constitutional validity of the Punjab Land Reforms Act No. 10 of 1973, hereinafter referred to as the Act, Specifically, the constitutional validity of section 4, section 5 and the definitions of the words "family" and "person" in section 3(4) and (10) were questioned in that case. Section 4 fixed the ceiling on land which a person could own or hold as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another. Section 5 enabled a landowner, who is in possession of land in excess of the permissible area, to select the permissible area and give intimation to the authorised officer in this behalf. The Full Bench held that the Act is clearly a measure of agricultural reform and its provisions fall under Article 31-A of the Constitution as they relate to the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights as provided in sub-clause (a) of clause (1) of Article 31-A. They were also of the view that the various provisions of the Act in so far as the acquisition of surplus land and its distribution amongst the poorer and weaker

(1) A.I.R. 1974 Pb. and Hry. 162.

sections of the society mentioned in section 11 of the Act are concerned, can also be justified under clauses (b) and (c) of Article 39 of the Constitution. In that view, they held that the Act is immune from attack on the ground that its provisions take away or abridge any of the fundamental rights guaranteed under Articles 14, 19 and 31 of the Constitution. The contention as to the constitutional validity of sections 4 and 5 of the Act was, therefore, rejected. However, they held that the definition of the word "person" in section 3(10) of the Act in so far as it includes "family" is unconstitutional with the result that in every provision of the Act, the word "person" wherever used shall not include "family". Certain other consequential provisions contained in the Act were also held as invalid on the basis of this portion of the judgment. The case went up in appeal to the Supreme Court in so far as it held that section 3(10) and 3(4) and the corresponding references in sections 4(1) and 4(2) of the Act were held in-valid. The Supreme Court considered the validity of these provisions along with some other cases arising from the State of Maharashtra in the decision reported as *Dattatraya Govind Mahajan and others* v. *The State of Maharashtra and* another (2). It may be mentioned that at the time when the Full Bench delivered the judgment, the Act was not included in the Ninth Schedule, but by the time it came up for consideration before the Supreme Court, it was included in the Ninth Schedule. Therefore, though at the time when the Full Bench delivered the judgment, Article 31B could not have been relied on, but in the decision of the Supreme Court, the immunity conferred under Article 31B also was relied on. The Supreme Court held that the provisions introducing the concept of a family unit and clubbing together lands held by each member of the family unit and applying the limitation of ceiling area in reference to the aggregation of such lands are not violative of the second proviso to clause (1) of Article 31-A and even if they were, they are protected by Article 31-B and accordingly they upheld the provisions of the Punjab Land Reforms Act, 1972, as they are not in conflict with the second proviso to clause (1) of Article 31-A and in any event they are protected from invalidation under Article 31-B. The first portion of the relief to the effect that the provisions of the Act authorising declaration, utilization and taking possession of land declared as surplus does not, therefore, strictly arise for consideration. However, what is contended by the learned counsel is that section 10 of the Act, in

(2) A.I.R. 1977 S.C. 915.

effect, does not provide for payment of compensation for structural improvements, cemented khals, valuable standing timber, garden and crops and that therefore that provision is *ultra-vires* of Article 300-A of the Constitution and the inherent right of the petitioner to be paid just compensation.

(4) In order to understand the scope of Article 300-A, it may be necessary to trace certain constitutional history of Articles 31, 31-A, 31-B and 31-C. Section 299 of the Government of India Act, 1935, dealing with compulsory acquisition of land provided as follows:—

"299. *Compulsory acquisition of land, etc.*—

(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a provincial legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section 'land' includes immovable property of every kind and rights in or over such property and undertaking includes part of an undertaking."

Construing the scope of clause (2) of section 299, the Federal Court in *Kunwar Lal Singh* v. *Central Provinces* (3), held that the word

(3) A.I.R. (31) 1944 Federal Court 62.

"acquisition" implies that there must be an actual transference of, and it must be possible to indicate some person or body to whom is or are transferred, the land or rights referred to. It is impossible to suggest that when the land revenue is increased, there is any transference to the Provincial Government or any other person of any land or rights in or over immovable property, which remains in the same possession or ownership as immediately before the increase of the assessment, and that, therefore, such increase in revenue cannot be brought within the meaning of section 299(2).

(5) The decision in *Rajah Sri Ravu Sweta, Chelapathi Ramakrishna Ranga Rao Bahadur, Rajah of Bobbili* v. *The State of Madras* (4), related to the validity of the provisions for the reduction of rents and for collection of reduced rents by Government under the provisions of the Madras Estates Land (Reduction of Rent) Act [XXX(30) of 1947]. It was held by a Division Bench of that Court that when one speaks of acquiring the property of another, there are two ideas, namely, the idea of one gaining something which the other is deprived of. There is a divesting and a vesting of property or any interest in property, whether tangible or intangible. Hence though every instance of acquisition of property would be an instance of taking of property the converse is not true. Every instance of taking would not amount to acquisition within the meaning of that term in section 299 of Government of India Act. Even giving the word "property" or "land" the widest connotation, there should be an element of transference before it can be said that there is an acquisition of any interest in land or in property.

(6) In *State of West Bengal* v. *Subodh Gopal Bose and others* (5), the scope of Article 31(1) and (2) directly came up for consideration. Head-note (d) of the report has brought out the correct ratio of the majority judgment and that reads as follows:—

> "The Americal doctrince of police power as a distinct and specific legislative power is not recognised in our Constitution and it is therefore contrary to the scheme of the Constitution to say that Cl. (1) of Article 31 must be read in positive terms and understood as conferring police power on the Legisalture in relation to rights of property. It is the legislature alone that can interpose and compel the individual to part with his property. It is this

(4) A.I.R. 1952 Madras 203.

(5) A.I.R. 1954 S.C. 92.

limitation which the framers of our Constitution have embodied in clause (1) of Article 31 which is thus designed to protect the rights to property against deprivation by the Government. Cl. (2) imposes two further limitations on the Legislature itself. It is prohibited from making a law authorising expropriation except for public purposes and on payment of compensation for the injury sustained by the owner. These important limitations on the power of the State, acting through the executive and legislative organs, to take away private property are designed to protect the owner against arbitrary deprivation of the property. Clauses (1) and (2) of Article 31 are thus not mutually exclusive in scope and content, but should be read together and understood as dealing with the same subject, namely, the prosecution of the right to property by means of the limitations on the State Power referred to above, the deprivation contemplated in Cl. (1) being no other than the acquisition or taking possession of property referred to in Cl. (2).

The majority did not also accept the interpretation placed on the word "acquisition" in the corresponding provision in section 299 of the Government of India Act, 1935, and the view of the majority was:—

"I see no sufficient reason to construe the words "acquired or taken possession" used in cl. (2) of Art. 31 in a narrow technical sense. The Constitution marks a definite break with the old order and introduces new concepts in regard to many matters, particularly those relating to fundamental rights, and it cannot be assumed that the ordinary word "acquisition" was used in the Constitution in the same narrow sense in which it may have been used in pre-Constitution legislation relating to acquisition of land. These enactments, it should be noted, related to "land" whereas Art. 31(2) refers to moveable property as well, as to which no formal transfer or vesting of title is necessary.

x x x x

I am of opinion that the word "acquisition" and its grammatical variations should, in the context of Art. 31 and the Entries in the Lists referred to above, be understood in their

ordinary sense, and the additional words "taking possession of 'or "requisitioning" are used in Art. 31(2) and in the Entries respectively, not in contradistinction with, but in amplification of the term "acquisition" so as to make it clear that the words taken together cover even those kinds of deprivation which do not involve the continued existence of the property after it is acquired. They would, for instance, include destruction which implies the reducing into possession of the thing sought to be destroyed as a necessary step to that end.

The expression "taking possession" can only mean taking such possession as the property is susceptible of and not actual physical possession, as "the interest in, or in any company owning, any commercial or industrial undertaking" which is expressly included in cl. (2) of Article 31, is not susceptible of any actual physical occupancy or seizure."

On both these aspects, S. R. Das J. gave a dissenting view.

(7) Thus, clauses (1) and (2) of Article 31 were regarded as dealing with the same subject, namely, compulsory acquisition or requisition of property by the State as constituting self-contained code on the subject.

(8) The scope of clauses (1) and (2) of Article 31 and Constitution (Fourth Amendment) Act, 1955, introducing clause (2A) of Article 31 was considered by the Supreme Court in *State of Gujarat* v. *Shantilal Mangaldas and others* (6), and it was held that the principal effect of the amendment was to snap the link, which according to the Supreme Court in a prior decision existed between clauses (1) and (2)—that was achieved by enacting clause (2A); greater clarity was secured by enacting in clause 2 that property shall be compulsory acquired only for a public purpose, and by authority of law which provides for compensation, and either fixes the amount of compensation or specifies the principles on which and the manner in which, compensation is to be determined and given.

(9) By the Constitution (Forty-fourth Amendment) Act, 1978, with effect from June 20, 1979, Article 31 relating to compulsory acquisition of property was omitted. The decision of the Supreme

(6) A.I.R. 1969 S.C. 634.

Court in *Datta Charya's* case (supra) in which the validity of the Punjab Land Reforms Act, 1972, was upheld on the basis of Articles 31-A, 31-B and 31-C was delivered on January 27, 1977 prior to the deletion of Article 31 by the Constitution (Forty-fourth Amendment) Act, 1978.

(10) According to the learned counsel, Article 31 only conferred or recognised power of compulsory acquisition of property on the State and while conferring such a power also limited its right to acquire the same only for a public purpose and on payment of compensation. The sovereign power of a State under common law to take property for public use on payment of compensation was kept dormant and the Constitution conferred a specific power of acquisition under Article 31. On the omission or deletion of Article 31, the common law right of an owner of the property to insist on payment of compensation and the limitation placed on the sovereign power to acquire only for a public purpose and on payment of compensation revives and that right had not been taken away by any of the provisions of the Constitution and that, therefore, section 10 of the Act in so far as it did not give him compensation and only provided for payment of an amount as determined thereunder was *ultra vires*. In this connection, he also contended that the entries in the Seventh Schedule relating to acquisition and requisition of property was also, by implication, subject to the acquisition being for public use and on payment of compensation and the entries cannot be construed as conferring a power to acquire property without payment of compensation.

(11) In the *State of Bihar* v. *Sir Kameshwar Singh* (7), one of the arguments was that the obligation to pay compensation is implicit in the language of Entry 33 of List I, Entry 36 of List II and Entry 42 of List III of the Seventh Schedule, as it then was, and that the power to take compulsorily raises, by implication, the right to payment, the power to acquire being inseparable from the obligation to pay compensation. Repelling this contention, the Supreme Court observed:—

> "The question for consideration is whether this obligation to pay compensation for compulsory acquisition of property has been impliedly laid down by the constitution makers

(7) A.I.R. 1952 S.C. 452.

in our Constitution under legislative head in Entry 36 of List II and Entry 33 of List I, or whether this all-important obligation which follows compulsory acquisition as a shadow has been put in express and clear terms somewhere else in the Constitution. To my mind, our Constitution has raised this obligation to pay compensation for the compulsory acquisition of property to the status of a fundamental right and it has declared that a law that does not make provision for payment of compensation shall be void. It did not leave the matter to be discovered and spelt out by learned arguments at the Bar from out of the contents of Entry 36; they explictly provided for it in Article 31(2) of the Constitution. As the obligation to pay has been made compulsory part of a statute that purports to legislate under Entry 33 of List I and Entry 36 of List II, it is not possbile to accede to the contention of Mr. P. R. Das, that the duty to pay compensation is a thing inherent in the language of Entry 36. I agree with the learned Attorney General that the concept of acquisition and that of compensation are two different notions having their origin in different sources. One is founded on the sovereign power of the State to take, the other is based on the natural rights of the person who is deprived of property to be compensated for his loss. One is the power to take, the other is the condition for the exercise of that power. Power to take was mentioned in Entry 36, while the condition for the exercise of that power was embodied in Art. 31(2) and there was no duty to pay compensation implicity in the content of the entry itself."

In the judgment of S. R. Das J., we find the following passage on this question:—

"The scheme of our Constitution obviously is to provide the three things separately, namely, the power of making a law for acquisition of property in Article 246 read with Entry 33 in List I and Entry 36 in List II, the obligation of such law to provide for compensation in Article 31(2) and the power of making a law laying down the principles for determining such compensation in Article 246 read with Entry 42 in List III. According to this scheme it is not necessary at all to regard Entry 33 in List I and Entry 36 in List II, which are mere heads of legislative power, as

containing within themselves any obligation to provide for the payment of compensation. In other words, it is not necessary to treat the obligation to pay compensation as implicit in or as a part or parcel of these legislative heads themselves, for it is separately and expressly provided for in Article 31(2).

In the same case, Chandrasekhara Aiyar J. dealing with this point observed:—

"The argument of Shri P. R. Das that the payment of compensation is a concomitant obligation to the compulsory acquisition of properties by the State can be accepted as sound; but when he went further and urged that it was found in an implicit form in Enrty 42 of the Concurrent List, he was by no means on sure ground. The entries give us the bare heads of legislation. For ascertaining the scope or extent or ambit of the legislation and the rights and the duties created thereby, we must examine the legislation itself or must have resort to general and well-recognized principles of law of jurisprudence. No resort can be had to anything implicit or hidden when the statute makes an express provision on the same subject. As just compensation has to be paid when property is acquired for a public purpose, the legislation has to formulate the principles for determining the compensation and the form and the manner in which it is to be given. Entry 42 means nothing more than a power conferred on the Legislature for achieving this end. The power is conferred but there is no duty cast to provide for compensation. For any statement that the payment of compensation is a primary condition for acquisition of property for a public purpose, we have to look at the provisions of the Constitution itself and this we find in Article 31(2) as stated already. Mr. Das was obliged to take up the untenable position that Entry 42 of its own force implies an obligation to pay compensation, as he could not otherwise jump over the hurdles created in his way by sub-sections 3 and 4 of Article 31 and the new Article 31-A and 31-B."

(12) It was contended by the learned counsel that these passages extracted above would themselves show that if Article 31(2) would not have been there, the learned Judges would have interpreted the

entries as implicitly containing a restriction on the power to provide compensation for acquisition and such an interpretation would be in consonance with common law of Eminent Domain. 29 Corpus Juris Secondum page 779 defines Eminent Domain as the right or power to take private property for public use; the right of the sovereign, or of those to whom the power has been delegated, to condemn private property for public use, and to appropriate the ownership and possession thereof for such use upon paying the owner a due compensation. This power is considered to be an attribute of sovereignty, inherent therein as a necessary and inseparable part thereof and belonging to the State alone. In some cases this principal is reached in theory that it is a reserved right vested in the State and that when the State originally granted land to individuals the grant was under the implied condition that the State might resume dominion over the property whenever the interests of the public or the welfare of the State made it necessary. Such right antedates Constitutions and legislative enactments and exists independently of constitutional sanction or provisions which are only declaratory of previously existing universal law. It is not conferred but may be recognised, limited or regulated by the Constitutions. These principles of common law were considered by the Supreme Court in *Kameshwar Singh's case* (supra). As noticed earlier, the Supreme Court has held that entries in the Seventh Schedule neither expressly nor by implication could be said to provide for payment of compensation in the case of acquisition. By omission of Article 31 and incorporating Article 300-A, which is almost identical with Article 31(1), the power to acquire in exercise of police power is retained but without the restrictions as originally provided under Article 31.

(13) Under Article 245, subject to the provisions of the Constitution, Parliament is empowered to make laws in the whole or any part of the territory of India and the Legislature of a State to make laws in the whole or any part of the State. The subject-matters of laws which could be made by the Parliament and by the Legislatures are dealt with under Article 246 of the Constitution. In considering the powers of the Indian Legislature constituted under Indian Councils Act, 1861, Lord Selborne, in the classic passage in *Her Majesty the Queen and Burah*, (8) said :—

> "...The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and

(8) 3 A.C. 8 & 9.

it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

After Government of India Act, 1935, in *Bhola Prasad* v. *R.* (9), Chief Justice Maurice Gwyer observed:—

"We must again refer to the fundamental proposition enunciated in The Queen *v.* Burah, 3 App. Cas. 889 that Indian Legislature within their own sphere have plenary powers of legislation as large and of the same nature as those of (the British) Parliament itself. If that was true in 1878 it cannot be less true in 1942. Every intendment ought therefore to be made in favour of a Legislature which is exercising the powers conferred on it. Its enactments ought not to be subjected to the minute scrutiny which may be appropriate to an examination of the by-laws of a body exercising only delegated powers, nor is the generally of its power to legislate on a particular subject to be cut down by the arbitrary introduction of far-fetched and impertinent limitations."

These fundamental principles for the interpretation of a written Constitution and its soundness were never doubted. By Article 245,

(9) (1942) F.C.R. 17.

the Constitution affirmatively conferred legislative powers on the Parliament and the Legislatures subject to the provisions of the Constitution. The restrictions or limitations on the powers are those relating to distribution of legislative power contained in Chapter I of Part XI of the Constitution, immutability of the fundamental rights and the restrictions under other provisions of the Constitution like Articles 265, 286, 300-A, 301 to 304 etc. Subject to these limitations or restrictions within the spheres of the power of Parliament and the Legislatures, they are supreme and have plenary power of legislation. The power to make laws is, thus, controlled only by the provisions of the Constitution and none of the principles of common law which are inconsistent with that provision could be enforced. The only restriction relating to deprivation of property is that contained in Article 300-A, which states that no person shall be deprived of his property save by authority of law. The Punjab Land Reforms Act, 1972, is a law relating to such deprivation of property and by virtue of Enrty 42, the State Legislature is entitled to make the law. The only grounds on which such a law could be attacked are that is arbitrary or unreasonable. If the Act is so arbitrary and unreasonable as to offend Article 14 of the Constitution, then it could be invalidated, but not on the ground that compensation provided is not due compensation or market value. The Constitution wherever it wanted to impose limitation on the power to acquire referred the same in the Constitution itself. Originally, Article 31 imposed a limitation on this power. Now after its deletion, we have two provisions : Article 30(1A) and second proviso to Article 31-A. Article 30 (1A) reads:—

> "In making any law provided for the compulsory acquisition of any property of an educational institutional established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause."

Again, the second proviso to Article 31-A reads:—

> "Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his

personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

Except in these two category of cases, there is no restriction under the Constitution on the power of the Legislature to make laws relating to acquisition and requisition. The only restriction was that it shall not be arbitrary or unreasonable so as to come with in the teeth of Article 14 of the Constitution. The petitioners are not entitled to invoke guarantee under Article 14 in this particular case as the Act in question has been included in the Ninth Schedule and it is also covered by Articles 31-A and 31-C as held by the Full Bench of this Court in A.I.R. 1974 P & H 162 and the Supreme Court in A.I.R. 1977 S.C. 915. We are, therefore, unable to agree with the learned counsel that by deletion of Article 31 and incorporating Article 300-A, the petitioner became entitled to be paid market value for the surplus land vested in the Government or that the Act has now became *ultra vires* of the provisions of Article 300-A of the Constitution. We are also unable to agree that the petitioner has any inherent right to be paid just compensation apart from what the valid law confers on him.

(14) It was then contended by the learned counsel that it is a case of non-payment of compensation in respect of super-structures and trees and to that extent section 10 is *ultra vires*. In this connection, he referred to the definition of "land" in section 2(5) which reads as follows:—

'land' means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

(a) the sites of buildings, and other structures on such land; and

(b) banjar land; "

The argument is, the definition of "land" does not include buildings or other super-structures on such land or the trees attached to the earth and the compensation provided under the Act by section 10 is only in respect of land and, therefore, deprivation of the buildings and trees, without payment of compensation is invalid. Before going into the merits of this contention, we may say that if this contention were to be accepted, then the buildings and the trees had not vested in the Government and since the land has vested in the Government, it is open to the petitioner to remove the buildings or the trees but he cannot claim compensation for that which has not vested in the Government. However, we are unable to agree that the Act deals with only the land and not the buildings or other super-structures on such land. The definition of the word "land" extracted above would show that it includes "sites of buildings, and other structres on such land". In the context in which clause (a) appears in section 2(5) and in view of the fact that there is a comma after the words "sites of buildings" we are of the view that the words "sites" in clause (a) does not qualify the words "other structures on such land". It should be interpreted as including other structures on such land as also sites of buildings. Further, normally the word "land" would include the rights in or over the land and thus construed, all that is standing on the land would also be taken as included in the definition. In providing the principles for the determination of the amount to be paid for the land which has vested in the Government under section 8, the Act provides for the determination of the amount in terms of multiples of fair rent. If the surplus area lands in which there are fruit-bearing trees or there are any super-structures, it could not be stated that the "fair rent" would be only for the land and would not take note of the super-structures or the fruit-bearing trees. If any fair rent is determined that could only be with reference to the totality of the interest of the owner and not with reference to distinct rights of the owner in the property. The explanation to section 10(1) states that the fair rent shall mean the value of one-fifth of the gross produce of the land determined in the prescribed manner by the Collector or the officer authorised in this behalf by the State Government. The gross produce is determined in terms of money. The gross produce thus will have to be determined first in terms of money which where there are fruit bearing trees will include the income therefrom and will also take note of any other super-structures as amenities provided therein. In any case when the Act has provided principles for the determination of the amount to

be paid it should be taken that that principles are for determination of the entire value of the land and not to leave out any interest of the owner in the same.

(15) Learned counsel then was at pains to point out that by reason of the maximum amount fixed under clauses (i), (ii) and (iii) the fair rent could never be fixed more than Rs. 166 per acre and that it could not be said to be payment of due compensation. All these arguments are only another facet of the same arguments based on Article 14, which is not permissible in this case by reason of Article 31-A, 31-B and 31-C. This argument is, therefore, unsustinable.

(16) The provisions of the Punjab Land Revenue Act, 1972, Punjab Tenancy Act, 1887 and the Punjab Alienation of Lands Act, 1990 were then referred by the learned counsel. His contention was that these Acts and some other Act give compensation for trees and buildings, but this Act has not provided separately for the trees and buildings. Again, this argument is on the realm of Article 14 which could not be involved by the petitioner. He then wanted to argue that on the basis of the equitable provisions as contained in section 51 of the Transfer of Property Act, he would be entitled to claim compensation. We are unable to agree with this contention because all these contentions go to the root question whether the amount determined on the principles enunciated under section 10 could be questioned or not. The only way he can question the adequacy of compensation is by invoking the provisions of Article 14 of the Constitution on the ground that the Act is so unreasonable or arbitrary as to violate that provision. Since Article 14 is not available to him, these arguments are also not available to him.

(17) In the result, we hold that section 10 is immune from attack on any of the grounds raised by the learned counsel for the petitioner, and that, therefore, the writ petition is liable to be dismissed.

(18) The writ petition is accordingly dismissed. However, there will be no order as to costs.

S.C.K.

Before S. S. Sodhi, J.

CHAN PARKASH,—*Petitioner.*

versus

TARA SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 1570 of 1987

May 19, 1988.

Displaced persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 29—Haryana Urban (Control of Rent and Eviction