PURUSHOTHAMAN NAMBUDIRI

v.

THE STATE OF KERALA

1961

December 5.

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR JJ.)

Agrarain Relations—Constitutional validity of enactment—Dissolution of State Assembly pending President's assent—Reconsideration of Bill by New Assembly—Pandarvaka Verumapattom and Puravaka lands—If amount to estates—"Estate", meaning of—Kerala Agrarian Relations Act, 1960 (Kerala 4 of 1961).—Constitution of India Arts. 31A, 172, 194(3), 196, 200, 201.

The Kerala Agrarian Relations Bill was introduced in the Kerala Legislative Assembly on December 21, 1957, and was ultimately passed by it on June 10, 1959. It was then reserved by the Governor of the State for the assent of the President under Art. 200 of the Constitution of India. Meanwhile, on July 31, 1959, the President issued a proclamation under Art. 356 and the Assembly was dissolved. In February 1960 fresh elections took place in Kerala and on July 27,1960, the President for whose assent the Bill was pending sent it back with his message requesting the Legislative Assembly to reconsider the Bill in the light of the amendments suggested by him. On October 15, 1960, the Bill as amended in the light of the President's recommendations was passed by the Assembly. It then received the assent of the President on January 21, 1961, and became law as the Kerala Agararian Relations Act, 1960. The petitioner challenged the validity of the Act on the ground that the Bill which was pending before the President for his assent at the time when the Legislative Assembly was dissolved lapsed in consequence of the said dissolution and so it was not competent to the President to give his assent to a lapsed Bill with the result that the said assent and all proceedings taken subsequent to it were constitutionally invalid.

Held, that the Constitution of India radically departs from the practice obtaining in the Parliament of the United Kingdom under which Bills not assented to before the dissolution of the Houses are treated as having lapsed on that event occuring. Under Art. 196 of the Constitution a Bill which is pending assent of the Governor or the President does not lapse on the dissolution of the Legislative Assembly of the State.

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Held, further, that the consideration of the remitted Bill by the new Legislative Assembly did not violate the provisions of Art. 201 of the Constitution.

Per Gajendragadkar, Sarkar, Wanchoo and Das Gupta, JJ.—(1) Clause (5) of Art. 196 of the Constitution of India deals exhaustively with the circumstances under which Bills would lapse on the dissolution of the Legislative Assembly of a State, and all cases not falling within its scope are not subject to the doctrine of lapse of pending business on the dissolution of the Assembly.

(2) Under Arts. 200 and 201 there is no time limit within which the Governor or the President should reach a decision on the Bill referred to him for his assent and those Articles do not require that the Bill which is sent back with the message of the Governor or the President should be to the same House which had considered it in the first instance.

Per Ayyangar, J.—(1) A Bill before the legistative Assembly of a State ceases to be pending, under Art. 196(5) when it has passed through all the procedure prescribed for its passage through the House and has been passed by it, and is not deemed as pending before the House till the receipt of the assent of the Governor or the President as the case may be.

(2) Though under Art. 172 each Legislative Assembly of a State is conceived of as having a life of limited duration, in Art. 201 the expression "The House of the Legislature", used in the sense of a House regarded as a permanent body.

Attorney-General for New South Wales v. *Pennie*, [1896] A.C. 376, relied on.

The Kerala Agrarian Relations Act, 1960, was enacted with the object of providing for the acquisition of certain types of agricultural lands in the State beyond the specific maximum extents laid down in the statute. The petitioner who was the owner of certain lands in Trichur of which 900 acres were classified in the land records of the State as Pandaravaka Verumpattom lands and the remaining were entered as Puravaka lands, claimed that the lands did not constitute estates under Art. 31A(2)(a) and, therefore, the Act was not applicable to them. His case was (1) that as regards Pandaravaka Verumpattom lands he was paying rent to the State calculated as a proportion of the gross yield of the properties, that he held the lands under the State as a tenant and that as he was not an intermediary between the State and the tiller of the soil, the lands were not an estate under cl. 2 (a) of Art. 31A, and (2) that the Puravaka lands were held under a Jenmi and that as they had within its scope a particular form of land-holding known as kanom

tenancy they were outside the purview of cl. 2 (a). It was not disputed that the proclamation issued by the Ruler of Cochin on March 10, 1905, was the relevant existing law for the purpose of deciding whether the properties of the petitioner, were an estate under Art. 31A (2)(a). Under cl. 13 of the proclamation the holders of the Pandaravaka Verumpattom tenure acquired full rights to the soil of the lands and held them subject to the liability to pay the assessment to the State. Clause 15 provided that in the case of Puravaka Lands the Jenmi was recognised as owning proprietorship in the land and entitled to share the produce with the cultivator and the State.

Held, that the lands held by the petitioner on Puravaka tenure satisfied the test as to what constituted an estate under Art. 31A(2)(a) of the Constitution and, therefore, the provision of the Kerala Agrarian Relations Act, 1960, were applicable to them.

Held, further (Ayyangar, J., *dissenting*), that the basic concept of the word "estate" as used in Art. 31A(2)(a) of the Constitution is that the person holding the estate should be proprietor of the soil and should be in direct relationship with the State paying land revenue to it except where it is remitted in whole or in part. If a term is used or defined in any existing law in a local area which corresponds to this basic concept of estate that would be the local equivalent of the word "estate" in the area. It is not necessary that there must be an intermediary in an estate before it can be called an estate within the meaning of Art. 31A(2)(a).

Shri Ram Ram Narain Medhi v. *State of Bombay*, [1959] Supp. 1 S.C.R. 489, *Atma Ram* v. *State of Punjab*, [1959] Supp. 1 S.C.R. 748, *Shri Mahadeo Paikaji Kolhe Yavatmal* v. *State of Bombay*, [1962] 1 S.C.R. 733 and *The State of Bihar*, v. *Rameshwar Pratap Narain Singh*, [1962] 2 S.C.R. 382. relied on.

The holder of lands held on Pandaravaka Verumpattom tenure was a proprietor of the lands and held the lands subject to the liability to pay the assessment to the State and therefore, Pandaravaka Verumpattom could be regarded as a loacal equivalent of an estate under cl.2(a) of Art. 31A. 382.

Per Ayyangar, J.—(1) The word "estate" in sub cls.(a) and (b) in Art. 31A(2) has the same meaning and signifies lands held by an intermediary who stood between the State and the actual tiller of the soil and also the interests of those in whose favour there had been alienation of the right to revenue.

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(2) The First Amendment to the Constitution did not bring within the definition of an estate in Art. 31A(2)(a) the holding of persons other than intermediaries or those who held land under grants on favourable tenures from Government.

(3) Lands held by a ryotwari proprietor other than those in 'estates' would not be an estate within sub-cl. (a) of Art. 31A(2), nor the interest of such ryot in his holding an 'interest in an estate' within sub-cl. (b).

(4) The word 'includes' in Art 31A(2)(b) is used in the sense of 'means and includes'.

(5) The holder of Pandaravaka Verumpattom tenure was in the position of a ryotwari pattadar, and, therefore, his lands were not an estate within the meaning of Art. 31A(2).

(6) The lands held by the petitioner on Puravaka tenure were within Art. 31A(2) because they were lands belonging to a Jenmi and so covered by the definition of an estate as amended by virtue of the Fourth Amendment to the Constitution.

ORIGINAL JURISDICTION : Petition No. 105 of 1961. Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

A. V. Viswanatha Sastri, M. K. B. Namburdripat and *M. R. K. Pillai*, for the petitioner.

M. C. Setalvad Attorney-General of India, K. K. Mathew, Advocate General for the State of Kerala, *Sardar Bahadur, George Pudissary* and *V. A. Seyid Muhammad*, for the respondent.

1961. December 5. The Judgment of P.B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo and K. C. Das Gupta, JJ., was delivered by Gajendragadkar, J., N. Rajagopala Ayyangar, J., delivered a separate judgment.

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GAJENDRAGADKAR, J. — This petition has been filed under Art. 32 of the Constitution and it seeks to challenge the validity of the Kerala Agrarian Relations Act, 1960 (Act 4 of 1961) (hereafter called the Act). The petitioner owns about 1, 250 acres of land in the Kerala State. These lands were originally situated within the erstwhile State of Cochin which now forms part of the Kerala State.

Out of the lands owned by the petitioner nearly 900 acres are classified in the land records maintained by the State as Pandaravaka holdings while the remaining lands are classified as Puravaka holdings. By his petition the petitioner claims a declaration that the Act is ultra vires and unconstitutional and prays for a writ of certiorari or other appropriate writ, order or direction against the respondent, the State of Kerala, restraining it from implementing the provisions of the Act. It appears that a notification has been issued by the respondent on February 15, 1961, directing the implementation of ss. 1 to 40, 57,58,60,74 to 79 as well as ss. 81 to 95 of the Act from the date of the notification. The petitioner contends that the notification issued under the Act is also ultra vires, unconstitutional and illegal and as such he wants an appropriate writ or order to be issued quashing the said notification. That in brief is the nature of the reliefs claimed by the petitioner.

The Kerala Agrarian Relations Bill which has ultimately become the Act was published in the Government Gazette of Kerala on December 18,1957, and was introduced in the Kerala Legislative Assembly on December 21, 1957, by the Communist Government which was then in power. The bill was discussed in the Assembly and was ultimately passed by it on June 10, 1959. It was then reserved by the Governor of the State for the assent of the President under Art. 200 of the Constitution. Meanwhile, on July 31, 1959 the President issued a proclamation under Art. 356 and the Assembly was dissolved. In February 1960 mid-term general elections took place in Kerala and as a result a coalition Government came into power. On July 27,1960, the President for whose assent the bill was pending sent it back with his message requesting the Legislative Assembly to reconsider the bill in the light of the specific amendments suggested by him. On August 2, 1960, the Governor returned the bill

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remitted by the President with his message and the amendments suggested by him to the new Assembly for consideration. On September 26, 1960, the amendments suggested by the President were taken up for consideration by the Assembly and ultimately on October 15, 1960, the bill as amended in the light of the President's recommendations was passed by the Assembly. It then received the assent of the President on January 21, 1961, and after it thus became law the impugned notification was issued by the respondent on February 15, 1961. On March 9, 1961, the present writ petition was filed.

Broadly stated three points fall to be considered in this petition. The petitioner challenges the validity of the Act on the preliminary ground that the bill which was pending before the President for his assent at the time when the Legislative Assembly was dissolved lapsed in consequence of the said dissolution and so it was not competent to the President to give his assent to a lapsed bill with the result that the said assent and all proceedings taken subsequent to it are constitutionally invalid. If this preliminary point is upheld no further question would arise and the petition will have to be allowed on that ground alone. If however, this preliminary challenge to the validity of the bill does not succeed the respondent raises its preliminary objection that the Act is protected under Art. 31 A (1) (a) and as such its validity cannot be challenged on the ground that it is inconsistent with, or takes away, or abridges, any of the rights conferred by Arts. 14, 19 and 31. This point raises the question as to whether the properties owned and possessed by the petitioner are an "estate" within the meaning of Art. 31 A (2) (a). If this question is answered in the affirmative then the Act would be protected under Art. 31 A (1) (a) and the challenge to its validity on the ground that it is inconsistent with Arts. 14,19 and 31 will not

survive. If, however, it is held that the whole or any part of the properties with which the petitioner is concerned is outside the purview of "estate" as described by Art. 31 A (2) (a) the challenge to the validity of the Act on the merits would have to be considered. The petitioner contends that the material provisions of the Act contravenes the fundamental rights guaranteed by Arts. 14, 19 (1) (f) and 31 of the Constitution. That is how three principal points would call for our decision in the present writ petition.

Let us first examine the argument that the bill which was pending the assent of the President at the time when the legislative Assembly was dissolved has lapsed and so no further proceedings could have been validly taken in respect of it. In support of this argument it is urged that wherever the English parliamentary form of Government prevails the words "prorogation" and "dissolution" have acquired the status of terms of art and their significance and consequence are well settled. The argument is that if there is no provision to the contrary in our Constitution the English convention with regard to the consequence of dissolution should be held to follow even in India. There is no doubt that, in England, in addition to bringing a session of Parliament to a close prorogation puts an end to all business which is pending consideration before either House at the time of such prorogation; as a result any proceedings either in the House or in any Committee of the house lapse with the session Dissolution of Parliament is invariably preceded by prorogation, and what is true about the result of prorogation is, it is said, *a fortiori* true about the result of dissolution (1). Dissolution of Parliament is sometimes described as "a civil death of Parliament" (2). Ilbert, in his work on

(1) *Vide*: Ridge's "Constitutional Law," 8th ed., p. 39; Earl Jowitt's "The Dictionary of English Law" p. 1427.
(2) Wharton's "Law Lexicon," p. 336.

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'Parliament', has observed that "prorogation means the end of a session (not of a Parliament)"; and adds that "like dissolution, it kills all bills which have not yet passed". He also describes dissolution as an "end of a Parliament (not merely of a session) by royal proclamation", and observes that "it wipes the slate clean of all uncompleted bills or other proceedings". Thus, the petitioner contends that the inevitable conventional consequence of dissolution of Parliament is that there is a civil death of Parliament and all uncompleted business pending before Parliament lapses.

In this connection it would be relevant to see how Parliament is prorogued. This is how prorogation is described in May's "Parliamentary Practice": "If Her Majesty attends in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament: the attendance of the Commons in the House of Peers is commanded; and, on their arrival at the bar, the Speaker addresses Her Majesty, on presenting the supply bills, and adverts to the most important measures that have received the sanction of Parliament during the session. The royal assent is then given to the bills which are awaiting that sanction, and Her Majesty's speech is read to both Houses of Parliament by herself or by her Chancellor; after which the Lord Chancellor, having received directions from Her Majesty for that purpose, addresses both Houses in this manner: "My Lords and Members of the House of Commons, it is Her Majesty's royal will and pleasure that this Parliament be prorogued (to a certain day) to be then here holden; and this Parliament is accordingly prorogued" (2). According to May, the effect of prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the proceedings of Parliament at an end but all proceedings pending at the time are quashed except

(2) May's "Parliamentary Practice," 16th ed., p. 214.

impeachment by the Commons and appeals before the House of Lords. Every bill must therefore be renewed after prorogation as if it had never been introduced. To the same effect are the statements in Halsbury's "Laws of England" (Vide: Vol. 28, pp. 371, 372, paragraphs 648 to 651). According to Anson, "prorogation ends the session of both Houses simultaneously and terminates all pending business. A bill which has passed through some stages but which is not ripe for royal assent at the date of prorogation must begin at the earliest stage when Parliament is summoned again and opened by a speech from the throne" (1). It would thus be seen that under English parliamentary practice bills which have passed by both Houses and are awaiting assent of the Crown receive the royal assent before the Houses of Parliament are prorogued. In other words, the procedure which appears to be invariably followed in proroguing and dissolving the Houses shows that no bill pending royal assent is left outstanding at the time of prorogation or dissolution. That is why the question as to whether a bill which is pending assent lapses as a result of prorogation or dissolution does not normally arise in England. Thus, there can be no doubt that in England the dissolution of the Houses of Parliament kills all business pending before either House at the time of dissolution. According to the petitioner, under our Constitution the result of dissolution should be held to be the same; and since the bill in question did not receive the assent of the President before the Assembly was dissolved it should be held that the said bill lapsed.

This argument has taken another form. The duration of the Legislative Assembly is prescribed by Art. 172(1), and normally at the end of five years the life of the Assembly would come to an end. Its life could come to an end even before the expiration of the said period

(1) Anson's "Law and Custom of The Constitution," Vol. 1, 5th ed., p.73.

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of five years if during the said five years the President acts under Art. 356. In any case there is no continuity in the personality of the Assembly where the life of one Assembly comes to an end and another Assembly is in due course elected. If that be so, a bill passed by one Assembly cannot, on well recognised principles of democratic government. be brought back to the successor Assembly as though a change in the personality of the Assembly had not taken place. The scheme of the Constitution in regard to the duration of the life of State Legislative Assembly, it is urged, supports the argument that with the dissolution of the Assembly all business pending before the Assembly at the date of dissolution must lapse. This position would be consonant with the well recognised principles of democratic rule. The Assembly derives its sovereign power to legislate essentially because it represents the will of the citizens of the State, and when one Assembly has been dissolved and another has been elected in its place, the successor Assembly cannot be required to carry on with the business pending before its predecessor, because that would assume continuity of personality which in the eyes of the Constitution does not exist. Therefore, sending the bill back to the successor Assembly with the message of the President would be inconsistent with this basic principle of democracy.

It is also urged that in dealing with the effect of the relevant provisions of the legislative procedure prescribed by Art. 196 it would be necessary to bear in mind that the powers of the legislature which are recognised in England will also be available to the State Legislature under Art. 194 (3). The argument is that whether or not a successor Legislative Assembly can carry on with the business pending before its predecessor at the time of its dissolution is really

a matter of the power of the Legislature and as such the powers of the Legislative Assembly shall be "such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of Parliament of the United Kingdom, and of its Members and Committees, at the commencement of this Constitution". In other words, this argument assumes that the conventional position with regard to the effect of dissolution of Parliament which prevails in England is expressly saved in India by virtue of Art. 194(3) until a definite law is passed by the State Legislature in that behalf to the contrary. It would be noticed that this argument purports to supply a constitutional basis for the contention which we have already set out that the word "dissolution" is a term of art and its effect should be the same in India as it is in England. It may incidentally be pointed out that the corresponding provisions for our Parliament are contained in Art. 104(3).

As we have already mentioned there is no doubt that dissolution of the House of Parliament in England brings to a close and in that sense kills all business pending before either House at the time of dissolution; but, before accepting the broad argument that this must inevitably be the consequence in every country which has adopted the English Parliamentary form of Government it would be necessary to enquire whether there are any provisions made by our Constitution which deal with the matter; and if the relevant provisions of our Constitution provide for the solution of the problem it is that solution which obviously must be adopted. This position is not disputed. Therefore, in determining the validity of the contentions raised by the petitioner it would be necessary to interpret the provisions of Art. 196 and determine their effect. The corresponding provisions in regard to the

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legislative procedure of Parliament are contained in Art. 107.

The argument based on the provisions of Art. 194(3) is, in our opinion, entirely misconceived. The powers, privileges and immunities of State-Legislatures and their members with which the said Article deals have no reference or relevance to the legislative procedure which is the subject-matter of the provisions of Art. 196. In the context, the word 'powers' used in Art. 194(3) must be considered along with the words "privileges and immunities" to which the said clause refers, and there can be no doubt that the said word can have no reference to the effect of dissolution with which we are concerned. The powers of the House of the Legislature of a State to which reference is made in Art. 194(3) may, for instance, refer to the powers of the House to punish contempt of the House. The two topics are entirely different and distinct and the provisions in respect of one cannot be invoked in regard to the other. Therefore, there is no constitutional basis for the argument that unless the Legislature by law has made a contrary provision the English convention with regard to the effect of dissolution shall prevail in this country.

What then is the result of the provisions of Art. 196 which deals with the legislative procedure and makes provisions in regard to the introduction and passing of bills? Before dealing with this question it may be useful to refer to some relevant provisions in regard to the State Legislature under the constitution. Article 168 provides that for every State there shall be a Legislature which shall consist of the Governor and (a) in the States of Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh and West Bengal, two Houses, and (b) in other States, one House. In the present petition we are concerned with the State of Kerala which has only one House

Article 168 (2) provides that where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly. Article 170 deals with the composition of the Legislative Assembly. and Art. 171 with that of the Legislative Council. Article, 172 provides for the duration of the State Legislatures. Under Art. 172(1) the normal period for the life of the Assembly is five years unless it is sooner dissolved. Article 172(2) provides that the Legislative Council of a State shall not be subjected to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law. It would thus be seen that under the Constitution where the State Legislature is bicameral the Legislative Council is not subject to dissolution and this is a feature which distinguishes the State Legislatures from the English Houses of Parliament. When the Parliament is dissolved both the Houses stand dissolved, whereas the position is different in India. In the States with bicameral Legislature only the Legislative Assembly can be dissolved but not the Legislative Council. The same is the position under Art. 83 in regard to the House of the People and the Council of States. This material distinction has to be borne in mind in construing the provisions of Art. 196 and appreciating their effect.

Article 196 reads thus :

> "196. (1) Subject to the provisions of Articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

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(2) Subject to the provision of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly".

With the first two clauses of this Article we are not directly concerned in the present petition. It is the last three clauses that call for our examination Under cl. (3) a Bill pending in the Legislature of a State will not lapse by reason of the prorogation of the House or Houses thereof. Thus, this clause marks a complete departure from the English convention inasmuch as the prorogation of the House or Houses does not affect the business pending before the Legislature at the time of prorogation. In considering the effect of dissolution on pending business it is therefore necessary to bear in mind this significant departure made by the Constitution in regard to the effect of prorogation. Under this clause the pending business may be pending either in the Legislative Assembly or in the Legislative Council or may be pending the assent of the Governor. At whichever stage the

pending business may stand, so long as it is pending before the Legislature of a state it shall not lapse by the prorogation of the Assembly. Thus, there can be no doubt that unlike in England prorogation does not wipe out the pending business.

Clause (4) deals with a case where a Bill is pending in the Legislative Council of a State and the same has not been passed by the Legislative Assembly ; and it provides that such a bill pending before the Legislative Council of a State shall not lapse on the dissolution of the Legislative Assembly. It would be noticed that this clause deals with the case of a Bill which has originated in the Legislature Council and has yet to reach the Legislative Assembly ; and so the Constitution provides that in regard to such a Bill which has yet to reaeh, and be dealt with by, the Legislative Assembly the dissolution of the Legislative Assembly will not affect its further progress and it will not lapse despite such dissolution.

That takes us to cl. (5). This clause deals with two categories of cases. The first part deals with Bills which are pending before the Legislative Assembly of a State, and the second with Bills which having been passed by the Legislative Assembly are pending before the Legislative Council. The Bills falling under both the clauses lapse on the dissolution of the Assembly. The latter part of cl. (5) deals with cases of Bills which are supplemental to the cases covered by cl. (4). Whereas cl.(4) dealt with Bills which had originated in the Legislative Council the latter part of cl. (5) deals with Bills which, having originated in the Legislative Assembly, have been passed by it and are pending before the Legislative Council. Since cl. (4) had provided that Bills falling under it shall not lapse on dissolution of the Assembly it was thought necessary to provide as a matter of precaution that Bills falling under the latter part of cl. (5) shall lapse on the dissolution of the Assembly.

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That leaves part 1 of cl. (5) to be considered. This part may cover three classes of cases. It may include a Bill which is pending before the Legislative Assembly of a State which is unicameral and that is the case with which we are concerned in the present proceedings. It may also include a case of a Bill which is pending before the Legislative Assembly of a state which is bicameral ; or it may include a case of a Bill which has been passed by the Legislative Council in a bicameral State and is pending before the Legislative Assembly. In all these cases the dissolution of the Assembly leads to the consequence that the Bills lapse. It is significant that whereas cl. (3) deals with the case of a Bill pending in the Legislature of a State, cl. (5) deals with a Bill pending in the Legislative Assembly of a State or pending in the Legislative Council; and that clearly means that a Bill pending assent of the Governor or the President is outside cl. (5). If the Constitution-makers had intended that a Bill pending assent should also lapse on the dissolution of the Assembly a specific provision to that effect would undoubtedly have been made. Similarly, if the Constitution makers had intended that the dissolution of the Assembly should lead to the lapse of all pending business it would have been unnecessary to make the provisions of cl. (5) at all. The cases of Bills contemplated by cl. (5) would have been governed by the English convention in that matter and would have lapsed without a specific provision in that behalf. Therefore, it seems to us that the effect of cl. (5) is to provide for all cases where the principle of lapse on dissolution should apply. If that be so, a Bill pending assent of the Governor or President is outside cl. (5) and cannot be said to lapse on the dissolution of the Assembly.

It is however, contended by the petitioner that if cl. (5) was intended to deal with all cases

where pending business would lapse on the dissolution of the Assembly it was hardly necessary to make any provision by cl. (4). There is no doubt in force in the contention; but, on the other hand it may have been thought necessary to make a provision for Bill pending in the Legislative Council of a State because the Legislative Council is a continuing body not subject to dissolution and the Constitution wanted to make a specific provision based on that distinctive character of the Legislative Council. Having made a provision for a Bill originating and pending in the Legislative Council by cl. (4) it was thought necessary to deal with a different category of cases where Bills have been passed by the Legislative Assembly and are pending in the Legislative Council; and so the latter part of cl. (5) was included in cl. (5). On the other hand, if the petitioner's contention is right cls. (3) and (4) of Art. 196 having provided for cases were business did not lapse it was hardly necessary to have made any provisions by cl. (5) at all. In the absence of cl. (5) it would have followed that all pending business, on the analogy of the English convention, would laps on the dissolution of the Legislative Assembly. It is true that the question raised before us by the present petition under Art. 196 is not free from difficulty but, on the whole, we are inclined to take the view that the effect of cl. (5) is that all cases not falling within its scope are not subject to the doctrine of lapse of pending business on the dissolution of the Legislative Assembly. In that sense we read cl. (5) as dealing exhaustively with Bills which would lapse on the dissolution of the Assembly. If that be the true position then the argument that the Bill which was pending assent of the President lapsed on the dissolution of the Legislative Assembly cannot be upheld.

In this connection it is necessary to consider Arts. 200 and 201 which deal with Bills reserved for the assent of the Governor or the President.

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Article 200 provides, *inter alia*, that when a Bill has been passed by the Legislative Assembly of a State it shall be presented to the Governor, and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President. The proviso to this Article requires that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Grovernor for assent the Governor shall not withhold assent therefrom. The Second proviso deals with cases where the Governor shall not assent to but shall reserve for the consideration of the President any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill. Article 201 then deals with the procedure which has to be adopted when a Bill is be assented to by the President. Under the said Article the President shall declare either that he assents to the Bill or that he withholds assent therefrom. The proviso lays down, *inter alia*, that the President may direct the Governor to return the Bill to the House together, with such message as is mentioned in the first proviso to Art. 200, and when a Bill is so returned the House shall reconsider it accordingly within a period of six months from the date of receipt of such message, and if it is again passed by the House with or without amendment it shall be presented again to the President for his consideration. The provisions of

these two Articles incidentally have a bearing on the decision of the question as to the effect of Art. 196. The corresponding provision for Parliamentary Bill is contained in Art. 111.

It is clear that if a Bill pending the assent of the Governor or the President is held to lapse on the dissolution of the Assembly it is not unlikely that a fair number of Bills which may have been passed by the Assembly, say during the last six months of its existence, may be exposed to the risk of lapse consequent on the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution. If we look at the relevant provisions of Arts. 200 and 201 from this point of view it would be significant that neither Article provides for a time limit within which the Governor or the President should come to a decision on the Bill referred to him for his assent. Where it appeared necessary and expedient to prescribe a time limit the Constitution has made appropriate provisions in that behalf (vide : Art. 197 (1)(b) and (2)(b)). In fact the proviso to Art. 201 requires that the House to which the Bill is remitted with a message from the President shall reconsider it accordingly within a period of six months from the date of the receipt of such message. Therefore, the failure to make any provision as to the time within which the Governor or the President should reach a decision may suggest that the Constitution makers knew that a Bill which was pending the assent of the Governor or the President did not stand the risk of laps on the dissolution of the Aasembly. That is why no time limit was prescribed by Arts. 200 and 201. Therefore, in our opinion, the scheme of Arts. 200 and 201 supports the conclusion that a Bill pending the assent of the Governor or the President does not lapse as a result of the dissolution of the Assembly and that incidentally shows that the provisions of Art. 196(5) are exhaustive.

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At this stage it is necessary to examine another argument which has been urged against the validity of the Act on the strength of the provisions of Arts. 200 and 201. It is urged that even if it be held that the Bill does not lapse, the Act is invalid because it has been passed in contravention of Arts. 200 and 201. The argument is that the scheme of the said two Articles postulates that the Bill which is sent back with the message of the President ought to be sent back to the same House that originally passed it. It is pointed out that when the message is sent by the President the House is requested to reconsider the Bill and it is provided that if the Bill is again passed by the House the Governor shall not withhold assent therefrom. This argument proceeds on the basis that the concept of reconsideration must involve the identity of the House, because unless the House had considered it in the first instance it would be illogical to suggest that it should reconsider it. Reconsideration means consideration of the Bill again and that could be appropriately done only if it is the same House that should consider it at the second stage. The same comment is made on the use of the expression "if the Bill is passed again". It is also urged that it would be basically unsound to ask the successor House to take the Bill as it stands and not give it an opportunity to consider the merits of all the provisions of the Bill. We are not impressed by these pleas. When the successor House is considering the Bill it would be correct to say that the Bill is being reconsidered because in fact it had been considered once. Similarly, when it is said that if the Bill is passed again the Governor shall not withhold assent therefrom it does not postulate the existence of the same House because even if it is the successor House which passes it it is true to say that the Bill has been passed again because in fact it had been passed on an early occasion. Besides, if the effect of Art. 196 is that the Bills

pending assent do not lapse on the dissolution of the House then relevant provisions of Art. 200 must be read in the light of that conclusion. In our opinion, there is nothing in the proviso to Art. 201 which is inconsistent with the basic concept of democratic Government in asking a successor House to reconsider the Bill with the amendments suggested by the President because the proviso makes it perfectly clear that it is open to the successor House to throw out the Bill altogether. It is only if the Bill passed by the successor House that the stage is reached to present it to the Governor or President for his assent, not otherwise. Therefore, there is no substance in the argument that even if the effect of Art. 196 is held to be against the theory of lapse propounded by the petitioner the Bill is invalid because it has been passed in contravention of the provisions of Arts. 200 and 201. This argument proceeds on the assumption that the House to which the Bill is sent must be the same House and that assumption, we think is not wellfounded. We would accordingly hold that the preliminary contention raised against the validity of the Bill cannot be sustained.

That takes us to the point raised by the respondent that the Act attracts the protection of Art. 31A (1)(a) and so is immune from any challenge under Arts. 14, 19 and 31. Thre is no doubt that if the Act falls under Art. 31A(1)(a) its validity cannot be impugned on the ground that it contravenes Arts. 14, 19 and 31; but the question still remains : Does the Act fall under Art. 31A (1) (a) ? ; and the answer to this question depends on whether or not the properties of the petitioner fall within Art. 31A(2)(a). Before dealing with this point it is necessary to set out the relevant provisions of Art. 31A (2) Article 31A(2) reads thus :

"*31A (2).* In this article—

(a) the expression 'estate' shall, in rg-
lation to any local area, have the same meanin

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as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant, *and in the States of Madras and Kerala any janmam right* ;

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

Article 31A was added by the Constitution (First Amendment) Act, 1951, with retrospective effect. Similarly, the portion in italics was added by the Constitution (Forth Amendment) Act, 1955, with retrospective effect.

It is well-known that the Constitution First Amendment of 1951 was made in order to validate the acquisition of zamindari estates and the abolition of permanent settlement. In other words the effect of the First Amendment was to provide that any law which affected the right of any proprietor or intermediate holder in any estate shall not be void on the ground that its provisions were inconsistent with any of the fundamental rights guaranteed by part III of the Constitution. The acquisition of zamindari rights and the abolition of permanent settlement, however, was only the first step in the matter of agrarian reform which the Constitution-makers had in mind. When the first zamindari abolition laws were passed in pursuance of the programme of social welfare legislation their validity was impugned on the ground that they contravened the provisions of Arts. 14, 19 and 31. In order to save the impugned legislation from any such challenge Arts. 31A and 31B and the Ninth Schedule were enacted by the Constitution First Amendment Act; and it is in that context that Art. 31A (2) (a)

and (b) were also enacted. After the zamindari abolition legislation was thus saved the Constitution-makers thought of enabling the State Legislatures to take the next step in the matter of agrarian reform. As subsequent legislation passed by several States shows the next step which was intended to be taken in the matter of agrarian reform was to put a ceiling on the extent of individual holding of agricultural land. The inevitable consequence of putting a ceiling on individual occupation or ownership of such agricultural land was to provide for the acquisition of the land held in excess of the prescribed maximum for distribution amongst the tillers of the soil. It is in the light of this background that we have to determine the question as to whether the property with which the petitioner is concerned constitutes an estate or rights in relation to an estate under cl. (2)(a) or (b).

The petitioner contends that in interpreting the expression "estate" we must have regard to the fact that originally it was intended to cover cases of zamindars and other intermediaries who stood between the State and the cultivator and who were generally alienees of land revenue; and so it is urged that it is only what may be broadly described as landlord tenures which fall within the scope of the expression "estate". It is conceded that the expression "rights in relation to an estate" as it now stands is very broad and it includes the interest of a raiyat and also an underraiyat; but it is pointed out that the said rights, however comprehensive and broad they may be, must be rights in relation to an estate, and unless the property satisfies the test which would have been reasonably applied in determining the scope of "estate" in 1950 the amendment made in cl. (2)(b) will not make the denotation of the word "estate" any broader. In other words, the argument is that the denotation which the expression "estate" had in 1950 continues to be the same even after the

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amendments of 1955 because no suitable amendment has been made in cl. (2) (a). But the infirmity in this argument is that the limitation which the petitioner seeks to place on the denotation of the expression " estate" is not justified by any words used in cl. (2)(a) at all ; it is introduced by reading cls. (2)(a) and (b) together, and that would not be reasonable or legitimate. In deciding what an " estate " means in cl. (a) we must in the first instance construe cl. (a) by itself.

In dealing with the effect of cl. (2) (a) two features of the clause are significant. First, that the definition has been deliberately made inclusive, and second, that its scope has been left to be determined not only in the light of the content of the expression " estate " but also in the light of the local equivalent of the expression " estate " as may be found in the existing law relating to land tenure in force in that area. The Constitution-makers were fully conscious of the fact that the content of the expression " estate" may not be identical in all the areas in this country and that the said concept may not be described by the same word by the relevant existing law ; and so the decision of the question as to what an estate is has been deliberately left rather elastic. In each case the question to decide would be whether the property in question is described as an estate in the terminology adopted by the revelent law. If the said law uses the word "estate" and defines it then there is no difficulty in holding the property described by the local law as an estate is an estate for the purpose of this clause. The difficulty arises only where the relevant local law does not describe any agricultural property expressly as an estate. It is conceded that though no agricultural property may be expressly described as an estate by the local law, even so there may be some properties in the area which may constitute an

estate under cl. (2) (a) ; and so in deciding which property constitutes an estate it would be necessary to examine its attributes and essential features and enquire whether it satisfies the test implied by the expression " estate " as used in cl. (2) (a).

In this connection it is pertinent to remember that the Constitution-makers were aware that in several local areas in the country where the zamindari tenure did not prevail the expression "estate" as defined by the relevant law included estates which did not satisfy the requirement of the presence of intermediaries, and yet cl. (2)(a) expressly includes estates in such areas within its purview and that incidentally shows that the concept of " estate " as contemplated by cl. (2)(a) is not necessarily conditioned by the rigid and inflexible requirement that it must be landlord-tenure of the character of zamindari estate. That is why, treating the expression " estate " as of wide denotation, in every case we will have to enquire whether there is a local definition of " estate " prevailing in the relevant existing law ; if there is one that would determine the nature of the property. If there is no definition in the relevant existing law defining the word " estate " as such, we will have to enquire whether there is a local equivalent, and in that connection it would be necessary to consider the character of the given agricutural property and its attributes and then decide whether it can constitute an estate under cl. (2)(a). If the expression " estate " is construed in the narrow sense in which the petitioner wants it to be construed then it may not be easy to reconcile the said narrow denotation with the wide extent of the word " estate " as is defined in some local definitions of the word "estate ". Therefore, in deciding the question as to whether the properties of the petitioner are an " estate " within the meaning of Art. 31A(2)(a) we are not prepared to adopt

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the narrow construction that the estate must always and in every case represent the estate held by zamindars or other similar intermediaries who are the alienees of land revenue.

This question can also be considered from another point of view. As we will presently point out, decisions of this Court in relation to agricultural estates existing in areas where the zamindari tenure does not prevail clearly show that the definitions in the relevant existing laws in those areas include properties within the expression "estate" despite the fact that the condition of the existence of the intermediary is not satisfied by them, and so there can be no doubt that even in such areas if the definition of the word "estate" includes specified agricultural properties they would be treated as estates under cl. (2)(a). Now just consider what would be the position in areas where the zamindari tenure does not pervail and where the relevant existing law does not contain a definition of an "estate" as such. According to the petitioner's argument where in such a case it is necessary to find out a local equivalent of an estate the search for such a local equivalent would be futile, because in the area in question the condition or test of the presence of intermediaries may not be satisfied and that would mean that the main object with which the Constitution First and Fourth Amendment Acts of 1951 and 1955 were passed would be of no assistance to the State Legislatures in such local areas. If the State Legislatures in such local areas want to enact a law for agrarian reform they would not be able to claim the benefit of Art. 31 A (1)(a). Indeed, the petitioner concedes that on his construction of cl. (2) (a) the intended object of the amendments may not be carried out in certain areas where the existing relevant law does not define an estate as such; but his argument is that the Constitution-makers failed to give effect to their intention

because they omitted to introduce a suitable amendment in cl. (2)(a). On a fair construction of cl. (2) (a) we do not think that we are driven to such a conclusion. Therefore, we are not inclined to accept the petitioner's narrow interpretation of the word "estate" in cl. (2) (a).

It is necessary therefore to have some basic idea of the meaning of the word "estate" as used in Art. 31A(2) (a). As we have said already, where the word "estate" as such is used in the existing law relating to land tenures in force in a particular area, there is no difficulty and the word "estate" as defined in the exiting law would have that meaning for that area and there would be no necessity for looking for a local equivalent. But where the word "estate" as such is not defined in an existing law it will be necessary to see if some other term is defined or used in the existing law in a particular area which in that area is the local equivalent of the word "estate". In that case the word "estate" would have the meaning assigned to that term in the existing law in that area. To determine therefore whether a particular term defined or used in a particular area is the local equivalent of the word "estate" as used in Art. 31 A (2) (a) it is necessary to have some basic concept of the meaning of the word "estate" as used in the relevant Article of the Constitution. It seems to us that the basic concept of the word "estate" is that the person holding the estate should be proprietor of the soil and should be in direct relationship with the State paying land revenue to it except where it is remitted in whole or in part. If therefore a term is used or defined in any existing law in a local area which corresponds to this basic concept of "estate" that would be the local equivalent of word "estate" in that area. It is not necessary that there must be an intermediary in an estate before it can be called an estate within the meaning of Art. 31 A (2)(a); it is true that in

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many cases of estate such intermediaries exist, but there are many holders of small estates who cultivate their lands without any intermediary whatever. It is not the presence of the intermediary that determines whether a particular landed property is an estate or not; what determines the character of such property to be an estate is whether it comes within the definition of the word "estate" in the existing law in a particular area or is for the purpose of that area the local equivalent of the word "estate" irrespective of whether there are intermediaries in existence or not. This in our opinion, is also borne out by consideration of the relevant decisions of this Court to which we will now turn.

The decisions of this Court where this question has been considered lend support to the construction of the word "estate" for which the respondent contends. In *Sri Ram Ram Narain Medhi* v. *The State of Bombay* (1) the constitutional validity of the Bombay Tenancy and Agricultural Lands (Amendment) Act 1956 (Bombay Act XIII of 1956) amending the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948), was considered by this Court. Section 2(5) of the Bombay Land Revenue Code, 1879, had defined the word "estate" as meaning any interest lands and the aggregate of such interested vested in a person or aggregate of persons capable of holding the same. This Court held that the Bombay Land Revenue Code was the existing law relating to land tenures in force in the State of Bombay and that the definition of the word "estate" as prescribed by s.2(5) "had the meaning of any interest in land and it was not confined merely to the holdings of land-holders of alienated lands. The expression applied not only to such estate-holders but also to land holders and occupants of unalienated lands". It would be noticed that s. 2(5) referred to "any

(1) [1959] Supp. 1 S. C. R. 489.

interest in lands" and the expression "lands" was undoubtedly capable of comprising within its ambit alienated and unalienated lands. The argument urged by the petitioner in that case in attacking the validity of the impugned Act in substance was that having regard to the narrow denotation of the "estate" used in Art. 31A(2)(a) the broader construction of s. 2(5) of the Bombay Land Revenue Code should not be adopted, and in construing what is the local equivalent of the expression "estate" in Bombay the narrow construction of s. 2(5) should be adopted and its operation should be confined to alienated lands alone. This contention was rejected and it was held that the estate as defined was not confined merely to the holdings of landholders of alienated lands. It is true that the decision proceeded substantially on the interpretation of s. 2(5) of the local Act; but it may be observed that if the denotation of the word "estate" occurring in Art. 31A(2)(a) was as narrow as is suggested to by the petitioner before us this Court would have treated that as a relevant and material fact in considering the contention of the petitioner before it that the narrow construction of s. 2(5) should be adopted. There is no doubt that the property which was held to be an estate in *Medhi's* case (1) would not be an estate within the narrow meaning of the word as suggested by the petitioner.

In *Atma Ram* v. *The State of Punjab* (2), this Court had occasion to consider the meaning of the expression "estate" in the light of the Punjab Land Revenue Act, 1887. Section 3(1) of the said Act had provided that an "estate" means any area—(a) for which a separate record of rights has been made, or (b) which has separately assessed to land revenue, or would have been so assessed if the land revenue had not been released, compounded for or redeemed, or(c) which the State Government may by general rule or special order, declare to be an estate. Section 3(3) which is also relevant provided

(1) [1959] Supp. 1 S.C.R. 489. (2) [1959] Supp. 1 S.C.R. 748.

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that "holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners. One of the arguments urged by the petitioner before the Court was that a part of the holding was not an estate within the meaning of s. 3(1) of the local Act. This argument was rejected. In dealing with the question as to whether the property held by the petitioner was an estate under the Art. 31A(2)(a) it became necessary for the Court to consider the amplitude of the expression "any estate or of any rights therein" in Art. 31A (1) (a). Sinha J., as he then was, who spoke for the Court, has elaborately examined the different kinds of land tenures prevailing in different parts of India, and has described the process of sub-infeudation which was noticeable in most of the areas in course of time. An "estate", it was observed, "is an area of land which is unit of revenue assessment and which is separately entered in the Land Revenue Collector's register or revenue paying or revenue-free estates". "Speaking generally", observed Sinha, J., "It may be said that at the apex of the pyramid stands the State. Under the State, a large number of persons variously called proprietors, zamindars, malguzars, inamdars and jagirdars, etc., hold parcels of land, subject to the payment of land revenue designated as peshkash, quitrent or malguzari, etc., representing the Government demands by way of land tax out of the usufruct of the land constituting an state, except where the Government demands had been excused in whole or in part by way of reward for service rendered to the State in the past, or to be rendered in the future" (p. 759). "Tenure-holders", it was observed, "were persons who took lands of an estate not necessarily for the purpose of self-cultivation, but also for settling tenants on the land and realising rents from them.....Thus, in each grade of holders of land, in the process of sub-infeudation the holder is a tenant under his superior holder

the landlord, and also the landlord of the holder directly holding under him" (pp. 760, 761).

Having thus considered the background of the land tenures in Punjab and elsewhere this Court proceeded to consider the amplitude of the crucial words "any estate or of any rights therein" in Art. 31A(1)(a). "According to this decision as the connotation of the term "estate" was different in different parts of the country, the expression "estate" described in cl. (2) of Art. 31A, has been so broadly defined as to cover all estates in the country, and to cover all possible kinds of rights in estates, as shown by sub-cl. (b) of cl. (2) of Art. 31 A" (p. 762). "The expression 'rights' in relation to an estate has been given an all-inclusive meaning comprising both what we have called, for the sake of brevity, the horizontal and vertical divisions of an estate. The Provisions aforesaid of Art. 31 A, bearing on the construction of the expression 'estate' or 'rights' in an estate, have been deliberately made as wide as they could be in order to take in all kinds of rights—quantitative and qualitative—in an area coextensive with an estate or only a portion thereof" (p. 763). Further observations made in the judgment in regard to the effect of the addition of words "raiyats" and "under-raiyats" in cl. (b) may also be usefully quoted : "The expression 'rights' in relation to an estate again has been used in a very comprehensive sense of including not only the interests of proprietors or Sub-propritors but also of lower grade tenants, like raiyats or under-raiyats, and then they added, by way of further emphasising their intention, the expression 'other intermediary', thus clearly showing that the enumeration of intermediaries was only illustrative and not exhaustive" (p. 765). Thus, this decision shows that the amendments made by the constitution First and Fourth Amendment Acts of 1951 and 1955 were intended to enable the State Legislatures to undertake the task of agrarian reform with the object of abolishing intermediaries

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and establishing direct relationship between the State and tillers of the soil; and it is in that context that the word "estate" occurring in cl. (2) of Art. 31 A was construed by this Court. What we have said about the decision in *Medhi's case* (1) is equally true about the decision in the case of *Atma Ram* (2). The property which was held to be an estate was not an estate in the narrow sense for which the petitioner contends.

In *Shri Mahadeo Paikaji Kolhe Yavatmal* v. *The State of Bombay* and *Shri Namadeorao Baliramji* v. *The State of Bombay* (3) this Court had to consider the case of the petitioners in Vidarbha who held lands under the State and paid land revenue for the said lands thus held by them. The relevant provisions of the Madhya Pradesh Land Revenue Code. 1954 (II of 1955) were examined and it was held that though the word "estate" as. such had not been employed by the said Code the equivalent of the estate had to be determined under Art. 31 A (2) (a), and as a result of provisions of ss. 145 and 146 of the said Code it was held that the estates held by the petitioners satisfied the test of the local equivalent of "estate" as contemplated by Art. 31A (2) (a). In *The State of Bihar* v. *Rameshwar Pratap Narain Singh* (4), this Court had occasion to consider the scope and effect of the expression "rights in relation to an estate" used in cl. (2) (b), and it held that "in the circumstances and in the particular setting in which the words 'raiyat' and 'under-raiyat' were introduced into the definition it must be held that the words "or other intermediary" occurring at the end do not qualify or colour the meaning to be attached to the tenures newly added". It is in the light of these decisions that we must now proceed to examine the character of the properties with which the petitioner is concerned.

As we have already seen the petitioner owns about 900 acres of land which are classified

(1) [1959] Supp. 1 S.C.R. 489.
(2) [1959] Supp. 1 S.C.R. 748.
(3) [1962] 1 S.C.R. 733.
(4) [1962] 2 S.C.R. 382.

as Pandaravaka holdings and about 350 acres which are described as Puravaka holdings. In meeting the respondent's contention that these lands are an estate under cl. (2) (a) of Art. 31A the petitioner has alleged that the Pandaravaka tenure represents lands of which the State was in the position of the landlord and whatever rights other persons possessed were directly derived from the State. Of the several classes of Pandaravaka tenure the most common is the verumpattom and most of the petitioner's lands falling under the Pandaravaka tenure belong to this class. The petitioner's case is that his liability is to pay rent to the State calculated as a proportion of the gross yield of the properties ; and so the lands held by the petitioner as tenant under the State cannot be said to be an estate under cl. (2) (a). He is not an intermediary between the State and the tiller of soil and so is outside the purview of cl. (2) (a). It has also been alleged by the petitioner that his properties cannot be said to be an estate even in the sense of a local equivalent of the term "estate" because there is no unified record of rights over the area in question ; "each survey number is often divided into several sub-numbers and representing holdings that do not often take in more than a few cents has his own record of rights and separate assessment register". It is for these reasons that the petitioner resists the application of cl. (2) (a) to his Pandaravaka Verumpattom lands.

No clear and specific plea has been expressly made by the petitioner in regard to Puravaka lands. In that connection the petitioner has, however, alleged that the Janmam is another peculiar feature of the land system in Kerala which it is not easy to define since a good deal of ambiguity attaches to the term. However he contends that the Janmam right has to be understood in its limited and technical sense as taking within its scope a particular form of land-holding known as the kanom tenancy.

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According to the petitioner the Janmam right included in cl. (2) (a) can take in only the rights and liabilities controlled and created by the two Tenency Acts to which he has referred. That is how the petitioner contends that the Puravaka lands are also outside the purview of cl. (2) (a).

It is common-ground that the proclamation issued by his Highness Sir Rama Varma Raja of Cochin on March 10, 1905, is the relevant existing law for the purpose of deciding whether the agricultural properties of the petitioner constitute an estate under cl. (2)(a). It is therefore, necessary to examine the scheme of this proclamation and decide whether in view of the characteristics and attributes of the properties held by the petitioner they can be said to constitute a local equivalent of an estate under cl.(2)(a). This proclamation consists of twenty-eight clauses which deal broadly with all the aspects of land tenure prevailing in the State of Cochin. The preamble to the proclamation recites that the Raja had already ordered that a complete survey embracing demarcation and mapping and the preparation of an accurate record of titles in respect of all descriptions of properties within his entire State shall be carried out, and it adds that directions had been issued that a revenue settlement or revision of the State demand shall be conducted in accordance with the principles laid down by the proclamation. Clause 6 enumerates the tenures of lands prevailing in the State. Under this clause there are two major tenures (1) Pandaravaka and (2) Puravaka. The former are held on one or the other of six varieties of tenures; of these we are concerned with the verumpattom sub-tenure. This clause provides that the Pandaravaka verumpattom tenure shall be deemed as the normal tenure for settling the full State demand and that the other tenures shall be treated as favourable tenures and settled on the lines indicated in cls. 14 to 17. Clause 7 says that the present rate of assessment

on Pandaravaka verumpattom nilas varies from one eighth para to twelve paras of paddy for every para of land; and it adds that such a vast disparity of rates is indicative of unequal incidence under the existing revenue system. That is why the clause proceeds to lay down that the State demand should bear a fixed proportion to the produce a land is capable of yielding and so it prescribes that under the Pandaravaka verumpattom tenure the holder should pay half of the net produce to the State. The clause then proceeds to provide for the method in which this half of the net produce should be determined. Clauses 11 and 12 deal with the assessment on tree.

Clause 13 is important. It says "at present holders of Pandaravaka verumpattom lands do not possess any property in the soil. As we are convinced that proprietorship in the soil will induce the cultivator to improve his land and thereby add to the prosperity of the land, we hereby declare that the verumpattom holders of lands shall, after the new settlement has been introduced, acquire full rights to the soil of the lands they hold and that their rights shall remain undisturbed so long as they regularly pay the State revenue provided that the rights to metals, minerals possessed by the State in all lands under whatever tenure they are held are reserved to the State".

Under cl. 18 it is provided, inter alia, that in the case of Pandaravaka lands held on the erumpattom tenure the settelement shall be made with the present holder of the land and in regard to Puravaka land with the Janmam. Clause 22 prescribes the procedure and the time for the introduction of settlement. It requires that before the introduction of the new rates of assessment a rough patta shall be issued to each of the landholders showing the relevant detail of his holdings and the assessment to be paid by him hereafter. The object of preparing such a patta is to

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give an opportunity to the landholders to bring to the notice of the authorities their objections if any. The objections are then required to be heard before the final entries are made. Clause 26 declares that the new settlement shall be current for a term of thirty years. This has been done with a view to secure the utmost freedom of action to the landholders in improving their properties and turning them to the best advantage according to their means and inclination. Clause 27 deals with escheats; and cl. 28 makes general provisions as to the formation of a new land record including reassessment of land and the registration of titles "a work calculated to promote the well-being of a State".

It would thus be seen that under cl. 13 the person holding lands on the Pandaravaka verumpattom tenure is not a tenant. He is given the proprietary right in the soil itself, subject of course to the rights as to metals and minerals reserved in favour of the State. Indeed, the whole scheme of the new proclamation appears to be to change the character of the possession of the Pandaravaka verumpattom tenure-holder from that of a tenant into that of a proprietor-holder. It is true that he is made liable to pay half of the net produce and that may appear to be a little too high, but the measure of the levy will not convert what is intended to be a recovery of assessment into a recovery of rent. The proprietor of the land held on Pandaravaka verumpattom tenure is nevertheless a proprietor of the land and he holds the land subject to his liability to pay the assessment to the State. It is not difficult to imagine that in a fairly large number of lands held by Pandaravaka verumpattom tenure-holders the holders in turn would let out the lands to the cultivators and thus would come into existence a local equivalent of the class of intermediaries. Land revenue record is required to be prepared by the proclamation and relevant entries showing the extent of the properties belonging to

the respective holders and the details about their liability to pay the assessment are intended to be shown in the said record. In our opinion, it would not be reasonable to hold that the lands held by the petitioner under the Pandaravaka verumpattom tenure do not confer on him the proprietary right at all but make him a tenant of the State. In the proclamation there does not appear to be a provision for forfeiture or surrender and the scheme adopted by the proclamation suggests that the amount due from the tenure-holder by way of assessment would presumably be recovered as arrears of land revenue and not as rent. Therefore, we are inclined to hold that the Pandaravaka Verumpattom can be regarded as a local equivalent of an estate under cl. (2) (a) of Art. 31A.

The position with regard to Puravaka lands is still more clear. Clause 14 of the proclamation enumerates four kinds of more favourable tenures. The first of these is the class of Puravaka lands. Clause 15 provides that in the case of Puravaka lands a third party called Janmi is recognised as owning proprietorship in the land and therefore entitled to share the produce with the cultivator and the sirkar. Then the clause describes the mode in which share of the State or its demand on these Puravaka lands is calculated, under the previously existing land system; and it provides new rates of assessment payable in respect of the Puravaka tenure. The Puravaka tenure in the State, the clause adds, corresponds to the normal conditions of land tenure in the District of Malabar where, in the recently introduced settlements, the net produce was distributed among the cultivator, the Janmi and the State in the following proportion :

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	In Wet Lands	In Garden Lands or Vrikshapattom Parambas
Cultivator	5 out of 15	5 out of 15
Jenmi	4 out of 15	5 out of 15
State	6 out of 15	5 out of 15

Since it was thought that the said method of apportionment was fair and equitable the clause adopted the same in the State of Cochin. It would thus be clear that the lands held by the petitioner under the Puravaka tenure satisfy the test of even the narrow construction placed by the petitioner on the term "estate" in cl. (2)(a). Therefore, there can be no doubt that about 350 acres of land held by the petitioner on the Puravaka tenure constitute an estate under cl. (2)(a).

The result is that the lands held by the petitioner are an estate under cl. (2)(a), and so the Act in so far as it operates against the holdings of the petitioner is protected under Art. 31A(1)(a) and so it is not open to the petitioner to challenge its validity on the ground that its material provisions offend against Arts. 14, 19 and 31 of the Constitution. The writ petition accordingly fails and is dismissed. There will be no order as to costs.

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AYYANGAR, J.—I regret I am unable to agree that Art. 31A of the Constitution saves the Kerala Agrarian Relations Act, 1960, from challenge under Arts. 14, 19 and 31 of the Constitution in so far as the said Act relates to the Pandaravaka lands of the petitioner.

Before however dealing with this point I consider it proper to add that I entirely agree that the Act was properly enacted by the State Legislature and that the consideration of the remitted bill by the new Legislative Assembly did not violate the provisions of Art. 201 of the Constitution. In my judgment the terms of Art. 196 of the Constitution proceed on the basis that the Constitution-makern

in line with the framers of the Government of India Act, 1935, radically departed from the theory of the British Constitutional Law and the practice obtaining in the Parliament of the United Kingdom as regards the effect of dissolution of the Houses of the Legislature on bills passed by the House or Houses and pending the assent of the head of the State. Article 196 by its third clause having negatived the English rule that bills pending in the legislature lapse by reason of prorogation, goes on to enact cls. (4) and (5) making special provision for lapse in the event of not prorogation but dissolution. Clause (5) enacts :

> "A bill which is pending in the Legislative Assembly of a State or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly."

This clause on its terms applies both to States which have and which do not have a bicameral legislature. In its application to a State without a Legislative Council the relevant words of the clause would read : "A bill which is pending in a Legislative Assembly of a State.....shall lapse on dissolution of the Assembly". The question that arises on the terms of this clause may be stated thus : Can a bill be said to be pending before the Legislative Assembly when it has gone through all the stages of the procedure precribed for its passage through the house and has been passed by the Assembly ? Expressed in other words, does the pendency of a bill before the Assembly cease when it has passed through all the stages through which bills pass before the House or is it to be deemed as pending before the House until the bill receives the assent of the Governor or the President, as the case may be the latter event arising when bills are reserved by the Governor for the President's assent ? Unless it could be contended that a bill

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is pending in the Legislative Assembly until assent, there could be no scope for the argument based on Art. 196(5) in support of the position that an unassented bill is still pending in the Assembly. In this context the difference in the terminology employed in Art. 196(3) and 196(5) requires to be noticed. Whereas Art. 196(3) speaks of the pendency of a bill in the *Legislature of a State* which would, having regard to the description of 'Legislature' in Art. 168, include the Governor, Art. 196(5) uses the words 'Legislative Assembly' as if to indicate that it is only in the event of the bill being pending before that body that it lapses on dissolution. In the face of the provision in Art. 196(5) there is no justification for invoking the British pratice under which bills not assented to before the dissolution of the Houses are treated as having lapsed on that event occurring.

If the Governor can assent or refuse to assent to a bill, which has passed through all the stages of consideration by a Legislative Assembly even though that Assembly is dissolved under the terms of Art. 200, because the bill is a live bill within the terms of that Article, it would follow that he can exercise the other alternative open to him under that Article, viz., to reserve the bill for the President's assent. If by reason of the language employed in Art. 196(5) the bill is alive so far, and the President could assent to the bill it would follow that subject to an argument based on the terms of Art. 201 he can also remit the bill for reconsideration by the Assembly notwithstanding the dissolution.

The next question for consideration is whether there is anything in the terms of Art. 201 which precludes effect being given to the above principle. The Article runs :

"201. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six moths from the date of receipt of such message and if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration."

Considerable stress was laid by the Learned Counsel on the use of the two expressions *'return* the bill to the House' and 'the House shall *reconsider* it accordingly' as indicating that the words underlined* unmistakably implied that the consideration of the bill must be by the Assembly which originally passed it. It was in this connection that reliance was placed on the terms of Art. 172(1) reading (omitting the proviso which is immaterial for the present purpose) :

"172. (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:
....."

The argument was that the Constitution did not envisage the Assemblies having a continuous life but

*Here printed in italics.

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that on the other hand it clearly contemplated different Legislative Assemblies each one having a definite life which ended either automatically at the end of five years or at an earlier period by dissolution and that in the context of this provision, to the words 'return' and 'reconsider' employed in Art. 201 their literal meaning must be attached.

It is not possible to accept this construction as to the effect of Art. 172 on the rest of the provisions in this Part. No doubt, for particular purposes each Assembly is conceived of as having a life of limited duration but it does not follow that the Constitution does not envisage the Legislature as an institution. In this connection I consider it useful to refer to the decision of the Privy Council in *Attorney-General for New South Wales* v. *Rennie* (1). The question before the Board was as ragards the true construction of a New South Wales statute—"The Parliamentary Representatives' Allowance Act"—which by its s. 2 made an annual grant to "every member of the Legislative Assembly now serving or hereafter to serve therein". Section 2 of the Imperial Act which enacted the Constitution Act of the Colony provided that "every Legislative Assembly was to continue for five years from the day of the return of writs for choosing the same and no longer, subject to be sooner prorogued or dissolved by the Governor of the Colony", which term was by a later enactment reduced to three years. The Attorney-General for New South Wales raised an information seeking a declaration that there were no moneys legally available or applicable to the payment of members of future Assemblies with a prayer that the Auditor-General might be restrained from countersigning the authorisation of such payments. The Supreme Court of the Colony dismissed the information whereupon the Attorney-General brought the matter in appeal to the Privy

(1) [1896] A. C. 376.

Council. The question turned on the meaning of the words 'the Legislative Assembly' in s. 2 of the Act and reliance was placed on behalf of the appellant on the provision for dissolution contained in the Imperial Act. It was contended that the Assembly was a body of limited duration called into existence from time to time and not a permanent and continuous body and that consequently the Act granting the allowance should be construed as applying to the members of the particular Assembly in existence on the date of the Act. Rejecting this argument, Sir, Richard Couch stated :

> "They think that according to the ordinary use of the term 'lagislative assembly' it means the assembly created by the Constitution Act which, though liable to be dissolved or to expire by effluxion of time, is an essential part of the constitution of the colony and must be regarded as a permanent body."

I consider these words apt to describe the reference to the "House of the Legislature" in the proviso to Art. 201. I therefore respectfully concur in the view that the bill was validly passed and that the objection based on an infringement or contravention of Art. 201 must be repelled.

I shall now take up for consideration the merits of the petition. The petitioner is the owner of about 1,250 acres of land in Trichur in the erstwhile princely State of Cochin. Out of this extent, 900 acres are classified in the land records of the State as Pandaravaka Verumpattom lands and the remaining are entered as Puravaka lands.

While so the Kerala Legislature enacted the Kerala Agrarian Relations Act, 1960 (Kerala Act IV of 1961), providing for the acquisition of certain types of agricultural lands in the State beyond the specified maximum extents laid down in the statute and

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on payment of compensation as determined by it. The details of this legislation are set out and their impact on the owners of landed property in the State are dealt with in full in the judgment in Writ Petitions 114 and 115 which is being pronounced today. In the circumstances it is not necessary to say more about the enactment than point out that it seriously interferes with the rights of landowners in a manner which, as held in the judgment in the other petitions, is violative of the rights guaranteed to citizens by Part III of the Constitution. For the respondent however the main defence on this petition is based on Art. 31A, the submission being that the lands of the petitioner by reason of the tenure by which he holds them, constitute an "estate" within the definition of that term in Art. 31A (2)(a). As the tenures which are involved in the case cover considerable areas of the former State of Cochin, and as the implications arising from any decision as regards these tenures might affect other areas, particularly in South India the effect of the acceptance of the submisson by the respondent would be far-reaching. I have therefore considered it proper to deal with matter from a wider angle than would be necessary if the effect of our decision would be confined to tenures of infrequent occurrence.

The two tenures into which the lands held by the petitioner fall are, as stated earlier, Pandaravaka Verumpattom and the Puravaka, but before considering their characteristics it will be useful to attempt a picture of the general system of landholding in Malabar. As is well known, Malabar—comprising the territories of the former princely State of Travancore & Cochin and the contiguous district of Malabar in the former Presidency of Madras, was among the few areas in India in which freehold rights in land were recognised. This exclusive right and hereditary possession and usufruct of the soil was denoted by the term "Jenm"

and the holder was designated the Jenmi or the Jenmikaran. The Jenmis had full and obsolute property in the soil. All land which was not the property of Jenmis or ceased to be theirs—such as by forfeiture, were held by the State. These lands were let for rent to cultivators on terms of paying rent. The assertion by the State to the proprietorship of the soil which carried with it a denial of the right of alienation by the tenant of the leased lands and so of the right to hereditary enjoyment was besides being contrary to the accepted theory of the Hindu law givers, was also productive of grave economic ills. According to the Hindu Law givers starting from Manu, property in the soil arose out of occupation and cultivation. The texts which expound this position are set out and discussed by Westropp, C. J., in *Vykunta Bapuji* v. *Government of Bombay*(1) (See also Sundaraja Iyengar Land Tenures in the Madras Presidency, pp. 5 to21). According to this theory the King was not the owner of cultivated land but the proprietary interset in it vested in the cultivator, the right of the King being merely to the Raja bhagam which represented various proportions of the produce, sometimes thought of as being a sixth and at other times at higher proportions ranging up to a half. As observed by Subramania Iyer, J., in *Venkata Narasimha* v. *Kotayya* (2) .

> "For, in the first place, sovereigns, ancient or modern, did here set up more than a right to a share of the produce raised by raiyats in lands cultivated by them, however much that share varied at different times. And,in the language of the Board of Revenue which long after the Permanent Settlement Regulations were passed, investigated and reported upon the nature of the rights of ryots in the various parts of the Presidency, 'whether rendered in service, in money or in kind and whether paid to rajas, jagirdars, zemindars, poligars, mutadars

(1) 12 Bom. H.C.R. Appendix p. 1 pp. 29-43.
(2)I.L.R. 20 Mad. 299, 301-302.

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shro-triemdars, inamdars or to Government officers, such as tahsildars, amildars, amins or thannadars, the payments which have always been made are universally deemed the due of Government.' (See the Proceedings of the Board of Revenue, dated 5th January, 1818, quoted in the note at page 223 of Dewan Bahadur Srinivasa Raghava Ayyangar's 'Progress in the Madras Presidency')."

This proprietary interest of the cultivator was in its true sense a property right—being capable of alienation and of hereditary enjoyment. At the time of Permanent Settlement Regulation in Bengal (1793), and subsequently when its Madras counterpart was enacted (Regulation XXV of 1802), there was a great deal of controversy as to whether the East India Company as the Ruler was or was not entitled to the proprietary rights to the soil in the country. In the words of Westropp, C. J., in *Vykunta Bapuji* v. *Government of Bomby* (1) involved in this

> "was the question as to the character in which native governments claimed, from the occupants of the land, payments either in money or in produce in respect of the land. Were these payments rent or revenue ? Some maintained that those payments were rent, not revenue ; because, it was said, the land could only be occupied and cultivated by the permission of the sovereign, and that such produce, as there may be in excess of what sufficed for the bare subsistence of the cultivators and for the expenses of cultivation, is the property of the sovereign. Others maintained that the sovereign was only entitled to a fixed portion of the produce, and that the surplus beyond that portion, plus the subsistence of the rayuts (cultivators)

(1) 12 Bom. H.C.R. Appendix p. 1 pp. 25-26.

and the cost of cutivation, belonged to a class of great landlords between the sovereign and the rayuts, which intermediate class consisted of zamindars, talukdars or similar personages; while others again strongly contended that, subject to a land-tax payable to the sovereign, the property in the soil was vested in the cultivator, sometimes in the form of village communities holding corporately, at other times individuals holding in severalty, or jointly as members of an undivided family. In 1793, (either upon the ground that the soil was vested in the sovereign power, and that it was expedient that, by that power, a landed aristocracy should be created, or upon the ground, that the land, subject to the revenue assessment i. e., the king's (or State's share of the produce, ought to be publicly recognized as vested in the class of zamindars, & c., as landlords) the permanent settlement in Bengal, Bihar and Orissa was made by the Government of Lord Cornwallis, by recognizing the zamindars, & c., as the proprietors of the soil, and entitled to transfer it, and by fixing, once for all, the land-tax payable by them to the State at an immutable annual rate."

In 1796 the Government of Madras declared that "it is the first feature in all the Governments of India, that the Sovereign, whether he be a Mussulman or Hindoo is lord of the soil; and hence it is that no alienation of lands from the property of the circar, or rather no possession of land whatever is valid without a written instrument from the superior lord; and this distinction has invariably followed the conquests of all nations who have established themselves in India". This statement was directly contrary to accepted practice and the consciousness of the cultivator in Madras. It is not therefore a matter for surprise

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that in answer to this declaration of the Government, the Board of Revenue at once pointed out that "there were hereditary cultivators on lands with the right of making any disposition of them by sale, mortgage or otherwise as long as they paid the Government revenue, and that they only could not make any alienation of them to the exclusion of the royal share of the revenue."

Acting on the view that the Crown was the proprietor of the soil, the British Government purported to confer proprietary rights in the soil on the zamindars under the Permanent Settlement the preamble to which referred to the reservation by the ruling power of the "implied right and actual exercise of the proprietary right to possession of all lands whatever" and by s. 2 purported to vest in the zamindars the proprietary right to the soil. It was however found that this interfered with the established rights of cultivators and Madras Regulation IV of 1822 was passed to declare that the provisions of Regulation XXV of 1802 were not intended to affect the actual ryots in cultivation of lands. It might be added that the Privy Council ruled in *Collector of Trichinapally* v. *Lekkamoni* (1) that the theory underlying these words in the Regulation were not sustainable and that there were proprietary rights in land not traceable to or derived from the sovereign.

The introduction of the Permanent Settlement with the creation of a class of zamindars as in Bengal was not cosider d to be a beneficial system by the Government of Madrs and so after the grant of some sanads under Madras Regulation XXV of 1802—mostly in recognition of ancient titles—the creation of new permanently settled estates was stopped and in its place, the system of revenue administration associated with the name of Sir Thomas Munro known as the ryotwari system was adopted. According to Munro there was

(1) L.R. 1 I.A. 282

no need for the interposition of an intermediary between the State and the actual cultivator, particularly as it was clear that the system meant that the zamindars enjoyed what the cultivator parted with to the State ; in other words, the difference between the rent paid by the actual cultivator, viz., the melwaram and the peishcush or the Jama fixed by the zamindar or proprietor was so much profit for the middleman and therefore *pro tanto* a diminution of the amount which would have accrued to the State. Besides, Munro considered that on economic grounds and with a view to increase agricultural production it was necessary for the State being in touch with the actual cultivator. For these reasons he formulated the "ryotwari system" and introduced it in several areas of the Madras Presidency and Coimbatore district adjoining the State of Cochin being almost the first among the districts where the system was introduced. The basic and essential feature of the system was that the fixation of the revenue assessment payable by the cultivator had to be proceeded by a survey of the a land which included the ascertainment of the productivity of the soil and that the assessment should be based on what was known as 'tharam' (or quality) classification. The assessment thus began to be based on scientific data and principles—and was so designed as to leave a sufficient margin to the cultivator to induce him to remain on the land and be assured of a good share in increased production resulting from the employment of his labour and capital. The terms on which the ryot held the land was contained in the patta issued to him on behalf of the Government and this specified the extent of land held by him as well as the amount of the assessment and the time when the instalments had to be paid. This was not however considered to be any document of title, because the ryot had the property in him and his interest was a proprietary interest in the soil and so capable

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of being alienated and of being transmitted to his heirs. This however was not anything new and it was not as if the interest of the cultivator was not alienable before the ryotwari system was introduced. Before that date however, the assessment of the land was both heavy in most parts and unequal— not being based on the productive capacity of the soil, as to leave little or no margin to the cultivator. Besides the predations of revenue and the severity of the tax was dependent on the exigencies and necessities, if not the whims of the ruler and in such a situation, even though technically cultivated land was capable of alienation there being no ban on alienation, still having regard to the meagre margin left to the owner and the fear of increased taxation based on no principle, no purchaser could be found; though owing to the impossibility of finding a more profitable use for manual labour apart from the sentimental attachment to land, the actual cultivator clung to his holding. But when with the advent of a system of assessment based on fixed and scientific principles which left a sufficient margin for the cultivator, and there was no fear of sudden increases of assessment, land became a marketable commodity investment in which was rendered worthwhile.

Notwithstanding that in Malabar absolute ownership of the soil by the Jenmi where the land was the property of individuals and of the State where it was the owner, was a characteristic of the landholding, still from a fairly early date after the British conquest of the neighbouring areas the concept of the cultivator with whom the State entered into direct relations being conceded the proprietorship of the soil slowly permeated.

In this connection I might usefully refer to a proclamation of the ruler of Travancore of 1865 (1040 M. E.) regarding Sarkar-pattom lands, with the observation that subject to variations

dependent on local usages, the system of land tenure and the concepts as regards the rights of property in land were substantially similar in Travancore and Cochin. Sarkar-pattom lands were what might be termed 'Crown lands' of which the ruler was deemed to be the Jenmi or the landlord. Previous to the proclamation the lands were legally capable of being resumed by the ruler, though this was seldom done and the cultivators were not legally entitled to transfer their rights and where this was done the Government had the right to ignore the transaction. The fact that the cultivator was conceived of as having no proprietary interest on the land also bore adversely on the State since the State was deprived of the means of realising any arrears of revenue by bringing the holding to sale. It was to remedy this situation that the proclamation was issued and the preamble and its terms carry the impress of the impact of the ryotwari system of Madras. The proclamation reads:

> "Whereas we earnestly desire that the possession of landed as well as other property in Our Territory should be as secure as possible; and whereas We are of opinion that, with this view Sirkar Pattom lands can be placed on a much better footing than at present so as to enhance their value; we are pleased to notify to our Ryots—
>
> 1st. That the Sirkar hereby and for ever surrenders, for the benefit of the people, all optional power over the following classes of lands, whether wet, garden or dry, and whether included in the Ayacut accounts or registered since :
>
> Ven Pattom,
> Vettolivoo Pattom,
> Maraya Pattom,
> Olavoo Pattom,
> Mara Pattom,

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and all such Durkast Pattom, the tax of which is understood to be fixed till the next Survey and assessment.

2ndly. That the Ryots holding these lands may regard them fully as private, heritable, saleable, and otherwise transferable, property.

3rdly. Accordingly, the sales, mortgages, & c., of these lands will henceforward be valid, may be effected on stamped cadjans, and will be duly registered. The lands may be sold for arrears of tax, in execution of decrees of Courts and such other legitimate purposes, and may also be accepted as security by the Sirkar as well as by private individuals.

4thly. That the holders of the lands in question may rest assured that they may enjoy them undisturbed so long as the appointed assessment is paid.

5thly. That the said holders are henceforth at full liberty to lay out labour and capital on their lands of the aforesaid description to any extent they please, being sure of continued and secure possession.....
....."

The language employed in the proclamation is of significance. It speaks of the relinquishment or withdrawal of the right of the State and not of the conferment of a right on the ryot so as to render the ryot a grantee from the State, just in line with the Hindu Law theory of the proprietorship of the soil vesting in the occupant-cultivator.

With this background, I shall proceed to consider the nature of the tenures—Pandaravaka and Puravaka—with which this petition is concerned. The two tenures are quite different in their origin and essential characteristics and so have to be separately dealt with. Pandaravaka lands are those in which the State held proprietary rights—the

name being derived from Bandara or the treasury, while in regard to the Puravaka, they were lands in which the proprietorship vested in the Jenmi, but which were under the cultivation of tenants on whom the State imposed land revenue. Putting aside for the moment the Puravaka lands, the Pandaravaka lands might be approximated to the Crown lands dealt with by the Travancore Proclamation of 1865 already referred to. The terms on which the tenants held the right of the Crown were almost the same as in the other case. The evils which the system gave rise to, the economic insecurity of the tenant and the consequent lack of incentive on his part to put his best exertion on the land and the resultant loss to the State in the shape of revenue as well as the rise of a contented peasantry were exactly parallel to the situation which faced the ruler of Travancore leading to the proclamation of 1865. It was in these circumstances that the ruler of Cochin issued a proclamation on March 10, 1905, which defined with precision the rights of the State and of the cultivator in regard to these lands and it is the submission of the learned Attorney-General that the effect of this proclamation is to render the Pandaravaka and Puravaka lands held by the petitioner "estates" within the meaning of Art. 31A(2) of the Constitution as it now stands. It is therefore necessary to set out in some detail the terms of this proclamation.

The preamble to the proclamation recites the fact that the State demand had not been fixed either with reference to the actual measurements of the land or on any fixed or uniform principles and that a revision of the State demand based upon a correct measurement of lands and definite principles, fair alike to the State and "our" agricultural population, is desirable in the interest of a sound revenue administration. It then proceeds to state

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that a survey which included the demarcation, mapping and the preparation of an accurate record of titles in respect of all descriptions of properties was to be carried out and that a Settlement or revision of the State demand would be conducted in accordance with the principles laid down by the proclamation. In passing it may be mentioned that this is reminiscent of the despatches of Thomas Munro in which he expatiates upon the need of a proper survey and a correct definition of the principles upon which land revenue shall be assessed and that the quantum of revenue should be such as while providing for a fair share to the State, should leave enough for the cultivator to live upon and offer an inducement to him to increase the output of his fields in which event the surplus available to him would be more. In particular I might refer to a passage in a despatch which is extracted by Westropp, C.J., in *Vykunta Bapuji* v. *Government of Bombay* (1) reading :

> "When the land revenue is fixed and light, the farmer sees that he will reap the reward of his own industry : the cheerful prospect of improving his situation animates his labours, and enables him to replace in a short time the losses he may sustain from adverse seasons, the devastations of war, and other accidents."

Paragraph 5 of the proclamation directs that lands, whether wet or dry, were to be classified with reference to the nature of their soils in accordance with the table of classification prescribed in the Madras Settlement Manual which is sufficiently indicative of the close correspondence between the ryotwari system and mode of fixation of land revenue and the principles underlying it as prevailed in the neighbouring Presidency of Madras. Paragraph 6 reads :

> "Under the present land revenue system of the State, lands are held under two main

(1) 12 Bom. H.C.R. Appendix I at p. 121.

tenures, viz., Pandaravaka and Puravaka... ....."

At this stage it is necessary only to add that the proclamation does not deal with the rights as between the State and Jenmis, i.e., that class of land owners who were entitled to a freehold interest in the land as explained earlier. I shall deal later with special legislation with reference to Jenmis in the other princely State which is a constituent of present State of Kerala in its proper place. Paragraph 6 proceeds to enumerate the six subsidiary classifications of the Pandaravaka tenure and enumerates the Verumpattom type as the first among them and this type is taken as the standard for fixing the land revenue of the other categories which, it might be mentioned, are favourable tenants, the State demand being reduced. To these others which partake of the nature of grants of land revenue very different considerations would apply. The lands of the petitioner held on Pandaravaka tenure, it should be added fall within the sub-category of Verumpattom lands. The proclamation then proceeds to state :

> "The revenue paid to the State varies according to the nature of the tenure, i. e., the six sub-classes. It is however only the Pandaravaka Verumpattom lands which pay the full pattom or share due to the State. We have accordingly decided that the Pandaravaka Verumpattom shall be deemed as the normal tenure for settling the full State demand and that the other tenures shall be treated as favourable tenures and settled on the lines hereinafter indicated....."

Paragraph 7, after reciting that the rates of assessment on Pandaravaka Verumpattom wet lands vary from place to place, points out that such disparity is indicative of unequal incidence and stating that it was essential that the State demand should

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bear a fixed proportion to the produce a land is capable of yielding announces the decision that the same shall be half the net produce. The deductions to be made for ascertaining the net produce are indicated. The next clause which is of relevance and importance in the present context is cl. 13 which runs :

> "13. At present holders of Pandaravaka Verumpattom lands do not possess any property in the soil. As we are convinced that proprietorship in soil will induce a cultivator to improve his land and thereby add to the agricultural prosperity of the country, we hereby declare that our Verumpattom holders of lands shall, after the new Settlement has been introduced, acquire full rights to the soil of the lands they hold and that their rights shall remain undisturbed so long as they regularly pay the State revenue, provided that the rights to metals and minerals, possessed by the State in all lands under whatever tenures they are held, are reserved to the State."

Paragraph 14 onwards deal with favourable tenures and of these we are concerned only with Puravaka lands and it is pointed out in Paragraph 15 that in the case of Puravaka lands the Jenmi is recognised as owning the proprietorship in the land and is consequently entitled to share the produce with the cultivator and the Sirkar, and proceeds to define the State demand in such lands. There are other clauses dealing with other incidents in regard to these tenures and in regard to other interests in the land such as house-sites etc. but we are not concerned with them. The proclamation also makes provision for the grant of rough or draft pattas to cultivators and of fair pattas detailing the assessment payable on such lands—provisions exactly parallel to the practice and procedure prevailing in the adjoining area of the Madras Presidency. Besides, it also makes

provision against any revision of the assessment once fixed before the expiry of 30 years, also in line with the then practice in Madras. I have made this analysis of the provisions of the proclamation for the purpose of emphasizing that what the proclamation intended to achieve was the introduction of ryotwari system of settlement in the place of exactions by the State based on no principles and unrelated to the productivity of the soil and having an unequal incidence for different areas and different lands. The holder of Pandaravaka Verumpattom patta was therefore nothing more or nothing less than the holder of a ryotwari patta in the adjoining Madras State. The only point of difference that could be suggested is this. Under the ryotwari system, the proprietorship of the ryot to the soil is not in theory derived from the State, whereas under the proclamation of 1905, it appears to rest on a grant. In my opinion this makes no difference, because the essential features of the system are the same as those of ryotwari—(1) a direct relationship between the State and the cultivator, and with the absence of any intermediary to intercept the raja bhagam or land revenue, (2) there is no grant or alienation of the States' right to revenue in favour of the grantee.

The Puravaka tenure was wholly different. They were lands held by Jenmis. As I shall show later, Jenmam lands were not exempt from the payment of land revenue but the Puravaka tenant had the benefit of a favourable assessment. In other words, in respect of those lands the produce of the land was the subject of sharing as between the actual cultivator, the Jenmi and the State, though the Jenmi had a freehold interest in the land itself.

The question for consideration now is whether the lands held under a patta by a Pandaravaka Verumpattom and of Jenmam lands by a Puravaka

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tenant are "estates" within the meaning of Art. 31 A (2).

Before examining the terms of Art. 31 A (2) as they now stand, it is necessary to refer to the antecedent history which led to the First and the Fourth Constitutional Amendments. Preliminary to this it might not be out of place to briefly explain the circumstances which necessitated the First amendment as pointing to the mischief which that amendment was designed to remedy. Very soon after independence several States initiated land reforms whose object was the elimination of the intermediaries. The Madras Legislature enacted the Madras Abolition of Estates and Conversion into Ryotwari Act, 1948, by which intermediaries in the shape of zemindars, Palayagars, Jagirdars, Inamdars and other such proprietors were eliminated and persons in actual cultivation of the lands under the zemindars were brought into direct relationship with the government by being granted ryotwari pattas in respect of their former holdings. There was similar legislation in Bihar—Bihar Act 1 of 1950, as also in some of the other States of the Indian Union. The validity of the several pieces of legislation was challenged in the respective High Courts principally on the ground that the deprivation of the rights of the zamindars etc. effected by these enactments and the principles upon which the compensation payable for the deprivation was determined violated Arts. 14, 19 and 31 of the Constitution. The first case in which a decision was rendered by a High Court in respect of the contentions urged was by the Patna High Court in *Kameshwar Singh* v. *State of Bihar* (1) in which the petition succeeded and Bihar Abolition of Estates Act 1 of 1950 was declared unconstitutional. An appeal was preferred by the State against the judgment to this Court and it was during

(1) A.I.R. 1951 Patna 91.

the pendency of this appeal and with a view to validate the legislation which had been enacted in the several States and which was the subject of attack in several Courts, including this Court, that First Constitutional Amendment by which Art. 31A was introduced into the Constitution, was enacted. The Constitution (First Amendment) Act, 1951, received the assent of the President on June 18, 1951, but Art. 31A which was introduced by s. 4 of this Act was expressly made retrospective from the commencement of the Constitution. As then enacted Art. 31A ran:

> "31A. *Saving of laws providing for acquisition of estates: etc.*—(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part :
>
> Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.
>
> (2) In this article,—
>
> (a) the expression 'estate' shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant ;
>
> (b) the expression 'rights' in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor tenure-holder or other intermediary and any rights or privileges in respect of land revenue."

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In addition the First Constitution Amendment Act also enacted by its s. 5 a further provision—Art. 31B expressly validating the several enactments of the various States which were then under challenge and which were all set out in Sch. 9 of the Constitution. From this collocation it would be seen that whereas Art. 31B immunised from attack all the pieces of legislation which had been enacted by June 1951, Art. 31A was intended to render the same types of legislation enacted in future immune from attack, provided that the enactments were reserved for the President's assent and were assented to by him. It is with this background that one has to approach the construction of Art. 31A.

Clause (1) of Art. 31A does not present any difficulty in construction with reference to the point now under discussion, because its terms are clear and apply to laws providing for "the acquisition by the State of any estate or rights therein" or "the extinguishment or modification of any such rights". The crucial words here are that the rights which are acquired, extinguished or modified are rights in or in respect of an "estate". If there had been no definition of the expression 'estate', one might have had to look to the grammatical of literal meaning of the word, and the word might conceivably be understood as including a person's interest in landed property whatever may be the nature or extent of the interest, though the width of this meaning might be controlled by the history of the provision, the antecedent state of circumstances and the mischief which it was designed to overcome. But the enactment has not left this matter for investigation in that manner. Sub-clause (2)(a) contains the definition of expression 'estate' and sub-cl. (b) of "rights in relation to an estate". It is obvious that the word 'estate' in sub-cls. (a) and (b) mean the same and is employed to designate identical types of land holding. If the expression "rights in relation to an estate" in sub-cl. (b)

indicates that it is the "estate" or the right of the intermediary that is comprehended by the use of the words "proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary", clearly the expression 'estate' in sub-cl.(a) must be understood as referring to such types of landholder. It is also worth noting that the words "shall also include any jagir, inam or muafi or other similar grant" in sub-cl. (a) have their parallel in sub-cl. (b) by the words "any rights or privileges in respect of land revenue." The net result therefore was that the term 'estate' signified the land held by an intermediary who stood between the State and the actual tiller of the soil, and also the interests of those in whose favour there had been alienation of the right to revenue, i. e., lands held on revenue free or on favourable tenures. The two sub-clauses may now be futher examined to determine their content and significance. Taking first sub-cl. (a) it is necessary to advert to two matters : (1) the reference to the "local equivalent" of the term 'estate' in the law existing in any local area, and (2) the denotation of the words 'the existing law *in relation to land tenures* in force in that area'. In regard to the 'local equivalent' of the term 'estate' there is one observation I desire to make. These words were not in the Bill as originally presented to Parliament and were brought in as a result of the suggestion of the Joint Select Committee to which the Blll was referred. In their report the Select Committee stated :

> "We have amended the definition of an 'estate' to cover cases where the existing law relating to land-tenure is in a regional language for example in Hindi or Urdu and uses the local equivalent of 'estate'."

I am far from saying that if the meaning of the expression were clear the purpose for which the words were used would determine their construction

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but I am drawing attention to this passage from the report of the Joint Select Committee for pointing out that by the use of the expression 'local equivalent' the central concept of an 'estate', as would be clear from the terms of sub-cl. (b), which in effect is a further definition of the term 'estate' was not intended to be departed from.

Next as to the meaning of "in the *existing law in relation to land-tenures*". These words raise for consideration the question as to what constitutes "a land-tenure". If one had to go merely by the grammatical meaning merely of 'tenure' derived from the Latin 'tenere' to hold, any kind of right or title by which property is held would be included, the only requirement would be that the property should be held of another. In that wide sense it would include the case of land held under an ordinary tenancy under a landlord under the Transfer of Property Act. Obviously that is not the sense in which the word is employed in the clause. It has therefore to be understood as comprehending that type of "holding" where the holder is an intermediary between the State and the tiller, or is otherwise the grantee of land revenue holding the land under a favourable tenure. If this is the essential feature of the concept of an 'estate' under cl. (2), the expression 'land-tenure' must in the context mean the 'tenure' under which an 'estate' as defined is held. To read it otherwise and understand 'land-tenure' as designating any system of landholding, whether or not such system conforms to the central and essential concept of estate, would not be correct. Such an interpretation would result in anomaly that in an existing law in force in a local area which uses the word 'estate' and includes within that definition particular tenures, only they and none else are included, but if such law does not refer to a tenure as an 'estate' then it comprehends any

holding of land under Government whatever be the nature of the tenure. That would constitute a radical departure from the purpose of the First Amendment and a construction which is not compelled by the words, but on the other hand contradicted by the context and setting in which they occur.

This leads me to the case where an "existing law in relation to land-tenures" uses the term 'estate' and defines it in a particular manner and that definition includes not merely the proprietary rights of intermediaries or others holding land on favourable tenures as described in sub-cl. (b) but also others who hold properties in their own right and describes the land-holding of these others also as 'estates'. The question would then arise whether literal effect has or has not to be given to the words 'defined as an estate under the law relating to land-tenures' occurring in sub-cl. (a). One possible view to take would be that having regard to the central concept of an 'estate' as signifying the rights in land of an intermediary etc., those whose rights in land did not involve any assignment of the Raja bhagam but were in direct relationship with the State and subject to the payment of the full assessment of the revenue lawfully imposed upon it, could not be termed to have an interest in an 'estate', nor the land held by them to fall within the concept of an 'estate' as comprehended in sub-cl. (a).

The other view would be that if the operative terms of Art. 31A and in particular the definition of "an estate" contained in cl. (2)(a) unambiguously covered cases of non intermediaries also, effect would have to be given to the terms used for it is a cardinal rule of interpretation that the operative words of an enactment, and in this must be included the terms of the Constitution, cannot be controlled by reference to the object for which the provision was introduced where the words are unambiguous. If a law in force in any local area

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at the commencement of the Constitution which was "a law in relation to land-tenures" contained the definition of an 'estate' then every species of land-holding which fell within the definition and was comprehended by such law relating to land-tenure would, for the purpose of the Constitution be comprehended within the ambit of an 'estate' and it might be no answer in regard to any particular species of land-tenure that its holder was not an intermediary. I shall have occasion to refer to the decisions which turn on this aspect of the matter a little later. Apart from the exceptional cases just now mentioned where one is faced with a definition of 'an estate' in an existing law, I consider that the First Amendment to the Constitution did not bring within the definition of 'an estate' the holdings of persons other than intermediaries or those who held land under grants on favourable tenures from Government—Jagirdar, Inamdar, Muafidar, etc. As pointed out by Venkatarama Ayyar, J., speaking for this Court in *Thakur Amar Singhji* v. *State of Rajasthan* (1) :

> "The object of Art. 31A 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,....."

I shall now turn to sub-cl. (b) and to the terminology employed in it to define 'rights in relation to an estate' and examine how far this definition affects the content of cl. (a) as above explained. In the first place as already noticed, the use of the word 'estate' in the clause serves to bring into it the concept of an 'estate' as defined in cl. (a) pointing to the inter-dependence of the two clauses necessitating their having to be read together. The second point requiring advertance is as regards the definition purporting to be inclusive and not exhaustive. The question arising therefrom may be

(1) [1955] 2 S. C. R. 303, 332-333.

posed thus : Does the definition include any other type of interest besides those enumerated, particularly of a different nature or characteristic which could not be comprehended within the extension brought in by the words 'or other intermediary'. I am clearly of the opinion that it does not and that the word 'includes' is here used in the sense of 'means and includes'. In this connection I would usefully refer to the observations of Lord Watson delivering the judgment of the Privy Council in *Dilworth* v. *Commissioner for Land and Income-tax* (1) :

> "The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act, must invariably be attached to these words or expressions."

If therefore the constitutional validity of a legislation extinguishing or modifying the rights either of the Pandaravaka Verumpattomdars who were in the position of a ryotwari pattadar or of the Puravaka holders who held under a Jenmi of Jenmam land had to be tested with reference to

(1) [1899] A. C. 99, 105.

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Art. 31A as it stood when it was introduced by the First Amendment, these interests under the proclamation of 1905 would not be held to be an 'estate' and therefore outside the scope of the protection against the guaranteed fundamental rights.

Before examining the effect of the change introduced by the Fourth Amendment to Art. 31A it might be useful to detail the circumstances which put these tenures outside Art. 31A under the First Constitution Amendment. Taking the Puravaka tenure first, it ought to be mentioned that as would be seen from the terms of the proclamation of 1905 extracted earlier, Puravaka lands were those in the ownership of the Jenmi but in respect of which he was not directly in cultivation. The Jenmi was considered an absolute proprietor not merely of lands which were cultivated but unlike the ryotwari pattadar also those which were not under his cultivation such as waste lands, forests, etc., and he did not hold land under the State. In other words, his proprietorship to or rights over the land of which he claimed ownership was not traceable to any title derived from the State. But notwithstanding this freehold right that he claimed and enjoyed the State was entitled from the earliest times to assess his lands to land-revenue. Exemption from taxation was not any essential condition of Jenmam tenure and the Jenmi was under an obligation to pay what was termed 'Raja bhagam' which was the equivalent of the expression 'land-revenue'. This incidence of Jenmam land did not therefore detract from its character of its being the private and absolute property of the Jenmi. There was legislation in Travancore as regards the liability of the Jenmi to pay the land-tax or the Raja bhagam except, of course, in those cases where anr particular land was rendered tax-free as a mattey of grace or concession by the ruler. The legislation started with a royal proclamation 1869 (1042 M.E.) dealing with the lands of Jenmis and their relation

with their tenants. This proclamation was replaced by Regulation 5 of 1071 (July 3, 1896) which continued in force with various amendments right up to the date of the Act whose validity is now impugned and is referred to in it. By these pieces of legislation the rights of the Jenmi quoad his tenants were regulated, the grounds upon which eviction would take place were laid down and the costomary rights enjoyed by either party were, so, to speak, codified. I am pointing this out because the existence of a law regulating the rights of property-owners and defining their rights or obligations either quoad the Government in respect of land-revenue or as regards persons holding land under them did not by itself render such law one "relating to land-tenure" within the meaning of Art. 31A(2)(a). In order to be such a law it should regulate the rights of persons holding under grants from the government of the Raja bhagom. A law defining or regulating the levy of asssesment or revenue on lands held not under such grants from the State would not be such a law. It was for this reason that the interest of Jenmis and the lands owned in Jenmam right did not fall within Art. 31A as it stood under the First Amendment to the Constitution and which necessitated the Fourth Amendment to which I shall refer later. The position of persons holding lands on Puravaka tenure would not be different from that of the Jenmis. As the Puravaka lands were held not under the State or under a grant from it but under the Jenmis, though liable to pay Raja bhagam, they would not be 'estates'.

The case of the Pandaravaka Verumpattomdars would be similar and the lands held by them would also not fall within the category of 'estate.' This would be so because they like ryotwari pattadars held the lands for cultivation directly from the State, and were niether intermediaries nor persons

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who held their lands on a favourable tenure as regards the payment of land revenue in other words, they were not alienees of the Raja bhagam to any extent, and were therefore not intended to be affected by the First Amendment. For this purpose it would make no difference whether the origin of the ryot's proprietary interest in the land be traceable to the Hindu law concept of title based on occupation and cultivation or to the relinquishment by the State under the Travancore Proclamation of 1865 or even to the conferment of proprietary rights by the Cochin Proclamation of 1905. It is only necessary to add that, their being outside the ambit of Art. 31A(2), and this would equally apply to the interest of the Jenmi, was not due to their tenure not being regulated by enacted law, as distinct from regulation either by the common law or by departmental instructions in the shape of the Standing Orders of the Board of Revenue or other similar bodies.

The point next to be considered is regarding the effect of the change brought about by the Fourth Amendment in 1955 which on its terms was also to have retrospective effect from the commencement of the Constitution. Clause 3 of the Act which was substituted for the original cl. 1 of Art. 31A, provides for various types of legislation interfering with property rights, but in respect of the matter now in question the words in the original cl. 1 referring to "a law providing for the acquisition by the State of an estate or of any rights therein or the extinguishment or modification of any such rights" were left untouched. In regard to the definition of an "estate" contained in cl. 2 the only change effected in sub-cl. (a) was the addition of the words "in the States of Madras and Travancore & Cochin any Janmam right" after the word "grant" in the clause as it stood and in sub-cl. (b) the addition of the words "ryot and under-ryot"

after the word "tenure-holder" in the original clause. After the amendment, the relevant words in Art. 31A read as follows:

> "(1) Notwithstanding anything contained in article 13, no law providing for—
>
> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights .....shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:
>
> Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.
>
> (2) In this article,—
>
> (a) the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any Jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any Janman right;
>
> (b) the expression 'rights' in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

It is not open to dispute that if the words of the statute are clear their import or content cannot be modified or varied either by way of extension or of

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diminution by reference to the presumed intention gatherable from the statement of objects and reasons to which I shall refer presently, for it is the enacted words that constitute the record of the intention of the legislature and where this is clear any extrinsic aid is forbidden. Now let us look at the definition of an "estate" in sub-cl.(a) where in express terms the lands held by a Jenmi are deemed to be a part of an estate. The words that precede the newly introduced words still retain their original form, with the result that they continue to connot the same idea and their content remains unaltered. The result of this would be that to the class of the lands of proprietors who were intermediaries and of others holding on favourable tenures which was designated as an "estate" under the First Constitutional Amendment, Jenmi lands were by specific ad hoc addition included. If therefore the holding of a ryotwari proprietor was not comprehended within the definition of an estate, the same cannot be included by reason of Jenmi lands being brought in. The argument that a raiyatwari holding has merely by the inclusion of the Jenmi become an "estate" would require the entire clause to be rewritten so as to make it read as embracing all lands which are subject to payment of land revenue to government. I consider this contention so unreasonable and unrelated to the language used in the clause as not to deserve serious consideration.

Proceeding next to sub-cl. (b), I must point out that it was on the introduction into it of the words 'raiyat and under-raiyat' that almost the entire argument on behalf of the respondent was rested. It is therefore necessary to scrutinize carefully the effect of these words. There is no doubt that if the words 'raiyat and under-raiyat' had been introduced in sub-cl.(b) as an independent category of persons whose interests were intended to be covered by the definition, just as the lands held by Jenmis were brought into sub-cl.(a) then the words

of the definition would have to be given full effect and the expression 'raiyat and under-raiyat' receive the construction urged before us by the respondent. But they are, however, not introduced as an independent category as has been done in the case of the Jenmam right, but are wedged in the midst of the enumeration of the several types of tenures in estates such as those of proprietor, sub-proprietor under-proprietor and tenure-holder—persons deriving their title to the interest held by them either under grants by a sovereign or under a title derived from grantees from government, the clause continuing to be wound up by a reference to "other intermediaries". As regards this a few observations may pertinently be made. The first is that even after the Fourth Amendment, "the rights vesting in a proprietor" etc. still continue to be a definition of "rights in relation to an estate" and if the word 'estate' in cl. (b) has to be read in the light of the definition of that word in cl. (a) no interest other than one in the estate of an intermediary or of a grantee on a favourable tenure and other than one in the estate of a Jenmi would be covered by sub-cl.(b). (2) I have already had occassion to point out that raiyats in proprietary estates like those of zamindars etc. did not claim title to hold their lands from the proprietor but according to law, as understood their rights even preceded that of the proprietor, i.e., the rights vested in them even before their proprietor. The interest of such raiyats cannot therefore be comprehended within the expression 'rights in relation to an estate' which as ordinarily understood would mean 'rights created in an estate or held under the proprietor'. Undoubtedly, the words 'raiyat and under-raiyat' introduced by the Fourth Amendment would comprehend this class of raiyats because they were raiyats in an estate as defined in sub-cl.(a). I am pointing this out for the purpose of showing that it is not as if the words 'raiyat and under-raiyat' would be without any

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meaning if they were not taken to extend to the interest of every raiyatwari proprietor having direct relationship with the State. In this connection the decision in this Court in *The State of Bihar* v. *Rameshwar Pratap Narain Singh* (1) is very relevant. The point in controversy before the Court was this. Under the Bihar Land Reforms Act (1 of 1950), the ex-intermediaries were conferred a ryoti interest in certain types of land previously held by them as proprietors. As owners of these lands they had been holding melas in some places on these lands and were deriving considerable income therefrom. By the Bihar Land Reforms Amendment Act of 1959, their right to hold melas was taken away and it was the validity of this enactment that was challenged in the case. It was urged on their behalf that when the land-holders were converted into raiyats, they were entitled to hold melas as an incident of their rights as raiyats and that this could not be adversely affected by State legislation without the same standing the test of scrutiny under Arts. 19, 31 etc. of the Constitution. The State of Bihar which was the respondent in the Writ Petition sought the protection of Art. 31A of the Constitution as amended by the Fourth Amendment. Dealing with the meaning of the words the 'raiyat and under-raiyat' in Art. 31A(2)(b) this Court said:

> "It is reasonable to think that the word 'raiyat' was used in its ordinary well-accepted sense, of the person who holds the land under the proprietor or a tenure-holder for the purpose of cultivation, and the word 'under-raiyat' used in the equally well-accepted and oridinary sense of a person who holds land under a raiyat for the purpose of cultivation".

and speaking of the purpose of the Fourth Amendment it was observed :

(1) [1962] 2 S.C.R. 382.

"At that time laws had already been passed in most of the States for the acquisition of the rights of intermediaries in the estates; rights of raiyats or under raiyats who might answer the description 'intermediary' were also within the definition because of the use of the word 'or other intermediary'. The only reason for specifically including the rights of 'raiyats' and 'under-raiyats' in the definition could therefore be to extend the protection of Art. 31A to laws providing for acquisition by the State Governments of rights of these 'raiyats' or 'under-raiyats'. In the circumstances and in the particular setting in which the words 'raiyat' or 'under raiyat' were introduced into the definition, it must be held that the words 'or other intermediary' occurring at the end, do not qualify or colour the meaning to be attached to the tenures newly added".

In other words, the decision was that the object achieved by the Fourth Amendment by the introduction of these two words in sub-cl. (b) was to rope in the interests of 'raiyats' and 'under raiyats' in 'estates', notwithstanding that the ryot might not derive his interest in his holding from the proprietor. The lands held by a ryotwari proprieter other than those in 'estates' would not be an 'estate' within sub-cl. (a) nor the interest of such ryot in his holding an 'interest in an estate' within sub-cl. (b) having regard to the collocation of the words which I have attempted to explain earlier.

In support of the construction that the holdings of ryots were comprehended within the definition of 'estates' in Art. 31A(2), to submissions were made. The first was based on the object sought to be achieved by the Fourth Constitutional Amendment Act as set out in the statement of objects and reasons of the Bill. The passage relied on reads :

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"While the abolition of zamindaris and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part our next objectives in land reform are the fixing of limits to the extent of agricultural lands that could be held or kept by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of landowners' tenants and agricultural holders".

I am unable to accept the argument that this passage can be of any assistance in the construction of cl. (a) or (b) of Art. 31A (2). As already pointed out, any extrinsic aid to construction can sought only when the words of the statute reasonably and properly interpreted are of ambiguous import, and the construction of the clauses now under consideration leads to no ambiguity. In the circumstances, to accept the construction contended for by respondent would be not to interpret the enacted words but to rewrite the clauses altogether. Besides, Art. 31A makes provision for special cases where on account of overwhelming social needs, the protection normally afforded to the citizen by the guarantee of fundamental rights is withdrawn. It would, I consider, be a proper rule of construction to interpret the terms of such a provision with strictness which would serve to preserve the area of the guaranteed freedoms from encroachment except as specially provided. In other words, if the construction of Art. 31A were ambiguous, the ambiguity should be resolved in favour of the citizen, so as to preserve to him the guarantee of the fundamental rights guaranteed by Arts. 14, 19 and 31 except where the same has been denied to him by the clear words of the Constitution.

Secondly reliance was placed on three

decisions of this Court: *Shri Ram Ram Narayan Medhi* v. *The State of Bombay* (1), *Atma Ram* v. *The State of Punjab* (2) and *Yavatamal* v. *State of Bombay* (3). In the two reported decisions, no doubt this Court held that interests of persons similar to those of raiyatwari proprietors were comprehended within the definition of an 'estate' within sub-cl. (a) but the reasoning upon which this was rested is wholly inapplicable for resolving the controversy now before us. In the first case *Sri Ram Narain Medhi* v. *The State of Bombay* (1), — the Bombay Land Revenue Code 1879 contained a definition of an 'estate' which included not merely the estates of intermediaries such as zamindars, taluqdars and other proprietors but also an occupant, i.e., a person who held directly under the government and whose property was assessed to land revenue in full. The question however was whether the provision in Art. 31 A (2) (a) that the expression 'estates' "shall have the same meaning as that expression has in the existing law relating to land-tenures inforce in the area" could be read as permitting the exclusion from the definition of interests which were defined in such a law as 'estates' on the ground that such interests were not those of an intermediary. This Court held that full effect had to be given to these words and that the definition of an 'estate' in a pre-Constitution law relating to land-tenures must determine the content of that expression. It would be seen that the result would have been the same whether the case arose before or after the Fourth Amendment. The decision in *Atma Ram* v. *The State of Punjab* (2) proceeds on an identical basis and turned on the definition of an 'estate' in the Punjab Revenue Act 17 of 1887. In this, as in the earlier case in relation to the Bombay Land Revenue Code, there could be no dispute that the enactment was a law in relation to land-tenure. The only question therefore was

(1) [1959] Supp. 1 S. C. R. 489.
(2) [1959] Supp. 1 S. C. R. 748,
(3) [1962] 1 S.C.R. 733.

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whether full effect could or ought to be given to the words of the definition, and this was answered in the affirmative. In my opinion, the learned Attorney-General cannot derive any assistance from either of these decisions. In the unreported decision in *Yavatmal* v. *The State of Bombay* (1) the challenge was to the validity of a Bombay enactment of 1958 which extended the Bombay Tenancy & Agricultural Lands Act 1956 to the Vidarbha region, an enactment whose constitutional validity had been upheld by this Court in Medhi's case. The argument before the Court was that the lands of the petitioners were not an 'estate' and this, for the most part, was sought to be supported by the absence of any definition of the word 'estate' in the Madhya Pradesh Land Revenue Code of 1954 which was taken to be "the existing law relating to land-tenures" in the Vidarbha region. This Court accepted the submission of Counsel for the respondent that Art. 31A applied to and saved the legislation from being impugned under Arts. 14, 19 and 31 for the reason that the interest of the petitioners in that case (who were bhoomiswamis) was the local equivalent of an 'estate'. The decision, therefore, is no authority for the point now under consideration as to the proper meaning to be attached to the word 'raiyat' and 'under-raiyat' in sub-cl. (2)(b) of Art. 31A or as regards the effect of the Fourth Amendment to the Constitution in regard to the point now under controversy.

From the foregoing it would be seen that the interests of the petitioner in the lands held by him on Puravaka tenure are within Art. 31A because they are lands belonging to a Jenmi and so covered by the definition of an 'estate' as amended by virtue of the Fourth Amendment to the Constitution. With regard, however, to the Pandaravaka Verumpattom lands I am clearly of the opinion that they are not an 'estate' and that the interests of the

(1) [1962] 1 S. C. R. 733.

petitioner in them do not amount to "an interest in an estate" within sub-cl. (b) of Art. 31A(2).

It would follow that the validity of the impugned Act in relation to Pandaravaka lands would have to be considered with reference to Arts. 14, 19 and 31. For the reasons stated in the judgment of this Court in Writ Petitions 114 and 115 which need not be repeated, I hold that the impugned Act is constitutionally invalid and cannot be applied to the Pandaravaka Verumpattom lands of the petitioner but that the petitioner would not be entitled to any relief as regards his other properties.

BY COURT : In accordance with the opinion of the majority, the petition is dismissed. There will be no order as to costs.

Petition dismissed.

KARIMBIL KUNHIKOMAN

v.

STATE OF KERALA

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Ryotwari lands—If "estates"—Compensation—Provisions for plantations of tea and coffee etc., if violative of equal protection of laws—The Kerala Agrarian Relations Act, 1961 (IV of 1961), ss. 3(39), 3(viii), 52,57,58,59,64,80—Constitution of India, Arts. 14, 31A(1).

The Kerala Agrarian Relations Act was impugned on various grounds.

Held, (per Gajendragadkar, Wanchoo and Das Gupta, JJ.) that (1) the bill which was originally passed by a Legislative Assembly which as dissolved and was reconsidered and re-passed by a new legislative assembly did not lapse and validly became the law when the President assented to it after it was passed by the second legislative assembly.