PETITIONER:
MAHARAO SAHIB SRI BHIM SINGHJI ETC. ETC

Vs.

RESPONDENT:
UNION OF INDIA AND ORS. ETC. ETC.

DATE OF JUDGMENT01/07/1985

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
KRISHNAIYER, V.R.
BHAGWATI, P.N.
TULZAPURKAR, V.D.
SEN, A.P. (J)

CITATION:
1985 AIR 1650 1985 SCR Supl. (1) 862
1986 SCC (4) 615 1985 SCALE (2)289
CITATOR INFO :
RF 1986 SC2030 (17)
R 1989 SC1796 (3)

ACT:
A. Urban Land (Ceiling and Regulation) Act, 1976 (Act XXXIII of 1976) -Whether constitutionally valid vis-a-vis Articles 39(b) and (c) of the Constitution.
B. Urban Land (Ceiling and Regulation) Act, 1976 (Act XXXIII of 1976), section 2(g),-Artificial definition of family in section 2(f), whether offends against Article 14 of the Constitution.
C. Urban Land (Ceiling and Regulation) Act, 1976 (Act XXXIII of 1976), section 11(6) validity of-Whether the maximum limit of the amount of compensation payable fixed at Rupees two lakhs is illusory and confiscatory and therefore, violative of Article 14 and 31(2) of the Constitution, as amended by the Twenty-fifth Amendment Act, 1971-Effect of the Amendment.
D. Urban Land (Ceiling and Regulation), Act, 1976 (Act XXXIII of 1976), section 23 validity of-The provision subserves the objectives of Articles 39(b) and (c) and hence protecte by Articles 31 and C, but the governing test of disposal of excess lands being "social good", any disposal in any particular case or cases which does not subserve that purpose will be invalid.
E. Urban Land (Ceiling and Regulation) Act, 1976 section 27(1), validity of-Whether offends Articles 14 and 19(1) (f).
F. Interpretation of statutes-Rule of reading down the provision, Permissibility as a part of the judicial process.
G. Constitution of India, 1950 Articles 31 and 300 -A-Basic structure of the Constitution, thereby applicability of-Whether right to property is a part of the basic structure of the Constitution-State's power of "eminent domain", and conditions precedent to exercise of that power, explained.
H. Constitution of India, 1950-Part IV-Directive Principles of State Policy, character and cognisability by the Courts.
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1. Interpretation of Constitution and the approach to

be adopted, explained.
J. Interpretation of statute-External and Internal Aids, use of
LK. Words and Phrase-Concept and meaning of "Public Purpose."

HEADNOTE:
The Urban Land (Ceiling and Regulation) Act, 1976 (Act XXXIII of 1976) is in force in 17 States and all the Union Territories in the country. It seeks to impose a ceiling on vacant lands in urban agglomerations having a population of two lakhs or more and for that purpose classifies such urban agglomerations in various cities and towns in all the States and Union Territories into four categories and fixes the ceiling limit for each such category.
The primary object and purpose of the Act, as its long title and the Preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land for matters connected there with, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bring about an equitable distribution of land in urban agglomerations to subserve the common good, presumably in furtherance of the Directive Principles of State Policy contained in Article 39(c) and (b) respectively. The enactment has also been put in the Ninth Schedule as Item 132 by the Constitution (Fortieth Amendment) Act, 1976; in other words, the enactment enjoys the benefit of protective umbrella of both the articles, Article 31-B and 31-C as it stood prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976.
By these writ petitions the petitioners, who are holders of vacant land in the urban agglomerations in various States, are seeking to challenge the vires of some of the salient provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (XXXIII of 1976) and since, according to them, some of the impugned provisions are pivotal and non-severable, having an impact on its entire scheme, the whole Act is liable to be struck down as being invalid and unconstitutional. The petitioners have, therefore, prayed for an order quashing notices issued to them by the concerned competent authorities under the Act and a mandamus directing the respondents not to implement the provisions thereof against them.
Dismissing the petitions and upholding the constitutional validity save and except section 27(1) by a majority of 4:1 (A-P. Sen, J- partially dissenting on the validity of sub-sections (1),(2), (3) and the opening words of sub-section (4) of section 23), the Court.
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HELD: Permajarity: (Y.V. Chandrachud, C.J., P.N. Bhagwati, V.R, Krishna Iyer and an.Sen. jj; V.D, Tulzapurkar, J. dissenting).
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1. The Urban Land (Ceiling and Regulation) Act, 1976 is constitutionally valid save and except section 27(1) in so far a it imposes a restriction on transfer of any urban of urbanisable land with a building or of a portion of such building. which is within the ceiling area. [877 E-F]
Per Chandrachud. C.J. and P.N. Bhagwati, J.
1. The Urban Land (Ceiling and Regulation) Act. 1976 is

valid. The vice from which a provision here or a provision there of the impugned Act may be shown to suffer will not justify the conclusion that the Act is not intended to or does not, by its scheme; in fact implement or achieve the purposes of clauses (b) and (c) of Article 39 of the Constitution.[878 C-D]

2. The definition of "family" in section, 2(f) of the Act, which in relation to a person means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children, will not necessarily lead to concentration of wealth in the hands of a few persons or families. Such is not the intendment, nor the drive, nor the direct and inevitable consequences of the definition of "family", [873 D-E]

3. Section 11(6) of the Urban Land (Ceiling and Regulation) Act, 1976 which provides that the amount payable under sub-section (I) or sub-section (5) of section 11 shall, in no case, exceed two lakhs of rupees is valid. The amount thus payable, is not illusory and the provision is not confiscatory Rupees two lakhs is not like a farthing even if the excess land may be a fortune.
[879 F]

4. Section 23 of the Urban Land (Ceiling and Regulation) Act is valid and does not suffer from any constitutional infirmity. Sub-section (4) of section 23 is the prepondering provisio governing the disposal of excess vacant land acquired under the Act. Though it is "subject to the provisions of sub-section (1) (2), and (3)", the provisions of sub-section (1) are enabling and not compulsive and those of sub-sections (2) and (3) are incidental to the provisions of sub-section (1). The disposal of excess vacant lands must therefore be made strictly in accordance with the mandate of sub-section (4) of section 23, subject to this, that in a given case such land may be allotted to any person, for any purpose relating to, or in connection with any "industry" or the other purposes mentioned in sub-section (1), provided that by such allotment, a common good will be subserved. The governing test of disposal of excess land being "social good", any disposal in any particular case or cases which does not subserve that purpose will be liable, to be struck down as being contrary to the scheme and intendment of the Act. The preamble to the Act ought to resolve interpretational doubts arising out of the defective drafting of section 23. "Common Good", being the writing on the wall, any disposal which does not serve that purpose will be outside the scope of the Act and, therefore, lacking in competence in diverse senses. Private property cannot under the Constitution be acquired or allotted for private purposes though an enabling power like that contained in sub-section (I) of section 23
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may be exercised in cases where the common good dictates the distribution of excess vacant land to an industry, as defined in clause (b) of the Explanation to Section 23.
[878' G-H; 879 A-E]

5. Sub-section (I) of section 27 of the Act is invalid insofar as it imposes a restriction on transfer of any urbanisable land with a building or a portion only of such building, which is within the ceiling area. Such property will therefore be transferable without the constraints mentioned in sub-section (I) of Section 27 of the Act. Nothing usefully can be added to the Judgment delivered by Krishna Iyer, J and the reasons given therein are fully agreed to. [879 G-H]

Per Krishna Iyer, J. (Concurring)

1. The legislation on the Ceiling and Regulation of urban lands is constitutionally valid, though section 27(1) is partially invalid. The legislation is obviously a measure for inhibiting concentration of urban lands in the hands of a few persons and for equitable distribution of such land to subserve the common good. Article 39(b) and (c) of the Constitution are directly attracted and the fullest exploitation of the material resources of the community undoubtedly requires distribution of urban land geared to the common good.
[880 E-F]

2, Family as defined in section 2(f) of the Act accords with the current life style in urban conditions and is neither artificial nor arbitrary nor violative of Article 14. And the courts, in these days of family planning and self-reliance of the adult cannot condemn as arbitrary, by a process of judicial ratiocination, the legislative provision that a family shall be defined as the parents plus their minor children. [886 B-C]

3.1 The payment, fixed under section 11(6) of the Act of a sum of Rs. two lakhs whatever be the total value of the property in the market is not so fictitious and flimsy as to be a farthing. There are no absolutes in law as in life and the compulsions of social realities must unquestionably enter the judicial verdict. [881 G-H]

3.2 The various amendments to Article 31 culminating in the present provision which provides for the payment of the "amount" disclose a determined approach by Parliament in exercise of its constituent power to ensure that full compensation or even fair compensation cannot be claimed as fundamental right by the private owner and that short of paying a "farthing for a fortune" the question of compensation is out of bounds for the court to investigate. [881 D-F]

3.3 Having regard to the human condition of a large percentage of pavement dwellers and slum dwellers in our urban areas and proletarian miserables in our rural vastnesses, any one who gets Rs. 2 lakhs can well be regarded as having got something substantial to go by. In a society where half of humanity lives below the breadline, to regard Rs. 2 lakhs as a farthing is farewell to poignant facts and difficult to accept. Therefore, section 11(6) is invulnerable and does not contravene Article 31(2) the payment stipulated is reasonable, neither a mere mockery or discriminatory. [884 E-F]

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4. The whole story of the legislation, the long gestation of pre-legislative consideration, the brooding presence of Article 39(b) and (c) and the emphasis in Section 23(4) on common good as the guiding factor for distribution point to public purpose, national development and social justice as the cornerstone of the policy of distribution. Any transgression of Article 39(b) and (c) is beyond the scope of Section 23(1) and disposal of land thereunder must subserve the common good and not the reverse. This limitation on the wide words of section 23(1) is a matter of semantics and reading down the judicial process. To sustain a law by interpretation is the rule. To be trigger-happy in shooting at sight every suspect law is judicial legicide. Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. The wide definition of "industry" or the use of general words like "any person" and "any purpose" cannot free the whole clause from the inarticulate major premise that only a public purpose to

subserve the commom on good and filing the bill of Article 39(b) and (c) will be permissible. The touchstone is public purpose, community good and like criteria. If the power is used for favouring a private industrialist or for nepotistic reasons the oblique act will meet with its judicial Waterloo. To presume as probable graft, nepotism. patronage, political clout. friendly pressure or corrupt purpose is imper missible. The law will be good, he power will be impeccable but if the particular act of allotment is mala fide or beyond the statutory and constitutional parameters such exercise will be a casualty in court and will be struck down. The power of judicial review to strike at excess or mala fides is always there for vigilant exercise. Hence, even the crude drafting of section 23(4) by the unwanted "subject to" will not whittle down the power, why the obligation, to distribute vacant land, not according to personal, political or official fancy but strictly geared to the good set down in Article 39(b) and (c).
[887 D-H; 888A; 889D]

5. Section 27(1) of the Act, is invalid, partially.
[880 A]

6.1 The question of basic structure being breached cannot arise when examining the vires of an ordinary legislation as distinguished from a Constitutional amendment. Nor, indeed, can every breach of equality spell disaster as a lethal violation of the basic structure. Peripheral inequality is invitable when large-scale equalization processes are put into action. What is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking, unconscionable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty. But to permit the Bharti ghost to haunt the corridors of the court brandishing fatal writs for every feature of inequality is judicial paralysation of parliamentary function. Nor can the constitutional fascination for the basic structure doctrine be made a Trojan horse to penetrate the entire legislative camp fighting for a new social order and to overpower the battle for abolition of basic poverty by the basic structure ’missle.
[889 E-H; 890A]

6.2 Right to property is not part of the basic structure even his right to develop is not the basic structure of India for ever. The whole adventure of the Constitution is to remove poverty and in that process remove concentration of
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property, not for a return, but for almost free, if the justice of the situation commended itself to the legislation to take it that way.

Kesavanda Bharati v. State of Kerala [1972] Supp. SCR p. I referred to.

6.3 Part IV which seeks to build a Social Justice Society, is basic to our constitutional order. The Directive Principles of State Policy being paramount in character and fundamental in the country’s governance, distributive justice, envisaged in Article 39(b) and (c) has a key role in the developmental process of the Socialist Republic that India has adopted. [888 C; 880 G]

Per Tulzapurkar, J. (dissenting)

1. The urban Land (Ceiling and Regulation) Act, 1976, though purporting to do so, does not, in fact, further the directive principles in Article 39(b) and (c). The measure was, undoubtedly, taken in hand with a view to achieve the

unexceptional objectives underlying Article 39(b) and (c) and supported by several State Legislatures as per their resolutions passed under Article 252(1) with a laudable object namely, to clothe the Parliament with legislative competence to enact a law for the imposition of ceiling on urban immovable property for the country as a whole, but the enacted provisions misfire and produce the opposite results and also damage or destroy the essential features or basic structure of the Constitution. Section 2(f) in relation to prescription of ceiling area permits unwarranted and unjustified concentration of wealth instead of preventing the same and is in teeth of the objective under Article 39(c): Similarly section 23 produces results contrary to the objectives under Article 39(b) Therefore, the impugned Act is outside the protective umbrella of Article 31-C. Further, sections 2(f) 23 and 11(6) which puts a maximum limit on the quantum of the amount payable in respect of excess vacant land acquired from a holder irrespective of the extent of area held by him-these three provisions flagrantly violate those aspects of Articles 14 and 31 which constitute the essential and basic features of the Constitution and hence the protective umbrella of Article 31-B is not available to the impugned Act inasmuch as the Fortieth Constitution Amendment Act, 1976 to the extent to which it inserts the Act in the Ninth Schedule is beyond the constituent power of the Parliament. Section 23 which authorises compulsory acquisition of property for private purposes is in breach of the doctrine of eminent domain and since it flagrantly violates Article 31(1) is ultra vires and unconstitutional. Similarly section 27 being severable is partially ultra vires and unconstitutional, being beyond the ambit of the Act and also violative of Article 14 of the Constitution.[916 H, 917A-D]

The legislative competence of the Parliament bring still there, a well drafted enactment within the constitutional limitations of the subject would be the proper remedy.[198 G-H]

Union of India v. Valluri Basaviah Chowdhry, [1979] 3 SCR 802 referred to.

2.1 The artificial definition of " Family" given in section 2(f) of(t) of Act, when considered in relation to the prescriptions of the ceiling area under
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section 4(1) is clearly violative of and strikes at the root of the equality clause contained in Article 14 of the Constitution. This artificial definition together with the double standard adopted for fixing the ceiling area runs through and forms the basis of chapter III of the Act and the discriminatory result or inequalities produced thereby are bound to have an impact on the scheme of that chapter and, therefore, along with it the whole chapter III must fall being violative of Article 14. [898 C-F]

2.2 The classification made between minor children and major children belonging to a family is not based on any intelligible differentia having no nexus to the object sought to be achieved by the Act, which is to acquire excess vacant land after leaving the ceiling area to the family. It has not been shown that so called nuclear families alleged by in vogue have replaced normal families which include major sons or joint Hindu families in urban areas. [898 B-C]

Karimbil Kunhikoman v. State of Kerala [1962] Supp. 1 SCR 829; A.P. Krishnasami Naidu v. State of Madras [1964] 7 S.R 82 followed.

2.3 Apart from the discriminatory result which the artificial definition of family in section 2(f) produces,

the adoption of the artificial definition of "family" and double standard for fixing ceiling area one for a family with minor children and another for a family with major children and completely ignoring the concept of Joint Hindu Family in relation to prescription of ceiling area clearly lead to results which run counter to the directive principles contained in Article 39 (c) of the Constitution.[899 E-F]

3.1 Section 11(6) of the Act, which puts the maximum limit of Rupees Two lakhs on the amount payable to a holder of excess vacant land acquired under the Act irrespective of the extent of such excess vacant land held by him is not merely violative of Articles 14 and 32(2) of the Constitution, but would be a piece of confiscatory legislation, because vacant land in excess of that portion which at the prescribed rates is worth Rupees Two lakhs stands confiscated to the State without any payment whatsover. [911 C-D]

3.2 The enactments involving large schemes of social engineering like abolition of Zamindars, agrarian reforms nationalisation of undertakings and businesses and the like, where avowedly the benefit of the community or public at large is the sole consideration are distinguishable from the instant case, where "industry" has been expressly defined to include business, trade or profession in private sector and where power has been coffered upon the State Government to allot properties acquired under the enactment to individual businessman, trader or professional to enable him to carry on his private business, trade or profession, that is to say, where the legislation is a fraud on State's power of eminent domain, such a provision of putting a maximum limit on compensation payable in respect of the acquired property irrespective of its extent will have to be regarded as confiscatory in nature. [911E 912 A-C]

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However, section 11 (6) is clearly a severable provision, and, therefore, ultra vires and unconstitutional. [913A]

State of Kerala v. The Gwalior Rayon Silk Mfg.Co. Ltd. [1974] I SCR 671 distinguished.

4.1 Section 23 of the Act which authorises compulsory acquisition of property for private purposes flagrantly violates those aspects of Article 31 which constitute the essential or basic features of the Constitution and is, therefore, ultra vires and unconstitutional. Further, indispensably, it is the most vital, integral and non-severable part of the entire scheme of urban ceiling as without it the scheme will merely remain a scheme for unjust and illegal enrichment of the State, and therefore, the whole of chapter III in which it occurs, must fall with it. [906 A-B]

4.2 Article 31 of the Constitution has more than one facet: it undoubtedly confers upon individuals (including non citizens) and corporate bodies a fundamental right to property and incorporates in our Constitution the concept of State's power of eminent domain i.e. power of compulsory acquisition of private property and prescribes two conditions precedent to the exercise of that power, namely, (i) such acquisition cannot be except for a public purpose and (ii) it must be on payment of compensation (now termed amount") to the claimant having interest in the property. But these two conditions precedent are sine qua non for the exercise of the State's power of eminent domain and, represent those aspects of the right to property under Article 31 which constitute the essential or basic features

of our Constitution and for that matter these would be so of any democratic constitution and, therefore, any law authorising expropriation of private property in breach of anyone of those conditions would damage or destroy the basic structure of our Constitution. [903 H, 904A, B-E]

H.H. Kesavananda Bharati v. Union of India & Ors. [1973] Supp. SCR 1 referred to.

State of Bihar v. Kameshwar Singh, [1952]SCR 889 relied on.

4.3 It is extremely doubtful whether compulsory acquisition of all the excess vacant land in all urban agglomerations throughout the country for a bald, indefinite and unspecified objective like "industry" simpliciter without any attempt at dovetailing it by having a proper scheme for industrial development will constitute a valid public purpose for the exercise of the power of eminent domain" [905 C-D]

4.4 The adoption of a wide definition of a wide definition of industry so as to include any business, trade or profession in private sector not only makes a mockery of "public purpose", but also, in the context of eminent domain is clearly suicidal. What is worse is that under the priorities laid down such private
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purposes are to be catered to first and then comes the disposal or distribution thereof to subserve common good, which clearly smacks of depriving Peter of his property to give it to Paul and, therefore, clearly amounts to an invalid exercise of State's power of "eminent domain". [905 F,G-H,906 A]

4.5 Besides, the wide definition of "industry" and the priorities for disposal or distribution of excess vacant land laid down in sub-sections (1) to (5) have adverse impact on the directive principle contained in Article 39(b) in as much as private purposes receive precedence over common good. The enactment which contains such provisions that produce contra results cannot be said to be in furtherance of the directive principle of Article 39(b) and cannot receive the benefit of the protective umbrella of Article 31-C. [906 C-D,G-H]

4.6 It is well settled that it is only when there is ambiguity in the text of any provision in the enactment that the preamble could be looked into. Here, there is no ambiguity whatsoever in section 23(1) and (4). Far from there being any ambiguity there is express provision in section 23(1) and (4) indicating the priorities in the matter of disposal or distribution of excess vacant land, in face of which, the Preamble cannot control, guide, or direct the disposal or distribution in any other manner. [907 A-C]

4.7 No rules framed under section 46(1), which empowers the Central Government to make rules for carrying out the provisions of the Act, and the disposal or distribution of excess vacant land can override the express provisions of section 23. Here, no rules have so far been framed. 907 C-D]

4.8 No reliance can be made on the "Compendium of Guidelines" issued by the Central Government in the Ministry of Works and Housing under the Act either. No doubt, the recommendations made by the 9th Conference of State Ministers of Housing and Urban Development seek to furnish improved guidelines but in the process reverse the priorities given in section 23 in the matter of disposal or distribution of excess vacant land. Hence, the priorities given in section 23 and as have been summarised in para 3 of the Note must prevail over the priorities indicated in the guidelines contained in para 4 of the Note and the latter

are of no avail. [907 F-G-H, 908 A-B]

4.9 Section 23 by no stretch deals with the objective of Article 39(c) at all but only deals with the objective underlying the directive principle of Article 39(b) and its provisions clearly run counter to that objective and as such the enactment which contains such provisions must forfeit the benefit of the protective umbrella of Article 31-C. [908 C-D]

4.10 The definition of "industry" in section 23 cannot be read down by the Court so as to confine the same to industries is public sector or co-operative sector or the like where benefit to community or public at large would be the sole consideration, so that allotment of excess vacant land acquired under the Act to private entrepreneurs for private purposes which runs counter to the
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doctrine of eminent domain would be completely eschewed, because Parliament has for the purpose of section (i.e. for purposes of disposal or distribution of such excess vacant land) deliberately and in express terms adopted a very wide definition which includes within its scope not merely trading or manufacturing activity but also any business or profession in private sector and reading down the definition would be doing violence to the Parliament's intention stated in express terms. [908 G-H, 909A]

4.11 Nor can sub-section (1) of section 23 of the Act be read as containing merely an enabling provision; the scheme of sub-sections (1) to (4) read together clearly shows that the disposal of excess vacant land is first to be done under sub-section (1) and disposal under sub-section (4) comes thereafter. The opening words of sub-section (4), "subject to sub-sections (1), (2) and (3)" cannot be read as constituting a non obstante clause giving an overriding effect to sub-section (4) nor can sub-section (4) be read as if the opening words were absent. By indulging in such interpretative acrobatics, the Court cannot reach the opposite result than is warranted by the plain text of the provision. Further, to say that every disposal of excess vacant land under sub-section (1) must be for 'common good is to read into that sub-section something which is not there; it amounts to rewriting that sub-section, which cannot be done, the preamble notwithstanding. Such interpretations require the restructuring of the entire section-a function legitimately falling within the domain of legislature. Moreover, sub-sections (1), (2), (3) and (4) of section 23 are integral parts of the whole scheme dealing with the disposal of excess vacant land acquired under the Act and as such cannot be severed from one another. The attempt to salvage section 23, either wholly or in part, by seeking to free it from the two vices, namely (i) the adoption of the wide definition of "industry" and (ii) the priorities mentioned therein governing the disposal of excess vacant land acquired under the Act, must, therefore. fail. [909 C-G]

5.1 Though the authorisation was for imposition of ceiling on whom immovable property Parliament deliberately kept out built up properties from the purview of the Act and the Act seeks to impose ceiling only on vacant land in urban agglomerations; that being so any restriction on transfer of built up properties or part thereof (including flats therein) standing on urban land falling within the permissible ceiling area would be outside the purview of the Act. [915 E-F]

5.2 Such a provision, as in Section 27 of the Act would not be incidental or ancillary to the ceiling contemplated

by the Act and would not fall within the phrase "for matters connected therewith" occurring in the Preamble and the long title of the Act, for the words "matters connected therewith" occurring in the concerned phrase must be correlated to what precedes the phrase, namely, "an Act to provide for ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land", and therefore, the words "matters connected therewith" must mean matters in relation to the ceiling imposed by the Act. A reference to objectives under Article 39(b)(c)
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(for the achievement of which the enactment is allegedly taken in hand) in the Preamble or long title cannot enlarge the ambit or scope of the Act. Any restriction imposed on built-up properties falling within the permissible ceiling area left with the holder would, therefore, be outside the ambit and scope of the Act. [914 G-H, 915A]

5.3 In the absence of any guidelines for the exercise of the power and in the absence of any standards having been laid down by the Legislature for achieving the objectives of prevention of concentration, speculation and profiteering in urban land and urban property, it cannot be said that there three broad objectives recited in the Preamble could effectively or adequately guide the exercise of power by the competent authority in the matter of granting or refusing to grant the permission under section 27 and is bound to produce arbitrary or discriminatory results. Further, the provision for appeal under section 33 the Appellate Authority and a revision under section 34 to the State Government would not be of much avail to preventing arbitrariness in the matter of granting of refusing to grant the permission. Section 27 which does not adequately control the arbitrary exercise of the power to grant or refuse the permission sought, is clearly violative of Article 14 of the Constitution and as such the requirement of permission contained therein is ultra vires and unconstitutional, [915 G-H,916A-B]

Per A.P. Sen, J. (concurring)

1.1 Sub-sections (2) and (3) of Section 23 and the opening words subject to the provisions of sub-sections (1), (2) and (3) "in section 23(4) of the Urban Land (Ceiling and Regulation) Act, 1976 are ultra vires of the Parliament and these provisions are not protected under Article 31-B and 31-C of the Constitution. Sub-section (1) of section 27 of the Act is invalid in so for as it imposes a restriction of transfer of urban property for a period of ten years from the commencement of the Act, in relation to vacant land or building thereon, within the ceiling limits. The remaining provisions of the Act, including sub-section (4) of section 23 being in conformity with Part IV of the Constitution and Article 31(2) are valid and constitutional. The Act is in furtherance of the directive principles under Article 39(b) and (c) and has the protection of both Article 31-B and 31-C. [946 B-F]

1.2 To strike down the whole Act would be against the national interest. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits of the organic law of the Constitution, it must be allowed to stand as the true expression of the national will. Here, the invalidity of the provisions of sub-sections (1) to (3) of section 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3)" in section 23(4) cannot affect the validity of the Act as a whole, in

as much as the said provisions are not inextricably bound up with the remaining provisions of the Act. Further, the legislature would have enacted what survives without enacting the part that is ultra vires. The Act still remains the Act as it was passed i.e. an Act for imposition of ceiling on urban land [935 D-E, 9.6 A-B]

Attorney-General for Alberin v. Attorney General for Canada [1947] AC-505 at 518 quoted with approval.

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1.3 In determining the effect of law upon the individual's right to property, the Court must take judicial notice of the fact of vast inequalities in the existing distribution of property in the Country. The Court's concern lies not merely with applying the preexisting sets of theories, concepts, principles and criteria with a view to determining what the law is on a particular point. The proper approach should be to view the principles with the realisation that the ultimate foundation of the Constitution finds its ultimate roots in the authority of the people. And, constitutional questions should not be deter- mined from a doctrinaire approach, but viewed from experience derived from the life and experience or actual working of the community, which takes into account emergence of new facts of the community's social and economic life affecting property rights of the individual, whenever, among there, the validity of a law prescribing preference or discrimination is in question under the "equal protection" guarantee. [936 B-E]

2. The artificial definition of family in section 2 (f) of the Act is valid. As a result of the artificial definition of "family" in section 2(f), a Joint Hindu family is excluded from the purview of section 2 of the Act, but such a total exclusion of Joint Hindu Family does not render the Act void and unconstitutional as violative of Article 14. Parliament deliberately excluded a joint family from the purview of the section as it was beset with difficulties in imposing a ceiling. The Act applies to Hindus, Mohammedans and Christians alike. By the exclusion of a Joint Hindu Family the members of a Joint Hindu family, whether governed by the Mitakshara school or the Dayabhaga school were brought at par with others. Therefore, there is nothing wrong in the exclusion. [937E-H, 938A, C-E]

3.1 The contention that the amount fixed by sub-section (6) of section (1) of the impugned Act is totally arbitrary and illusory since there is no nexus between the value of the property and the amount fixed and, therefore, the maximum amount fixed under sub-section (6) makes the Act confiscatory in total abrogation of the fundamental right guaranteed under Article 31(2) cannot be accepted. [938 F-A]

3.2 The Constitution (Twenty-fifth Amendment) Act, 1971, has placed the matter of adequacy of compensation beyond the pale of controversy by substituting the word " amount" for the word "compensation" in Article 31(2) and made the adequacy of the amount payable for acquisition or requisition of the property nonjusticiable. When the Court has no power to question the adequacy of the amount under Article 31(2), it cannot be said, that the amount determined according to the principles laid down in sub-section (1) subject to the maximum fixed under sub-section (6) thereof is illusory merely because of inadequacy. The legislature in its wisdom has laid down the principles and fixed a ceiling on the maximum amount payable and considers that Rupees Two Lakhs is a fair and just recombines. That is a legislative judgment and the Court has no power to question it. [938 G, 939 FG, 942 E-F,G]

H.H. Kesavananda Bharati v. State of Kerala [1973] Supp. SCR P.I; R.C. Cooper v. Union of India [1970] 3 SCR 531; State of Kerala v. Gwalior Rayan
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Silk Manufacturing Co. [1974] 1 SCR 671; State of Karnataka v. Ranganatha Reddy [1978] 1 SCR 641 followed.

4.1 Sub-sections (1), (2) and (3) of section 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3) in sub-section (4) of section 23 are ultra vires of the Parliament [935 B-C]

4.2 Apart from the five pillars or the Constitution, namely, Sovereign Democratic Republic, Equality of status and opportunity, Secularism, Citizen s right to worship and the Rule of law-, the concept of social and economic justice-to build a welfare State-, is equally a part of the basic structure or the foundation upon which the Constitution rests. The provisions of sections 23(1), (2) and (3) and the opening words in sections 23(4) are the very antithesis of the idea of a welfare State based on social and economic justice. Since these provisions permit acquisition of property under the Act for private purposes, they offend against the Directive Principles of State Policy of Article 39 (b) and (c) and are also violative of Article 31(2) and therefore, not protected under Article 31-B, [934 G-H 935 A-B]

Indira Nehru Gandhi v. Raj Narain, [1976]2SCR 347 relied on

H.H. Kesavananda Bharyti v. State of Kerala [1973] Supp. SCR p.1 explained.

4.3 It is extremely doubtful whether compulsory acquisition of all the excess vacant land in all urban agglomeration throughout the country for a bold, indefinite and unspecified objective like ' industry", simpliciter would be a valid exercise of the power of eminent domain. [928H-929A]

4.4 Although the impugned Act is enacted with a laudable object to subserve the common good, in furtherance of the Directive Principles of State Policy under Article 39(b) and (c), in terms of sub-sections (1), (2) and (3) of section 23 it would be permissible to acquire vacant land in urban agglomerations and divert it for private purposes, the whole emphasis being on industrialisation. The opening words in section 23 (4) "subject to the provisions of sub section (1), (2) and (3)" make the provisions of section 23(4) subservient to section 23(1), which make it lawful for the allottee that is the industrialist to hold such land in exceess of the ceiling limit. [928 D-F]

4.5 The provisions of sub-section(1), (2) and (5) of section 23 cannot be read in the light of the Preamble of the Act or the Directive Principles under Article 39(b) and (c). [929 B-C]

When the language of the section is clear and explicit, its meaning cannot be controlled by the Preamble. It is not for the Court to restructure the section. The restructuring of a statute is obviously a legislative function. The matter is essentially of political expediency and as such it is the concern of the statements and, the therefore, the domain of the legislature and not the judiciary. [929 C-E]
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The use of the words "subject to the provisions of sub-sections (1), (2) and (3)" in section 23(4) takes away the compulsion on the State Government to adhere to the Directive Principles under Article 39 (b) and (c) in making allotment of the vacant lands in an urban aggolomereration acquired under the Act. The words "-subject to the

provisions of sub-sections (1), (2) and (3)" in section 23(4), appearing in the context means " in addition to if anything is left over after the allotment under section 23(1)"[929 F-G]

A legislation built on the foundation of Article 39(b) and (c) permitting acquisition of private property must be for a Public purpose. that is to subserve the common good Sub-sections (1), (2) and (3) of section 23 of the Act negate that principle. Furthermore, Article 31(2) consists of three prerequisites, namely, (i) the property shall be acquired by or under a valid law; (ii) it shall be acquired only for a public purpose, and (iii) the person whose property has been acquired shall be given an amount in lieu thereof. The definition of 'industry ' in Explanation (b) to section 23(1) is wide enough to include any business, trade or vocation carried on for private grain. There cannot be "mixed purpose of public and private to substain under legislation Article 39(b) and (c) The vice lies in section 23(1) and the Explanation (b) thereto, which on a combined reading, frustrate the he very object of the legislation. [930 A-C]

4.6 The concept of "public purpose" necessarily implies that it should be a law for the acquisition or requisition of property in the interest of the general public, and the purpose of such a law directly and vitally subserves public interest. If In reality the object of the acquisition under the Act is to set up industries in the private sector as is permissible from the provisions of section 23(1) of the Act, nothing prevents the State from taking recourse to section 40 of the Land Acquisition Act, 1894, for which there must be quid pro quo that is, payment of compensation according to the market value.
[930 F-G]

4.7 The guidelines issued by the Government of India, Ministry of Works and Housing clarifying the intent and purpose of the provisions of the Act cannot supersede or alter any of the provisions of the Act or the rules made thereunder. The Guidelines cannot alter the "priorities" laid in the sections. The guidelines are nothing but in the nature of Executive Instructions and cannot obviously control the plain meaning of the section. [930 G-H, 932E]

Where the language of the Act is clear and explicit, the Courts must give effect to it, whatever may be the consequences for in that case the words of the statute speak the intention of the legislature. Therefore, the courts cannot be called upon the interpret the provisions of section 23 of the Act in the light of the Guidelines issued by the Government of India, Ministry of Works and Housing. 932 E-F]

4.8 The provisions of sub-sections (1), (2) and (3) of section 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3) in section 23(4) which makes the setting up of industries the dominent object for
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the acquisition of vacant land in urban agglomerations under the Act are not in keeping with Part IV of the Constitution and, therefore, not protected under Article 31-C. [932 G-H]

4.9 A legislation which directly runs counter to the Directive Principles of State Policy enshrined in Article 39(b) and (c) cannot by the mere inclusion in the Ninth Schedule receive immunity under Article 31-B. The Directive Principles are not mere homilies. Though these Directives are not cognizable by the Courts and if the Government of the day fails to carry out these objects no court can make the Government ensure them , yet these principles have been

declared to be fundamental to the governance of the country. In short, the Directives emphasise, in amplification of the Preamble, that the goal of the Indian policy is not laissez faire, but a welfare State, where the State has a positive duty to ensure to its citizens social and economic justice and dignity of the individual. It would serve as an "Instrument of Instructions" upon all future governments, irrespective of their party creeds. 933A-B, E-F]

5.1 The provisions of sub-section (1) of section 27 of the Act is invalid in so far as it seek to affect a citizen's right to dispose of his urban property in an urban agglomeration within the ceiling limits. [946 B-C]

5.2 The right to acquire, hold and dispose of property guaranteed to a citizen under Article 19(1)(f) carries with it the right not to hold any property. As such a, citizen cannot be compelled to own property against his will [945 G-H]

There is no justification at all for the freezing of transactions by way of sale, mortgage, gift or lease of vacant land or building for a period exceeding ten years or otherwise for a period of ten years from the date of the commencement of the Act, even though such vacant land with or without building thereon falls within the ceiling limits. [945 E-F]

If vacant land owned by a person falls within the ceiling limits for an urban agglomeration he is outside the purview of section 3 of the Act. That being so, such a person is not governed by any of the provisions of the Act. [946A]

Excel Wear v. Union of India and Ors. [1979] 1 SCR 1009 relied on.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 350/ of 1977 etc.

Under Article 32 of the Constitution of India.

S.K. Jain and S.S. Khanduja for the Petitioners.

R.N. Poddar and Ms. A. Subhashini for the Respondents.

The following Judgments were delivered

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CHANDRACHUD, C.J.: A large group of persons holding vacant lands in different urban agglomerations in the country had filed writ petitions in this Court, challenging the validity of some of the key provisions of the Urban Land (Ceiling and Regulation) Act, 33 of 1976. Those writ petitions were disposed of on November 13, 1980 by a Constitution Bench consisting of Krishna Iyer J., Talzapurkar J., A.P.Sen J., and the two of us. Each of our three learned Brethren delivered a full judgment. We delivered a short judgment and stated that fuller reasons will follow later.

We had discussed with one another the several points arising in the writ petitions. But, we were running against time, not an unusual predicament, since Krishna Iyer J. was due to retire on November 15, 1980, Tulzarpurkar J. differed from all of us, holding that the impugned Act is not protected under Article 31-C or under Article 31-B since, it did not further the Directive principles contained in clauses (b) and (c) of Article 39 of the Constitution. The learned Judge held further that since Chapter III of the Act, comprising the substratum of the very scheme of the Act was invalid the entire Act had to be struck down as unconstitutional. A.P. Sen J. agreed with us on all the

points except that according to him, subsections (1), (2) and (3) of section 23 and the opening words of section 23(4) of the Act are unconstitutional, not being protected by Articles 31-B and 31-C of the Constitution. Krishna Iyer J. concurred with us in holding that the entire Act is valid save and except section 27(1), insofar as that section imposes restrictions on the transfer of any urban or urbanisable land with a building or a portion of such building, which is within the ceiling area. We took the view that the impugned Act was intended to and did in fact implement or achieve the purpose of clauses (b) and (c) of Article 39 and that, the vice from which a few provisions of the Act could be shown to suffer, would not justify a contrary conclusion.

We are free to confess that if the full text of the judgment of Krishna Iyer J. were available to us sufficiently in advance we would not have delivered a separate order stating that fuller reasons will follow later. The judgment had to be pronounced on November 13, 1980 since, Krishna Iyer J. was due to retire two days later. As we have stated earlier, all of us had together discussed the various points arising in these cases and we knew the conclusions to which we had respectively come. But, it is not possible to express agreement with the line of reasoning of a judgment, without examining
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the judgment carefully. That opportunity became available to us latter. We have gone through Krishna Iyer J.'s judgment closely and find that there is nothing that we can usefully add to it.

The only further order which we propose to pass now is say that we agree fully with the reasons given by Krishna Iyer J. in his judgment reported in 1981(1) S.C.C. 166.

CHANDRACHUD, C.J. We have perused the judgment prepared by Brother Tulzapurkar with care but, with respect, we are unable to agree with him that the Urban Land (Ceiling and Regulation) Act 33 of 1976, does not further the Directive Principles of State Policy in clauses (b) and (c) of Article 39 of the Constitution. The vice from which a provision here or a provision there of the impugned Act may be shown to suffer will not justify the conclusion that the Act is not intended to or does not, by its scheme, in fact implement or achieve the purposes of clauses (b) and (c) of Article 39.

The definition of 'family' in section 2(f), which in relation to a person means the individual, the wife or husband, as the case may be, of such individual, and their unmarried minor children, will not necessarily lead to concentration of wealth in the hands of a few person or families. Such is not the intendment, nor the drive, nor the direct and inevitable consequence of the aforesaid definition of 'family'.

Section 23 of the Act is in our opinion valid and does not suffer from any constitutional infirmity. The definition of the word 'industry' in clause (b) of the Explanation to that section is undoubtedly unduly wide since it includes "any business, profession, trade, undertaking or manufacture". If sub-section (1) of section 23 were to stand alone, no doubt could have arisen that the Urban Land Ceiling Act is a facade of a social welfare legislation and that its true, though concealed, purpose is to benefit favoured private individuals or associations of individuals. But the preponderating provision governing the disposal of excess vacant land acquired under the Act is the one contained in sub-section (4) of section 23 whereby, all vacant lands deemed to have been acquired by the State

Government under the Act "shall be disposed of...to subserve the common good". The provisions of sub-section (4) are "subject to the provisions of sub-sections (1), (2) and (3) "but the provisions of sub-section (1)
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are enabling and not compulsive and those of sub-sections (2) and (3) are incidental to the provisions of sub-section (1). The disposal of excess vacant lands must therefore be made strictly in accordance with the mandate of sub-section (4) of section 23, subject to this, that in a given case such land may be allotted to any person; for any purpose relating to, or in connection with, any 'industry' or for the other purposes mentioned in sub-section (1), provided that by such allotment, common good will be subserved. The governing test of disposal of excess land being 'social good', any disposal in any particular case or cases which does not subserve that purpose will be liable to be struck down as being contrary to the scheme and intendment of he Act. The Preamble to the Act ought to resolve interpretational doubts arising out of the defective drafting of section 23, It shows that the Act was passed with the object of preventing concentration of urban land in the hands of a few persons and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. 'Common good' being the writing on the wall, any disposal which does not serve that purpose will be outside the scope of the Act and therefore lacking in competence in diverse senses. Private property cannot under our Constitution be acquired or allotted for private purposes though an enabling power like that contained in sub-section (1) of section 23 may be exercised in cases where the common good dictates the distribution of excess vacant land to an industry, as defined in clause (b) of the Explanation to section 23.

Section 11(6) which provides that the amount payable under sub-section (1) or sub-section (5) of section 11 shall, in no case, exceed two lakhs of rupees is valid. The amount thus payable is not illusory and the provision is not confiscatory. Rupees two lakhs is not like a farthing even if the excess land may be a fortune.

Finally, we are of the opinion that subsection (1) of section 27 of the Act is invalid in as far as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion only of such building, which is within the ceiling area. Such property will therefore be transferable without the constraints mentioned in sub-section (1) of section 27 of the Act.

The Writ Petitions are accordingly dismissed except for the restricted striking down of section 27(1) of the Act. There will be no order as to costs
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Fuller reasons will follow latter.

KRISHAN IYER, J. I agree with the learned Chief Justice both regarding the constitutionality of the legislation and regarding the partial invalidation of s. 27 (1). Nevertheless, I consider it necessary to strike a few emphatic notes of concordance having special regard to the discordance of my learned brother Tulzapurkar, J. I have carefully perused the judgment of Tulzapurkar, J, but must express my deferential disagreement because on a few fundamentals there is sharp divergence between us.

I proceed to turn the focus only on three issues, namely, the alleged artificiality of "family' as defined in s. 2 (f) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act), the invalidity of s. 23 of the

Act as discriminatory and, therefore, unconstitutional and the invalidity of s. 11 (6) of the Act on the score that the compensation offered is illusory and, therefore, violative of Art. 31 (2) of the Constitution.

The legislation, as its title indicates, is obviously a measure for inhibiting concentration of urban lands in the hands of a few persons and fore quitetable distribution of such land to subserve the common good. Article 39 (b) and (c) of the Constitution are directly attracted and there is no doubt that the fullest exploitation of the material resources of the community undoubtedly requires distribution of urban land geared to the common good. It is also a notorious fact that concentration of urban land in private hands is an effective forbiddance of the maximum use of such land for industrial purposes at a critical juncture when the nation is fighting for survival through industrialisation. It needs no argument to conclude that the objective of the legislation as set out in the long title and in the statutory scheme is implementation of Part IV of the Constitution. The Directive principles of State policy being paramount in character and fundamental in the country's governance, distributive justice envisaged in Art. 39 (b) and (c) has key role in the developmental process of the socialist Republic that India has adopted. The conclusion is inevitable that is a broad measure of State policy, ceiling on and regulation of urban land ownership is an imperative of economic independence and is, therefore, on the national agenda of planned development. Indeed, there was no controversy on this question before us. One of the points which has been argued and has found approval with my learned brother

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Tulzapurkar, J., turns on the gross inadequacy of compensation fixed under s. 11 (6) of the Act. There is a specific case before us that urban land worth a few crores will fall a prey to acquisition under this Act, but thanks to s. 11 (6), "the amount" payable in return to the owner shall not exceed Rs. 2 lakhs. This, it is contended, is an illusory compensation in reckless disregard of the market value of the property acquired. I am unable to agree with this submission.

The taking over of large conglomerations of vacant land is a national necessity if Art. 39 is a constitutional reality. "Law can never be higher than the economic order and the cultural development of society brought to pass by that economic order." (Marx). Therefore, if Art. 38 of the Constitution which speaks of a social order informed by economic justice, is to materialise, law must respond effectively and rise to the needs of the transformation invisioned by the founding fathers. But it is contended that any legislation which violates Art. 31 (2) or Art. 19 (1) (f) (both of them have since been deleted by the 44th Amendment to the Constitution although on the relevant date they were part of part III) must fail notwithstanding the fact that Arts. 31B and 31 C shield the legislation in question. It is said that the Act is vulnerable for the reason that right to property armoured by the above two Articles is inviolable unless the taking is for a public purpose in contrast to a private industry and the payment in return, even if not an equivalent, is be fair enough so as not to be castigated as illusory. The various amendments to Art. 31 culminating in the present provision which provides for the payment of an "amount" disclose a determined approach by parliament in exercise of its constituent power to ensure that full compensation or even fair compensation

cannot be claimed as a fundamental right by the private owner and that short of paying a 'farthing for a fortune' the question of compensation is out of bounds for the court to investigate.

The question is whether in the light of Kesavananda Bharati (especially the observations of Chandrachud, J), a sum of Rs. 2 lakhs in s. 11 (6) is a farthing for a fortune. I repudiate the proposition that payment of a sum of Rs. 2 lakhs, whatever the total value of the property in the market may be is so fictitious and flimsy as to be a farthing. There are no absolutes in law as in life and the compulsions of social realities must unquestionably enter the judicial verdict.

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What is the dimension of Indian penury? What is the basis of our constitutional order? What is the goal of the Republic? What is the meaning of the egalitarian ethos of our society? What do we mean by "We, the people of India"? Unless these profound roots of our social constitutional order are probed, we can never reach an effective answer to legal formal issues. The roots and fruits of our National Charter depend on a clear grasp of the constitutional fundamentals. In this context, it is important to remember what, right at the beginning even as the proceedings of the constituent Assembly were culminating, Nehru had warned:

> If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. If India goes down, all will go down; if India thrives, all will thrive; and if India lives, all will live.

He had repeated with emphasis:

> The first task of this Assembly is to free India through a new constitution, to feed the starving people and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.

Indeed, the tryst with destiny that India made when it became free found expression in a historic speech by the then Prime Minister, Jawahar Lal Nehru:

> The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.

We must notice the Indian human condition. "Indian poverty, to many who have an acquaintance with poverty in similar societies is unique", writes Segal in his book The Crisis of India: "It is unique in its depths, which seems incapable of supporting life at all; unique in its blatancy, for it is everywhere, in city and village, and concealed among chimneys or trees, not isolated like an epidemic in an

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inaccessible slum, but everywhere, on the movement of one's feet, always some where in the circle of one's sight; unique in its sheer magnitude for in India the poor are not to be numbered in hundreds of thousands, but in hundreds of millions; unique in the quality of its submission, which registers a kind of glazed pride." In this context we may also read what Rajen Babu stated as a framer of the Constitution:

> To all we give the assurance that it will be our endeavour to end poverty and squalor and its companions hunger and disease, to a abolish distinctions and

exploitation and to ensure decent conditions of living. We may have to remember that a galaxy of Constitution-makers like Sardar Patel and B. Pant and Rajagopalachari, not to speak of Jawahar Lal Nehru, where doubtful about the court being given the power to pronounce upon the question of compensation when the State acquired property. Indeed, it is revealing to read the debates in condensed form given by Granville Austin:

> Sardar Patel closed the debate with a speech that sounded like a requiem for land-lords....What did 'public use' mean he wondered. Pant then said: Suppose the government acquires zamindari rights and then abolishes them. Or what if the Government takes over Connaught Place (the central shopping and office area of New Delhi) and then redistributes the buildings to the tenants? The first stage is acquisition. Does that come under this clause? To Ayyar's answer of 'Certainly', Pant replied that he opposed the wording if it means that the government would not be free to determine the compensation it would have to pay. If this clause covers all cases of acquisition said Rajagopalachari, then the question of the justness of compensation will go to the courts 'with the result that government functioning will be paralysed'. Panikkar suggested that they should take out the 'just' so that it would not be justiciable. Pant replied that if this covered acquisition for social purposes, 'then I submit payment of compensation should not even be compulsory'. Patel concluded the discussion.

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> 'If the word 'just' is kept,' he said, 'we come to the conclusion that every case will go to the Federal Court.' Therefore "just" is dropped .....The Assembly greeted the committee's actions favourably.

We need not go into the details except to state that even Gandhiji took the view that anything like compensation could possibly not be given when property was taken from the property owners by the State for community benefit. I mention this only to drive home the point that right to property is not part of the basic structure of the Constitution even as right to poverty is not the basic structure of India for ever. The whole adventure of the Constitution is to remove poverty and in that process remove concentration of property, not for a return, but for almost free, if the justice of the situation commended it self to the legislation to take it that way. Of course, it may be a deception to say that an "amount" is paid if nothing is paid except a tittle. So what we have to consider is whether the amount of Rs. 2 lakhs is so utterly deceptive and totally nominal as to be discarded as a farthing with contempt. Having regard to the human condition of a large percentage of pavement dwellers and slum dewllers in our urban areas and proletarian miserables in our rural vastnesses, any one who gets Rs. 2 lakhs can well be regarded as having got something substantial to go by. In a society where half of humanity lives below the breadline, to regard Rs. 2 lakhs as a farthing is farewell to poignant facts and difficult to accept. In my view, with the greatest respect for my learned brother, I am unable to assent to the view that s. 11 (6) contravenes Art. 31 (2) because the Payment stipulated is a mere mockery.

To put a ceiling on the maximum amount payable when property is taken is reasonable and does not spell discrimination unless the maximum itself is a hoax, being trivial. In a Constitution which creates a Socialist

Republic egalite is the rule of life and where gross inequalities mar the economic order, a measure of equalization is but one strategy of promoting equality and has to be viewed as part of the dynamics of social justice. Indeed, even in the Income Tax Act, at a certain stage, almost all the income is taken away by a steep rate of tax leaving next to nothing to the income earner. We have to be pragmatic and show empathy with the values
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of the Constitution. Chief Justice Earl Warren's statement is apposite as a reminder to our judicial conscience:

> Our judges are not monks or scientists, but participants in the living stream of our national life, steering the law between the dangers of rigidity on the one hand and of formlessness on the other. Our system faces no theoretical dilemma but a single continuous problem: how to apply to ever-changing conditions the never-changing principles of freedom.

I have no hesitation in holding s. 11(6) as invulnerable.

'Family' as defined in s.2(f) has been held invalid by my learned brother Tulzapurkar, J, as an arbitrary, artificial creation of the statute inconsistent with the natural unit prevalent in the country. Here again. I must emphasise that law is never static and must respond to the challenges of change:

> The law is not an end in itself, nor does it provide ends. It is preeminently a means to serve what we think is right .....Law is here to serve! To serve what? To serve, insofar as law can properly do so, within limits that I have already stressed, the realization of man's ends, ultimate and mediate, Law cannot stand aside from the social changes around it.

It is possible that in the last century the prevalent concept of family was of a certain pattern. Indeed, in the diversity of Indian social structure the concept of 'family' has varied from region to region and even from community to community and we cannot postulate any parameters in this behalf. Moreover, fission, not fusion, is the modern trend and wherever might have been the situation in Indian rural life in the 1950s there is no doubt that nuclear families are becoming the vogue in the late 1970s and 1980s of Indian urban life. In the Western countries the family unit consists of the parents and their minor children and the West has invaded the East in life-style
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atleast in our cities. Whatever may be the pastoral life of old or the idyllic picture we may cherish the social facts tell a different tale in contemporary India of the cities. There is hardly space for a unclear family to live in urban conditions and to think of large joint families as the natural unit is to resurrect by gone ways of life and turn the blind eye to the rapid growth of the small family of man and wife-'we two and we shall have two' is the desideratum and social factum. In these days of family planning and self-reliance of the adult we cannot condemn as arbitrary, by a process of judicial ratiocination, the legislative provision that a family shall be defined as the parents plus their minor children. I, therefore, hold that 'family' as defined in s. 2(f) of the Act accords with the current lifestyle in urban conditions and is neither artificial nor arbitrary nor violative of Act 14. It is noteworthy that many agrarion legislations have been upheld by this court in a spate of recent cases where the definition of 'family' is substantially the same.

I may permit myself a few observations on s. 23 of the

Act and the grounds of invalidation relied on by the challengers. The section has been loosely or ambivalently drafted and runs thus:

> 23. Disposal of vacant land acquired under the Act.
>
> (1) It shall be competent for the State Government to allot, by order, in excess of the ceiling limit any vacant land which is deemed to have been acquired by the State Government under this Act or is acquired by the State Government under any other law to any person for any purpose relating to, or in connection with, any industry or for providing residential accommodation of such type as may be approved by the State Government to the employees of any industry and it shall be lawful for such person to hold such land in excess of the ceiling limit.
>
> Explanation-For the purposes of this section,
>
> (a) where any land with a building has been acquired by the State Government under any other law and such building has been subsequently demolished by the State Government, than, such land shall be deemed to be vacant land acquired under such other law:

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> (b) "industry" means any business, profession, trade, undertaking or manufacture.
>
> ... ...
>
> (4) Subject to the provisions of sub-sections (1), (2) and (3), all vacant lands deemed to have been acquired by the State Government under this Act shall be disposed of by the State Government to subserve the common good on such terms and conditions as the State Government may deem fit to impose.

Certain basics must be remembered as ideological tools of legal interpretation. The purpose of the enactment, garnered from the Preamble, is to set a ceiling on vacant urban land, to take over the excess and to distribute it on a certain basis of priority. The whole story of the legislation, the long gestation of pre-legislative consideration, the brooding presence of Art. 39(b) and (c) and the emphasis in s. 23(4) on common good as the guiding factor for distribution point to public purpose, national development and social justice as the cornerstone of the policy of distribution. It is not and never can be compulsory taking from some private owners to favour by transfer other private owners. The prevalent pathology of corrupt use of public power cannot be assumed by the court lest the same charge be levelled against its echelons. The wide definition of 'industry' or the use of general words like 'any person' and 'any purpose' cannot free the whole clause from the inarticulate major premise that only a public purpose to subserve the common good and filling the bill of Art. 39(b) and (c) will be permissible. Even a private industry may be for a national need and may serve common good. Even a medical clinic, legal aid bureau, engineering consultant's office, private ambulance garage, pharmacist's shop or even a funeral home may be a public utility. Professions for the people, trade at the service of the community and industry in the strategic sector of the nation's development may well be in private hands in the transitional stage of our pluralist economy undergoing a fabian transformation. Why should lands allotted to such private industries or professionals be condemned? The touchstone is public purpose, community good and like criteria. If the power is used for favouring a private industrialist or for nepotistic reasons the oblique act will

meet with its judicial Waterloo. To presume as probable graft, nepotism, patronage, political cloth,
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friendly pressure or corrupt purpose is impermissible. The law will be good, the power will be impeccable but if the particular act of allotment is mala fide or beyond the statutory and constitutional parameters such exercise will be a casualty in court and will be struck down. We must interpret wide words used in a statute by reading them down to fit into the constitutional mould. The confusion between the power and its oblique exercise is an intellectual fallacy we must guard against. Fanciful possibilities, freak exercise and speculative aberrations are not realistic enough for constitutional invalidation. The legislature cannot be stultified by the suspicious improvidence or worse of the Executive.

I wholly agree with the perspective of my learned brother Sen, J. that Part IV which seeks to build a Social Justice Society, is basic to our constitutional order. Any transgression of Art. 39(b) and (c) is beyond the scope of s. 23(1) and disposal of land thereunder must subserve the common good and not the reverse. This limitation on the wide words of s. 23(1) is a matter of semantics and reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule. To be trigger-happy in shooting at sight every suspect law is judicial legicide. Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. As Lord Denning said: "A judge should not be a servant of the words used. He should not be a mere mechanic in the power-house of semantics". May Lord Denning live long, and his shadow never grow less."

The power of judicial review to stricke at excess or mala fides is always there for vigilant exercise untrammeled by the narrow precedents of Victorian vintage. Prof. H.W.R. Wade's note of judicial activism, in his recent Hamlyn Lectures, will set the sights right:

> Brainwashed though British lawyers are in their professional infancy by the dogma of legislative sovereignty, they ought to excuse rather than criticise the logical contortions and evasions to which Judges must resort in their struggle to preserve their powers. I do not see how
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> they can fairly be accused, to borrow words used by Lord Devlin, of moving too far from their base. They would be much more open to criticism if they remained content with the wretchedly narrow base to which they confined themselves 30 years ago, when they took clauses of the "if the minister is satisfied" type at face value. For judicial control, particularly over discretionary power, is a constitutional fundamental. In their self-defensive campaign the judges have almost given us a constitution, establishing a kind of entrenched provision to the effect that even Parliament cannot deprive them of their proper function. They may be discovering a deeper constitutional logic than the crude absolute of statutory omnipotence.

I have no doubt even the crude drafting of s. 23 (4) by the unwanted 'subject to' will not whittle down the power, why the obligation, to distribute vacant land, not according to personal, political or official fancy but strictly geared to the good set down in Art. 39 (b) and (c)

The question of basic structure being breached cannot

arise when we examine vires of an ordinary legislation as distinguished from a constitutional amendment. Kesavananda Bharati cannot be the last refuge of the proprietariat when being legislation takes away their 'excess' for societal weal. Nor, indeed, can every breach of equality spell disaster as a lethal violation of the basic structure. Peripheral inequality is inevitable when large-scale equalisation processes are but into action. If all the judges of the Supreme Court in solemn session sit and deliberate for half a year to produce a legislation for reducing glaring economic inequality their genius will let them down if the essay is to avoid even peripheral inequalities Every large cause claims some martyr, as sociologists will know. Therefore, what is a betrayal of the basic feature is not a mere violation if Art. 14 but a shocking, unconscienable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty. But to permit the Bharati ghost to haunt the corridors of the court brandishing fatal writs for every feature of
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inequality is judicial paralysation of parliamentary function. Nor can the constitutional fascination for the basic structure doctrine be made a Trojen horse to penetrated he entire legislative camp fighting for a new social order and to overpower the battle for abolition of basic poverty by the 'basic structure' missile. Which is more basic? Eradication of die-hard, deadly and pervasive penury degrading all human rights or upholding of the legal luxury of perfect symmetry and absolute equality attractively presented to preserve the status quo ante? To use the Constitution to defeat the Constitution cannot find favour whit the judiciary I have no doubt that the strategy of using the missile of 'equality' to preserve die-hard, dreadful societal inequality is a stratagem which must be given short shrift by this court. The imperatives of equality and development are impatient for implementation and judicial scapegoats must never be offered so that those responsible for stalling economic transformation with a social justice slant may be identified and exposed of. Part IV is a basic goal of the nation and now that the court upholds the urban ceiling law, a social audit of the Executive's implementation a year or two later will bring to light the gaping gap between verbal valour of the statute book and the executive slumber of law-in-action. The court is not the anti-hero in the tragedy of land reform urban and agrarian.

After all, in a rapidly changing society running on the rails of the rule of law and operated according to constitutional paradigms, the proprietariat is bound to suffer but the country cannot defer the transformation because, then, hunger will know no law. This is the root of the matter. And then comes the irony of continual litigative Clamour and the periodic chorus for property.

> Dosn't thou 'ear my 'erse's, as they canters awaay? Proputty, proputty, proputty-than's what I 'ears 'em saay.

And holders and hoarders of wealth may pensively reflect:

> Few rich men own their own property. The property owns them.

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I have not had the leisurely advantage of my learned brothers' full judgments save some discussions but my impending retirement impels a hurried recording of my

reasons for subscribing to the order passed just now. 'Tomorrow to fresh woods and pastures new', but to-day must be fulfilled before tomorrow arrives, and so, I deliver this judgment as is my duty to do,

TULZAPURKAR, J. By these writ petitions the petitioners, who are holders of vacant land in the urban agglomerations in various States, are seeking to challenge the vires of some of the salient provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) and since, according to them, some of the impugned provisions are pivotal and non-severable, having an impact on its entire scheme, the whole Act is liable to be struck down as being invalid and unconstitutional. The petitioners have, therefore, prayed for an order quashing notices issued to them by the concerned competent authorities under the Act and a mandamus directing the respondents not to implement the provisions thereof against them.

The impugned enactment has its genesis in the resolutions passed by eleven sponsoring States under Art. 252 (1) of the Constitution. The State Legislatures of Andhra Pardesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal considered it desirable to have an uniform legislation enacted by Parliament for the imposition of ceiling on urban property for the country as a whole and as required by the first part of Art. 252 (1) of the Constitution passed a resolution to that effect. Parliament accordingly enacted the Urban Land (Ceiling and Regulation) Act, 1976. It received the assent of the President on February 17, 1976 and, in the first instance, it come into force on that day in all the Union Territories and the 11 States which had passed the requisite resolution under the first part of Art. 252 (1). Subsequently, the Act was adopted, by passing resolutions under the second part of Art. 252 (1) by the State Legislatures of Rajasthan on March 9, 1976, Manipur on March 12, 1976, Assam on March 25, 1976, Bihar on April 1, 1976, Meghalaya on April 7, 1976 and Madhya Pradesh on September 9, 1976. Thus, the enactment is in force in 17 States and all the Union Territories in the country. It seeks to impose ceiling on vacant lands in urban agglomerations having a population of two lakhs or more and for that purpose classifies such urban agglomerations in various cities and towns in all the State and Union Territories into four categories

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and fixes the ceiling limit for each of the categories thus: Ceiling limit on vacant land is fixed at 500 sq. metres for the urban agglomerations of the metropolitan areas of Delhi, Bombay, Calcutta and Madras having a population exceeding ten lakhs falling under category 'A', at 1,000 sq. metres for urban agglomerations with a population of ten lakhs and above, excluding the four metropolitan areas, falling under category 'B', at 1,500 sq. metres for urban agglomerations with a population between three lakhs and ten lakhs falling under category 'C' and at 2,000 sq. metres for urban agglo merations with a population between two lakhs and three lakhs falling under category 'C': vide s.4 read with Schedule I of the Act. The said Schedule does not mention the urban agglomerations having a population of one lakh and above but if a particular State which passed a resolution under Art. 252 (1) (first part) or if a State which subsequently adopts the Act by passing a resolution under Art. 252 (1) (second part) wants to extend the Act to such areas, it could do so by a Notification under s. 2 (n) (A) (ii) or s. 2 (n) (B), as the case may be, after obtaining

the previous approval of the Central Government. Chapter III, being the main Chapter, comprising ss. 3 to 24, deals principally with imposition and limits of ceiling on vacant land, acquisition and vesting in the State Government of vacant land in excess of the ceiling limits, payment to be made to the holders for such acquisition, disposal of excess vacant land so acquired and exemptions from the applicability of this Chapter. Chapter IV comprising ss. 25 to 30 deals with regulation of transfer and the use of urban property; while Chapter V which includes ss. 31 to 47, deals with appeals, revisions, offences and punishments and other miscellaneous matters.

The primary object and purpose of the Act, as its long title and the Preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bring about an equitable distribution of land in urban agglomerations to subserve the common good, presumably in furtherance of the Directive Principles of State policy contained in Art. 39 (c) and (b) respectively. The enactment has also been but in the Ninth Schedule as Item 132 by the Constitution (Fortieth Amendment) Act, 1976, in other words, the enactment enjoys the benefit of protective umbrella
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of both the articles, Art. 31B and 31C as it stood prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976.

Dealing with these two articles, namely, Arts. 31B and 31C and the protective umbrella provided by them in the context of the decision in Kesavananda Bharati's case this Court in Waman Rao and others v. Union of India & others, has by its order passed on May 9, 1980, held thus:

> "In Kesavananda Bharati decided on April, 24, 1973 it was held by the majority that Parliament has no power to amend the Constitution so as to damage or destroy its basic structure. We hold that all amendments to the Constitution which were made before April 24, 1973 and by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are valid and constitutional. Amendments to the Constitution made on or after April 24, 1973 by which the 9th Schedule to Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are open to challenge on the ground that they, or any one or more of them, are beyond the constituent power of the parliament since they damage the basic or essential features of the Constitution or its basic structure. We do not pronounce upon the validity of such subsequent constitutional amendments except to say that if any Act or Regulation included in the 9th Schedule by a constitutional amendment made after April 24, 1973 is saved by Article 31C as it stood prior to its amendment by the 42nd Amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is but in the 9th Schedule, on the ground that the Amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Articles 14, 19 or 31, will

became otiose.

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Article 31C of the Constitution, as it stood prior to its amendment by section 4 of the Constitution (42nd Amendment) Act, 1976, is valid to the extent to which its constitutionality was upheld in kesavonanda Bharati. Article 31C, as it stood prior to the Constitution (42nd Amendment) Act does not damage any of the basic or essential features of the Constitution or its basic structure."

Since the impugned Act has been put in the Ninth Schedule by the Constitution (Fortieth Amendment) Act, 1976 i. e. after April 24, 1973, the said Constitutional Amendment would be open to challenge on the ground that the same is beyond the constituent power of the Parliament if it damages the essential features or basic structure of the Constitution; but at the same time the impugned Act has, apparently, received the protective umbrella of Art. 31C as it stood prior to its amendment by 42nd Amendment Act inasmuch as it seems to have been enacted in furtherance of the Directive Principles contained in Art. 39 (b) and (c) with the result that in order to succeed in their challenge the petitioners will have to cross two hurdles. In the first place they will have to establish that the Act is outside the pale of the protective umbrella of Art. 31C which they can do by showing that though purporting to do so, it does not, in fact, further any of the said Directive Principles. A scrutiny of the Directive Principles contained in Art. 39 (b) and (c) clearly shows that the basic postulate underlying the former obviously is that diffusion of ownership and control of the material resources of the community is always in public interest and hence the State is directed to ensure such distribution (equitable) there of as best to subserve the common good, while the postulate underlying the latter obviously is that concentration of wealth as well as means of production in the hands of few is detrimental to common interest and hence the State is directed to ensure such economic system to operate which prevents such concentration. It would, therefore, be clear that if by the impugned enactment the aforesaid objectives of these Directive Principles are not furthered or if the provisions of the enactment run counter to these objectives the Act would lose the benefit of the protective umbrella of Art. 31 C. Secondly, after crossing this hurdle, the petitioners will have to show further that the 40th Amendment Act by which the impugned Act was included in the Ninth Schedule was beyond the constituent power of the Parliament since it has damaged the basic structure or the

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essential features of the Constitution as reflected in Arts. 14, 19 and 31, which of course, they will be able to do by showing that the impugned Act itself flagrantly violates aspects of Arts. 14, 19 and 31 which constitute the basic structure or the essential features of the Constitution.

It may be stated that Counsel for the petitioners principally attacked four provisions of the impugned Act (a) artificial definition of 'family' given in s. 2 (f) in relation to the prescription of ceiling area, (b) provision contained s. 11 relating to amounts payable in respect of excess vacant land acquired by the State (c) provision containedins. 23 relating to disposal of excess vacant land acquired by the State and (d) prohibition or restriction on transfer of a building or a part thereof or a flat therein, though unconcerned with excess vacant land, without permission, as being flagrantly violative of those aspects

of the petitioners' fundamental rights under Arts. 14, 19 and 31 as constitute the essential features or basic structure of the Constitution. Counsel for the petitioners also contended that some of the aforesaid impugned provisions which are pivotal and have an impact on the entire scheme of the Act, in fact, run counter to the Directive Principles of Art. 39 (b) and (c) and, there fore, but the entire Act outside the pale of the protective umbrella of Art. 31C of the Constitution. Counsel, therefore, urged that both the 40th Amendment to the extent it inserted the impugned Act in the Ninth Schedule and the impugned Act deserve to be struck down.

On the other hand, the learned Attorney General appearing on behalf of the Union of India and counsel for the concerned States of Rajasthan, Andhra Pradesh, Uttar Pradesh and for the concerned competent authorities under the Act, refuted the contentions urged on behalf of the petitioners. It was denied that any provision of the Act runs counter to the Directive Principles of Art. 39 (b) and (c) of the Constitution. It was pointed out that the impugned Act having been put in the Ninth Schedule and having been enacted in further of the Directive Principles of the State policy contained in Art. 39 (b) and (c) of the Constitution was protected both under Art. 31B and 31C of the Constitution. It was disputed that any provision of the Act violated the petitioners' fundamental rights under Arts. 14, 19 and 31 and, it was contended that even if there was any such violation, the Act and its provisions could not be
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challenged by the petitioners on that ground because of the protective umbrella of Art. 31B and 31C of the Constitution and, therefore, the petitions were liable to be dismissed.

I shall first deal with those impugned provisions of the Act, which according to the petitioners, not merely violate their fundamental rights but also have an adverse impact on the protective umbrella afforded by Art. 31C of the Constitution. In this behalf counsel for the petitioners referred to two provisions, namely. s. 2(f) which gives an artificial definition of 'family' in relation to prescription of ceiling area and s. 23 which contains provision relating to disposal of excess vacant land acquitted by the State.

Re: s. 2(f) in relation to prescription of ceiling area.

It is by s. 3 of the Act that the ceiling on vacant land in any urban agglomeration is imposed. That section runs thus:

> "3. Except as otherwise provided in this Act, on and from the commencement in this Act, on person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of section 1."

The ceiling limits referred to in the above section, as stated earlier, have been fixed at 500 sq. metres, 1,000 sq. metres, 1,500 sq. metres and 2,000 sq. metres for vacant lands in urban agglomerations falling in categories A,B,C and D respectively under s. 4(1). Section 2(i) defines 'person' as including an individual, a family, a firm, a company, or not association or body of individuals, whether incorporated or not; while s. 2(f) defines 'family' thus:

> "Family", in relation to a person means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children."

And the Explanation to this clause states that "minor" means a person who has not completed his or her age of eighteen

years. There is no doubt that the aforesaid definition of 'family' is an artificial one inasmuch as is evcludes from its scope major children two
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are normally included in the concept of a family; it further completely ignores the normal Joint Hindu Family. Counsel for the petitioners pointed out that if this artificial definition of 'family' is considered in the context of ceiling limits prescribed under s. 4(1) it produces discriminatory results because of adoption of double standard for fixing the ceiling limit-one for the artificial family as defined and another for a normal family which includes major children or for Joint Hindu Family governed by Mitakshara Law obtaining in several parts of the country. For instance, in an urban agglomeration falling under category 'A' where the ceiling limit is prescribed at 500 sq. metres, a family of a father, mother and say three minor sons (being in all five) together will be entitled to retain for itself only 500 sq. metres of vacant land whereas a family of a father and four major sons (being in all five) will be entitled to retain for itself 2,500 sq. metres of vacant land (500 sq. metres for father as a person and 500 sq. metres each for four sons as persons). Counsel urged that such discrimination or inequality arises from the classification made between minor children and major children belonging to a family but such classification is not based on any intelligible differentia having any nexus to the object sought to be achieved by the Act, which is to acquire excess vacant land after leaving the ceiling area to a family and as such the same is clearly violative of Art. 14 of the Constitution. Counsel strongly relied upon two decisions of this Court in this behalf, namely, decisions in Karimbil Kunhikoman v. State of Kerala and A.P. Krishnasami Naidu etc. v. State of Madras, where on similar ground the whole of Chapter III of Kerala Agrarian Relations Act, 1961 and the whole of Chapter II of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961, respectively were struck down by this Court inasmuch as the artificial definition of family together with adoption of double standard for fixing ceiling limit formed the basis of the concerned Chapter in each Act. I find considerable force in counsel's contention.

I may point out that when the agricultural ceiling matters were argued before us counsel for the petitioners therein had raised a similar contention in the context of the artificial definition of 'family' and the adoption of double standard for fixing ceiling limits obtaining in the several concerned Acts and in support of such contention counsel had placed reliance on the aforesaid two decisions of this
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Court but we rejected the contention on the ground that ample material had been produced before the Court justifying the adoption of artificial definition of 'family' and double standard for fixing the ceiling limits in those Acts. Production of such justifying material distinguished the agricultural ceiling matters before us from the said two decisions relied upon by counsel but in the instant case no material whatsoever has been placed before the Court by the respondents justifying the adoption of the artificial definition of 'family' in s. 2(f) and double standard of fixation of ceiling in the impugned Act. It has not been shown that the so-called nuclear families allegedly in vogue have replaced normal families which include major sons or joint Hindu families in urban areas. Besides, if the object

of the impugned Act is to acquire excess vacant land in urban agglomerations after leaving permissible ceiling area to a family the classification made between minor children and major children belonging to a family has no nexus whatsoever to that object. In my view, therefore, the artificial definition of 'family' given in s. 2(f) when considered in relation to the prescription of the ceiling area under s. 4(1) is clearly violative of and strikes at the root of the equality clause contained in Art. 14 of the Constitution. It cannot be disputed that this artificial definition together with the double standard adopted for fixing the ceiling area runs though and forms the basis of Chapter III of the Act and the discriminatory results or inequalities produced thereby are bound to have an impact on the scheme of that Chapter and, therefore, along with it the whole Chapter III must fall as being violative of Art. 14.

There is yet one more aspect which needs consideration in connection with this adoption of the artificial definition of 'family' given in s.2 (f) and the double standard for fixing ceiling area. Apart from the discriminatory results which it produces the question is what is its impact in the context of the directive principle contained in Art. 39 (c) of the Constitution? As stated earlier the postulate underlying the said directive principle in that concentration of wealth in the hands of few is deterimental to common interest and as such the State should ensure such economic system which prevents such concentration and the Act has been put on the Statute book professedly to achieve that objective. But, by adopting the artificial definition of 'family' in s. 2(f) and having double standard for fixing ceiling limit a contrary result is obtained inasmuch as the Act actually permits an unwarranted and unjustified concentration of
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wealth (urban vacant land) in the hands of a family having major sons in it as compared to the family having minor children. In the illustration given above a family of a father with four major sons is allowed to retain with itself 2,500 sq. metres of vacant land while a family of a father mother and three minor sons is permitted to retain only 500 sq. metres. The position becomes more glaring if I take the illustration of a Joint Hindu Family consisting of five brothers, each having five major sons, as, in such a case the said Joint Hindu Family will be entitled to retain 15,000 sq. metres of vacant land as against 500 sq. metres permitted to be retained by the artificial family. It cannot be said that large joint Hindu families are unknown in urban agglomerations in various cities and towns of the country and instances more glaring than the preceding illustration could be multiplied. In other words, by adopting the artificial definition of 'family' and double standard for fixing the ceiling area the Act enables unwarranted and unjustified concentration of wealth in the hands of few rather than preventing the same and this certainly would be in teeth of and not in furtherance of the directive principle of Art. 39(c); in fact, it is a negation of that principle. It is not possible to take the view that the Parliament out of inadvertance ignored joint Hindu Family or forgot the possible concentration of vacant land in the hands of major members of large joint Hindu families, because in another context the concept of Joint Hindu Family was present to the mind of the draftsman as is clear from s. 4(7) of the Act. In my view, therefore, the adoption of the artificial definition of 'family' and double standard for fixing ceiling area one for a family with minor children and

another for a family with major children and completely ignoring the concept of Joint Hindu Family in relation to prescription of ceiling area clearly lead to results which run counter to the directive principle contained in Art. 39(c) of the Constitution. The Act which contains such provision being in teeth of that directive principle must fall outside the pale of protective umbrella of Art. 31C.

Re: s.23 relating to disposal of excess vacant land acquired under the Act.

It may be stated that under s.6 every person holding vacant land in excess of the ceiling limit at the commencement of the Act is required to file within the period prescribed a statement before the competent authority having jurisdiction giving full particulars there of

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and also specifying the vacant land within the ceiling limit which he desires to retain. Sections 8 and 9 provide for preparation of draft statement as regards vacant land held in excess of the ceiling limit, holding of an inquiry in that behalf and preparation of final statement and service thereof on the concerned person by the competent authority, Section 10 provides for acquisition of excess vacant land by the concerned State Government and determination of claims of all persons interested in such excess vacant-land and under sub-s.(3) it is provided that upon the publication of a notification in that behalf such excess vacant land as may be specified therein shall be deemed to have been acquired by the State Government and the same shall vest absolutely in the State Government free from all encumbrances with effect from the date specified in the notification. Then comes s.23 which deals with disposal of such excess vacant land acquired by the State Government under the Act. It runs as follows:

> "23.(1) It shall be competent for the State Government to allot, by order, in excess of the ceiling limit, any vacant land, which is deemed to have been acquired by the State Government under this act or is acquired by the State Government under any other law, to any person for any purpose relating to, or in connection with, any industry or for providing residential accommodation of such type as may be approved by the State Government to the employees of any industry and it shall be lawful for such person to hold such land in excess of the ceiling limit.
>
> Explanation,-For the purposes of this section,-
>
> (a) Where any land with a building has been acquired by the State Government under any other law and such building has been subsequently demolished by State Government, then, such land shall be deemed to be vacant land acquired under such other law;
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> (b) "Industry" means any business, profession, trade, undertaking or manufacture.
>
> (c) In making an order of allotment under sub-section (1), the State Government may impose such conditions

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> as may be specified therein including a condition as to the period within which the industry shall be put in operation or, as the case may be, the residential accommodation shall be provided for:
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> Provided that if, on a representation made in this behalf by the allottee, the State Government is satisfied that the allottee could not put the industry in operation, or provide the residential accommodation, within the period specified in the

order of allotment, for any good and sufficient reason, the State Government may extend such period to such further period or periods as it may deem fit.

(3) Where any condition imposed in an order of allotment is not complied with by the allottee, the State Government shall, after giving an opportunity to the allottee to be heard in the matter, cancel the allotment with effect from the date of the non-compliance of such condition and the land allotted shall revest in the State Government free from all encumbrances.

(4) Subject to the provisions of sub-sections (1), (2) and (3), all vacant lands deemed to have been acquired by the State Government under this Act shall be disposed of by the State Government to subserve the common good on such terms and conditions as the State Government may deem fit to impose.

(5) Notwithstanding anything contained in sub sections (1) to (4), where the State Government is satisfied that it is necessary to retain or reserve any vacant land, deemed to have been acquired by that Government under this Act, for the benefit of the public, it shall be competent for the State Government to retain or reserve such land for the same."

Five or six aspects or peculiar features emerge clearly from the provisions contained in s. 23 in the context of the entire Act. In the first place unlike agrarian ceiling which deals with land as means of production, urban ceiling under the impugned Act deals with vacant

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land in urban agglomerations not as a means of production but as a part of the holder's wealth or capital asset. Secondly, unlike agrarian ceiling which has the objective of distributing surplus agricultural land straightway among landless persons, under the impugned Act excess vacant land in urban agglomerations is acquired by and vests in the State to be disposed of as indicated in the section; clearly a legislation in exercise of the State's power of eminent domain (i.e. power of compulsory acquisition of private property). Thirdly, such excess vacant land thus acquired is to be disposed of by the State Government "for any purpose relating to or connected with industry or for providing residential accommodation to the employees of any Industry". Fourthly, under cl. (b) of the Explanation, 'industry' has been very widely defined for the purposes of this section to mean any business, profession, trade, undertaking or manufacture; the word 'any' clearly suggests that business, profession, trade, undertaking or manufacture even in private sector is included. Fithly. sub-s. (1) confers absolute power and discretion on the State Government to allot any amount of such excess vacant land to any person for any industry. Reading the fourth and fifth aspects together, it is clear that it is open to the State Government to allot any extent of such excess vacant land to any professional person, say a lawyer a medical practitioner or even an astrologer for the purpose of carrying on his private profession. Sixthly, the section contemplates utilisation of such excess vacant land by the State Government in three ways: (a) allotment for industry (b) allotment to subserve the common good and (c) retention or reservation for the benefit of the public, but, the priorities in the matter of disposal or distribution of such excess vacant land have been peculiarly fixed in the section these priorities, as indicated in sub-ss. (1) and (4),

are:=(i) allotment for the purpose of an industry, namely any business, profession, undertaking trade or manufacture, (ii) allotment for the purpose of construction of houses for the employees of an industry specified in item (i) above and (iii) disposal to subserve the common good which would include allotment of vacant land for governmental purpose or local authorities or for institutions etc. In other words, it is after the disposal of such excess vacant land for items (i) and (ii) above that the balance thereof can be disposed of "to subserve the common good" which means private purposes have precedence over public purposes, and this is clear from the fact that disposal under sub-s. (4) is "subject to" the prior disposal under sub-s. (1) for purposes of industry. In fact, disposal of excess vacant land for subserving the common good is last in the priorities Sub. s (5) undoubtedly has an
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overriding effect over sub-ss. (1) to (4) but that provision deals not with disposal or distribution of excess vacant land but with retention and reservation of such vacant land by State Government for the benefit of the public like social housing and provision for basic arenities etc.

Having regard to the aforesaid peculiar features that energe from a consideration of the provisions contained in s.23, counsel for the petitioners contended that the acquisition of excess vacant land in urban agglomerations cannot be said for a public purpose at all and hence the ehactment which is primarily for compulsory acquisition of private property runs counter to a valid exercise of the State's power of 'eminent domain'. He pointed out that no scheme for any industrial development for any urban agglomeration has been indicated in the Act, nor any such scheme seems to have been prepared by any State Government or even by the Union Government before undertaking the legislative measure in hand and no definite public purpose of industrialisation with any plan or blue print with set specifications or standards seems to have been within the contemplation of the sponsoring States or the Union Government; at any rate no material in that behalf has been placed on record before the Court and, therefore, according to counsel, compulsory acquisition of all excess vacant land in all urban agglomerations throughout the Union Territories and the 17 States of the country for achieving a bald, indefinite and unspecified objective of an 'industry' would not be a valid exercise of the power of eminent domain. Alternatively, counsel contended that even if it were assumed for the purpose of argument that a bald, indefinite and unspecified objective of 'industry' is a public purpose, when that concept of 'industry' is widely defined so as to include any business, trade or profession in private sector, the purpose sheds its character as a real public purpose, which position is further componded by the priorities laid down in the section and the acquisition becomes acquisition for private purpose amounting to an invalid exercise of the States's power of eminent domain. Counsel, therefore, urged that s. 23 flagrantly violates Art. 31 (2) and is, therefore, ultra vires and unconstitutional and since it is a pivotal provision having an impact on the entire Ceiling scheme and at the same a non-severable provision from the rest of the provisions contained in that chapter, the whole of Chapter III must fall with it.

Article 31 of the Constitution has more than one facet, it undoubtedly confers upon individuals (including non-citizens) and
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corporate bodies a fundamental right to property but because of conflict of views in Keshavanada Bharati's case (supra) it may be debatable whether that right forms part of basic structure or not, but that apart, Art. 31 incorporates in our Constitution the concept of State's power of eminent domain i. e. power of compulsory acquisition of private property and prescribes two conditions precedent to the exercise of the power, namely, (i) such acquisition cannot be except for a public purpose and (ii) it must be on payment of compensation (now termed 'amount') to the claimant having interest in the property. In Kameshwar Singh's case this position has been clarifie where Mahajan, J., after referring to some authoritative books has summed up the definition of the concept in one sentence thus "Authority is universal in support of the amplified definition of 'eminent domain' as the power of the sovereign to take property for public use without the owner's consent upon making just compensation," The requirement of just compensation under the latter condition is diluted to payment of non-illusory amount under the 25th Amendment of the Constitution and subsequent decisions of this Court. But it is well settled that these two conditions precedent are sine qua non for the exercise of the State's power of eminent domain' and, in my view, represent those aspects of the right to property under Art. 31 which constitute the essential or basic features of our Constitution and for that matter these would be so of any democratic constitution and, therefore, any law authorising expropriation of private property in breach of any one of those conditions would damage or destroy the basic structure of our constitution.

It is extremely doubtful whether a bald, indefinite and unspecified objective like 'industry' simpliciter without any attempt at dovetailing it by having a proper scheme for industrial development will constitute a valid public purpose for the exercise of the power of 'eminent domain'. It is because of the absence of any definite scheme for industrial development with plans or blue prints with set specifications or standards for any of the urban agglomerations that wide power has been conferred on the State Government under sub-s. (1) in vague terms to allot any extent of such excess vacant land to any person for any industry. I am conscious that in Kameshwar Singh's case (supra) this Court speaking through Mahajan, J., observed that "the phrase 'public purpose' has to be
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construed according to the spirit of times in which the particular legislation is enacted" and held that so construed, acquisition of estates for the purpose of preventing the concentration of huge blocks of land in the hands of a few individuals and to do away with intermediaries was for a public purpose. But that case dealt with three statutes (the Bihar Land Reforms Act, 1950, the M. P. Abolition of proprietory Rights Act, 1950 and the U. P. Zamindari Abolition and Land Reforms Act, 1950), the common aim of which, generally speaking, was to abolish zamindaries and other proprietory estates and tenures in the three States, so as to eliminate the intermediaries by means of compulsory acquisition of their rights and interests and to bring the raiyats and other occupants of lands in those areas into direct relation with the Government and therefore, that case is distinguishable and its ratio would not apply to the instant case where the purpose of acquisition of excess vacant (urban) land is a bald objective like 'industry' simpliciter, surely different considerations would apply. In my view it is extremely

doubtful whether compulsory acquisition of all the excess vacant land in all urban agglomerations throughout the country for a bald, indefinite and unspecified objective like 'industry' simpliciter would be a valid exercise of the power of 'eminent domain'. However, it is not necessary for me to decide this larger question inasmuch as in my view the alternative submission of counsel for the petitioners clinches the issue in this case. Assuming that a bald objective of 'industry' simpliciter partakes of the character of a public purpose, what Parliament intended by the said objective has been expressly clarified by cl. (b) of the Explanation where 'industry' has been very widely defined so as to include any business, trade or profession in private sector which makes a mockery of such public purpose. Whatever be the merits or demerits of a wide definition of 'industry' for the purposes of industrial-cum-labour relations, adoption of such wide definition of the concept in the context of eminent domain is clearly suicidal. By adopting such definition for the purposes of s. 23 the State Government has been empowered under sub-s. (1) to allot any extent of such excess vacant land to any businessman, trader or professional man like a lawyer, doctor and astrologer to enable him to carry on his private business, trade or profession. In other words, acquisition of excess vacant land in urban agglomeration would clearly be for private purposes and what is worse is that under the priorities laid down such private purposes are to be catered to first and then comes the disposal or distribution thereof to subserve common good. This clearly smacks of depriving peter of his property to give it to Paul
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and, therefore, clearly amounts to an invalid exercise of State's power of 'eminent domain'. Section 23, which thus authorises compulsory acquisitions of property for private purposes flagrantly violates those aspects of Art. 31 which constitute the essential or basic features of the Constitution and is, therefore, ultra vires and unconstitutional. Further, indisputably it is the most vital, integral and non-severable part of the entire scheme of urban ceiling as without it the scheme will merely remain a scheme for unjust and illegal enrichment of the State and, therefore, the whole of Chapter III, in which it occurs, must fall with it.

Apart from the unconstitutionality of s.23 as indicated above, it is clear that the wide definition of 'industry' and the priorities for disposal or distribution of excess vacant land laid down therein have adverse impact on the directive principle contained in Art.39(b). In the first place instead of confining the objective of industrialisation to public sector or cooperative sector and the like where benefit to community or public at large would be the sole consideration, the concept is widely defined to include any business, trade or profession in private sector which enables the disposal or distribution of excess vacant land for private purposes and sub-s.(1) authorises the State Government to allot any extent of such land to individuals or bodies for private purposes. Secondly, the priorities in the matter of disposal or distribution of the excess vacant land under sub-sections (1) and (4) are as indicated above, which show that disposal or distribution of excess vacant land for subserving the common good comes last in the priorities. I have already indicated that the postulate underlying the directive principle of Art. 39(b) is that diffusion of ownership and control of the material resources of the community is always in the public interest and,

therefore, the State is directed to ensure such distribution (equitable) thereof as best to subserve the common good but the priorities prescribed in sub-ss. (1) and (4) of s.23 in regard to distribution of material resource produce contrary results or results in the opposite direction inasmuch as private purposes receive precedence over common good. The enactment which contains such provisions that produce contra results cannot be said to be in furtherance of the directive principle of Art. 39(b) and cannot receive the benefit of the protective umbrella of Art. 31C.

Counsel for the respondents, however, relied upon three aspects to counter-act the aforesaid result flowing from the priorities

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given in s. 23(1) and (4). It was urged that the disposal of excess vacant land acquired by the State under the Act will be guided by the Preamble which says that enactment was put on the Statute Book with a view to bringing about the equitable distribution of land in urban agglomerations to subserve the common good. In the first place, it is well settled that it is only when there is some ambiguity in test of any provision in the enactment that the preamble could be looked at and here there is no ambiguity whatsoever in s.23(1) and (4). Secondly, far from there being any ambiguity there is express provision in s.23(1) and (4) indicating the priorities in the matter of disposal or distribution of excess vacant land, in face of which, the preamble cannot control, guide or direct the disposal or distribution in any other manner. Next, reliance was placed on s. 46(1) which empowers the Central Government to make rules for carrying out the provisions of the Act and the disposal or distribution of excess vacant land could be prescribed by rules. It may, however be stated that no rules under s.46 have so far been framed by the Central Government and, in any event, no rules framed thereunder can over-ride the express provisions of s.23. Lastly, reliance was placed on certain guidelines issued by the Central Government in its Ministry of Works and Housing under the Act and at page 83 of the "Compendium of Guidelines" (a Govt. of India publication dated February 22, 1977) a note containing guidelines on utilization of excess vacant land acquired under the Act is published. Paragraphs 3 and 4 of the said Note deal with the topic of priorities. In para 3 the disposal or distribution of excess vacant land as per the priorities in s. 23 has been set out (which are the same as given above) while para 4 sets out the priorities in accordance with the recommendations made by the 9th Conference of State Ministers of Housing and Urban Development held at Calcutta on the 17th, 18th and 19th December, 1976, which considered the matter and the priorities indicated are: (i) Retention/reservation for the 'benefit of the Public' like social housing, provision of basic amenities, etc. (ii) Disposal 'to subserve common good' which may include allotment of vacant land for Government purposes, local authorities, institutions' etc. (iii) Allotment for the purpose of construction of houses for the employees of industries specified in item (iv) A below (v) Allotment for the purpose of industry, viz., any business, profession trade, undertaking of non-polluting manufacture; cottage and small scale and wherever possible ancillary industry; manufacture. It will appear clear that the recommendations made by the 9th Conference of State Ministers of Housing and Urban Development seek to furnish

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improved guidelines but in the process reverse the

priorities given in the section in the matter of disposal or distribution of excess vacant land. It is obvious that the priorities given in s. 23 and as have been summarised in para 3 of the Note must prevail over the priorities indicated in the guidelines contained in para 4 of the Note and the latter are of no avail. It is thus clear that the priorities as given in s. 23(1) and (4) in the matter of disposal or distribution of excess vacant land acquired under the Act run counter to and in a sense operate to negate the directive principle of Art.39(b).

It was then faintly argued by counsel for the respondents that the law in order to receive the protection of Art. 31C need not fulfil the objectives of both Art. 39(b) and (c) and even if it fulfils the objective under Art. 39(c) and not under Art. 39(b) it will be protected by Art. 31C. But here s. 23 by no stretch deals with the objective of Art. 39(c) at all but only deals with the objective underlying the directive principle of Art. 39(b) and its provisions as discussed above clearly run counter to that objective and as such the enactment which contains such provisions must forfeit the benefit of the protective umbrella of Art. 31C.

Faced with the situation that the constitutional invalidity of s. 23 was likely to have adverse repercussion not only on Chapter III in which it occurs but also on the entire Act, counsel for the respondents made a valiant effort to salvage the said section by indulging in interpretative acrobatics with a view to relieve it from the two vices attaching to it, namely, (i) the adoption of the wide definition of 'industry' in cl. (b) of the Explanation which makes a mockery of the Public purpose indicated by the bald objective like 'industry' simpliciter and (ii) the priorities mentioned therein governing the disposal or distribution of excess vacant land acquired under the Act. It was suggested that the definition of 'industry' should be read down by the court so as to confine the same to industries in public sector or co-operative sector or the like where benefit to community or public at large would be the sole consideration, so that allotment of excess vacant land acquired under the Act to private entrepreneurs for private purposes which runs counter to the doctrine of eminent domain would be completely eschewed. It is impossible to read down the definition in the manner suggested because parliament has for the purposes of the section (i.e. for purposes of disposal or distribution
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of such excess vacant land) deliberately and in express terms adopted a vary wide definition which includes within its scope not merely trading or manufacturing activity but also any business or profession in private sector and reading down the definition as suggested would be doing violence to the Parliament's intention stated in express terms. It was then submitted that sub-s. (1) of s. 23 should be construed as an enabling provision which merely permits the State Government to allot excess vacant land for the purposes of industry, while the real obligation in the matter of disposal of excess vacant land arises under sub-s. (4) which speaks of disposal of such land "to subserve the common good"; in other words, the disposal under sub-s. (4) should over-ride the disposal under sub-s. (1); at any rate the "common good" spoken of in sub-s. (4) should permeate the disposal under sub-s. (1). It is impossible to read sub-s. (1) of s.23 as containing merely an enabling provision; the scheme of sub-ss. (1) and (4) read together clearly shows that the disposal of the excess vacant land is first

to be done under sub-s.(1) and disposal under sub-s.(4) comes thereafter. The opening words of sub-s.(4) "subject to sub-ss.(1), (2) and (3)" cannot be read as constituting a non obstante clause giving an over-riding effect to sub-s. (4) nor can sub-s.(4) be read as if the opening words were absent. By indulging in such interpretative acrobatics the Court cannot reach the opposite result than is warranted by the plain text of the provision. Further, to say that every disposal of excess vacant land under sub-s.(1) must be for "common good" is to read into that sub-section something which is not there; it amounts to re-writing that sub-section, which cannot be done, the Preamble notwithstanding. It is the conferral of such unrestricted power (not its oblique exercise) that is being attacked and hence the submission to read into sub-s.(1) this kind of limitation. These submissions require the re-structuring of the entire section a function legitimately falling within the domain of the Legislature. Moreover, sub-ss.(1), (2), (3) and (4) of s.23 are integral parts of one whole scheme dealing with disposal of excess vacant land acquired under the Act and as such cannot be severed from one another. The attempt to salvage s.23, either wholly or in part, by seeking to free it from the two vices must, therefore, fail.

The next provision challenged by the petitioners as being violative of their fundamental rights is s. 11 (6) which puts the maximum limit of Rs. two lakhs on compensation (called 'amount') payable to the holder of excess vacant land irrespective of the extent of such excess vacant land. For the purpose of determining the

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quantum of compensation s.11 (1) divides vacant land in urban agglomerations into two categories -(i) vacant land from which income is derived and (ii) vacant land from which no income is derived and in regard to the former category cl, (a) of sub-s. (1) fixes the quantum payable at an amount equal to eight and one third times the net average annual income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification issued under s. 10 (1) and the net average annual income is to be calculated in the manner and in accordance with the principles set out in Schedule II, while in respect of the latter category, cl. (b) of sub-s. (1) fixes the quantum payable at an amount calculated at a rate not exceeding-(i) Rs. 10 per sq. metre in the case of vacant land situated in urban agglomerations falling with categories A and B and(ii) Rs.5 per sq. metre in the case of vacant land situated in urban agglomerations falling within categories C and D. In other words, for vacant land yielding income the method of capitalisation of the income for certain number of years is adopted while for vacant land yielding no income maximum rates of compensation for A and B categories at Rs. 10 per sq. metre and for C and D categories at Rs 5 per sq. metre have been fixed. Compensation (called 'amount') once determined is payable to the holder under s. 14 (2) in a certain manner, namely, 25 % there of will be paid in cash and the balance 75% in negotiable bonds redeemable after expiry of 20 years carrying interest at 5% per annum. Section 11 (6) which puts the maximum limit of two lakhs on the quantum payable in respect of excess vacant land acquired under the Act runs thus:

> "11 (6)-Notwithstanding anything contained in sub-section (1) or sub-section (5) the amount payable under either of the said sub-sections shall, in no case, exceed two lakhs of rupees."

Counsel for the petitioners contended that s. 11 (6) which puts the maximum limit of Rs. two lakhs on the amount payable to a claimant irrespective of the extent of the excess vacant land acquired under the Act is not only arbitrary but also results in illusory payment and violates Arts. 14 and 31 (2) respectively. Counsel pointed out that a person holding excess vacant land which at the prescribed rates is of the value of Rs. two lakhs and a person holding such excess vacant land which even at the same prescribed rates

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is of the value of Rs. two crores are treated alike, that is to say, both will get compensation (termed 'amount') of Rs. two lakhs only and is this sense prescribing a limit of maximum of Rs. two lakhs is clearly arbitrary and violates Art. 14. Similarly, for a person who holds excess vacant land which even at the prescribed rates it of the value of Rs. two crores a payment of Rs. two lakhs only (i.e. 1/100th of the value at the prescribed rates) must, by any standard, be regarded as illusory and, therefore, the fixation of maximum limit at Rs. two lakhs under s. 11(6) irrespective of the extent of excess vacant land held by a person violates Art. 31(2) of the Constitution. I find considerable force in both the submissions of counsel for the petitioners. In fact, in my view, this provision which puts the maximum limit of Rs. two lakhs on the amount payable to a holder of excess vacant land acquired under the Act irrespective of the extent of such excess vacant land held by him is not merely violative of Arts. 14 and 31(2) of the Constitution in the manner indicated above, but would be a piece of confiscatory legislation, because vacant land in excess of that portion which at the prescribed rates is worth Rs. two lakhs stands confiscated to the State without any payment whatsoever. I do not suggest that a provision putting a maximum limit upon compensation payable to the owner or holder irrespective of the extent of the property acquired whenever or wherever is found in any enactment has to be regarded as a confiscatory provision. I am aware that in enactments involving large schemes of social engineering like abolition of Zamindar is, agrarian reforms, nationalisation of undertakings and businesses and the like, such a provision might be justifiably made. In State of Kerala v. The Gwalior Rayon Silk Mfg. Co. Ltd., this Court upheld the validity of Kerala Private Forest (Vesting and Assignment) Act, 1971 where under private forest lands held on janman right were acquired without payment of any compensation on the ground that such acquisition was for implementing a scheme of agrarian reform by assigning lands on registry or by way of lease to poorer sections of the rural agricultural population, the enactment being protected under Art. 31A (1) of the Constitution. Again the Coal Mines (Nationalisation Act, 1973 whereunder the right, title and interest of the owners in relation to their coal mines specified in the schedule to the Act stood transferred to and became vested absolutely in the Central Govt. free from encumbrances in exchange of payment of fixed amounts specified in that schedule was upheld by this Court.

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But such cases involving large schemes of social engineering where avowedly the benefit of the community or public at large is the sole consideration are distinguishable from the instant case, where 'industry' has been expressly defined to include business, trade or profession in private sector and where power has been conferred upon the State Government to allot properties

acquired under the enactment to individual businessman, trader or professional to enable him to carry on his private business, trade or profession, that is to say, where the legislation is a fraud on State's power of eminent domain, such a provision of putting a maximum limit on compensation payable in respect of the acquired property irrespective of its extent will have to be regarded as confiscatory in nature.

An instance in point is available on the record of these writ petitions. In writ petition No. 350 of 1977 the petitioner who happens to be the ex-Ruler of the former Kota State has averred in paragraphs 17 and 20 of the petition that the urban vacant land owned and possessed by him in the city of Kota admeasures 918. 26 acres and that the Assistant Director, Lands and Buildings Tax, Kota in his assessment order dated 20.12. 1976 had valued the same at market rate of Rs. 15.12 per sq. metre at Rs 3,98,05021.84 (say about Rs. four crores) and inclusive of other items of properties the total value was put down at Rs. 4.12 crores and these averments are substantially admitted in the counter-affidavit filed by S. Mahadeva Iyer on behalf of the Union of India where in para 9 he has stated thus:

> "In reply to para 20 of the writ petition I submit that the total assessment of the entire property comes to Rs. 4.56 crores."

In other words, in the case of this petitioner the fact that he owns urban vacant land of the value of about Rs. four crores in the city of Kota stands admitted. Now, under s. 11(6) for all this urban vacant land worth nearly Rs. four crores the petitioner will get only rupees two lakhs, it works out to a princely sum of eight annas for property worth Rs. 100, which would clearly be an illusory payment. In fact, all his vacant land, in excess of that portion which is worth Rs. two lakhs at the prescribed rates, shall stand conficated without any payment whatsoever. Such a glaring instance, available on the record of these petitions, brings out in bold relief how flagrantly s. 11(6)
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violates Arts. 14 and 31(2) of the Constitution; it highlights the aspect that such acquisition takes place in breach of the other condition precedent attaching to the power of eminent domain namely, payment of non-illusory compensation. However, s. 11(6) is clearly a severable provision, and that alone is liable to be struck down as being ultra vires and unconstitutional.

The next provision challenged by the petitioners is s. 27 occurring in Chapter IV to the extent to which it imposes restriction on transfer of an urban land with building or a flat therein though unconcerned or unconnected with the excess vacant land as unconstitutional being beyond the legislative authorisation as also violative of petitioners' fundamental rights under Arts 14 and 19(1) (f). Section 27, as its marginal note indicates, deals with the subject of prohibition of transfer of urban property and sub-s. (1) thereof runs thus:

> "27. (1) Notwithstanding any thing contained in any other law for the time being in force, but subject to the provisions of sub-section (3) of section 5 and sub-section (4) of section 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the

building is constructed, whichever is later, except with the previous permission in writing of the competent authority."

Inter alia, the aforesaid provision is clearly applicable to a building or a portion of such building which would include a flat therein standing on any urban or urbanisable land falling within the permissible ceiling area which a holder of a vacant land is entitled to retain with himself and under this provision any transfer of such property by way of sale, mortage, gift or lease for ten years or otherwise, is prohibited for the period of ten years from the commencement of the Act except with the previous permission in writing of the competent authority. Under sub-s. (2) if the holder of such property falling within the permissible ceiling area is desirous of effecting a transfer of the type indicated above has to apply in writing for permission from the competent authority and under sub-s.(3) the

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competent authority has been authorised after making such inquiry as it deems fit to grant the permission or refuse the same, but a refusal has to be accompanied by written reasons, copy whereof is to be furnished to the holder. Sub-s. (4) provides that if within sixty days of the receipt of the application refusal is not communicated, the permission shall be deemed to have been granted by the competent authority.

Counsel for the petitioners made two submissions in regard to aforesaid restriction as made applicable to transfers of built-up properties that fall within the limits of ceiling area permitted to be retained by a holder. Firstly, such restriction would be outside the legislative authorisation conferred upon the Parliament as well as beyond the ambit and scope of the Act which has assiduously kept built-up properties outside the pale of imposition of ceiling. Secondly, such restriction requiring permission from the competent authority is arbitrary and violative of Art.14 in as much as the power to grant the permission or to refuse it is unguided and untrammeled which is bound to produce arbitrary results. In my view both the submissions have substance in them.

It cannot be disputed that though the authorisation was for imposition of ceiling on urban immovable property Parliament deliberately kept out built-up properties from the purview of the Act and the Act seeks to impose ceiling only on vacant land in urban agglomerations; that being so any restriction on transfer of built-up properties or parts thereof (including flats therein) standing on urban land falling within the permissible ceiling area would be outside the purview of the Act. It was urged for the respondents that such a provision would be incidental or ancillary to the ceiling contemplated by the Act and would fall within the phrase "for matters connected therewith" occurring in the Preamble and the long title of the Act. It is not possible to accept the contention, for, the words "matters connected therewith" occurring in the concerned phrase must be co-related to what precedes that phrase, namely, "an Act to provide for ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land" (emphasis supplied) and, therefore, the words "matters connected therewith" must mean matters in relation to the ceiling imposed by the Act. A reference to objective under Art. 39(b) and (c) (for the achievement of which the enactment is allegedly taken in hand) in the Preamble or long title cannot enlarge

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the ambit or scope of the Act. Any restriction imposed on built-up properties falling within the permissible ceiling area left with the holder would, therefore, be outside the ambit and scope of the Act.

The next question is whether the restriction which requires the holder of such property to seek permission of the competent authority before effecting any transfer thereof by way of sale, mortgage or gift, etc. is violative of Art. 14 of the Constitution. The contention is that the requirement in the absence of any guidelines governing the exercise of the power on the part of the competent authority in the matter of granting or refusing to grant the permission is highly arbitrary, productive of discriminatory results and, therefore, violates the equality clause of Art. 14. Counsel for the respondents fairly conceded that the section itself does not contain any guidelines but urged that the objectives of "preventing concentration, speculation and profiteering in urban land" recited in the Preamble would afford the requisite guidance for the exercise of the power to grant the permission sought or to refuse the same. Firstly, which of the three objectives mentioned in the Preamble should guide the exercise of power by the competent authority in any given case is not clear and in any case no standard has been laid down for achieving the objectives of preventing concentration, speculation, and profiteering in urban land or urban property and in the absence of any standard being laid down by the Legislature-a purely legislative function, it will be difficult to hold that these broad objectives recited in the Preamble could effectively or adequately guide the exercise of power by the competent authority in the matter of granting or refusing to grant the permission and in the absence of guidelines the exercise of the power is bound to produce arbitrary or discriminatory results. It was also said that against the order passed by the competent authority under s. 27 an appeal to the Appellate Authority has been provided for under s. 33 and revision lies to the State Government under s. 34 and in view of such provision for appeal and revision the exercise of the power or discretion vested in the competent authority cannot be regarded as unfettered or arbitrary. Here again I feel that in the absence of any guidelines for the exercise of the power and in the absence of any standards having been laid down by the Legislature for achieving the objectives of prevention of concentration, speculation and profiteering in urban land and urban property, the provision for appeal and revision would not be of much avail to preventing arbitrariness in the matter of granting or refusing to
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grant the permission. Section 27 which does not adequately control the arbitrary exercise of the power to grant or refuse the permission sought, is clearly violative of Art. 14 of the Constitution and as such the requirement of permission contained therein will have to be struck down as being ultra vires and unconstitution.

In the result, in view of the aforesaid discussion. I would like to indicate my conclusions thus:

(1). The impugned Act, though purporting to do so, does not, in fact, further the directive principles in Art. 39 (b) and (c). Section 2(f) in relation to prescription of ceiling area, as shown above, permits unwarranted and unjustified concentration of wealth instead of preventing the same and is in teeth of the objective under Art. 39(c); similarly, s. 23, as discussed above, produces results

contrary to the objective under Art. 39(b). Therefore, the impugned Act is outside the pale of the protective umbrella of Art. 31C.

(2) Section 2(f) which contains the artificial definition of 'family' in relation to the prescription of ceiling area, s. 23 which deals with disposal or distribution of excess vacant land acquired under the Act as per priorities laid down therein and s. 11(6) which puts a maximum limit on the quantum of the amount payable in respect of excess vacant land acquired from a holder irrespective of the extent of area held by him these three provisions flagrantly violate those aspects of Arts. 14 and 31 which constitute the essential and basic features of our Constitution and hence the protective umbrella of Art. 31B is not available to the impugned Act inasmuch as the 40th Constitution Amendment Act 1976 to the extent to which it inserts the impugned Act in the Ninth Schedule is beyond the constituent power of the Parliament as the said Amending Act has the effect of damaging or destroying the basic structure of the Constitution.

(3). The artificial definition of 'family' given in s. 2(f) in relation to prescription of ceiling area under s. 4(1) is clearly violative of Art. 14 and as such is ultra vires and unconstitutional. Similarly, s. 23 which authories compulsory acquisition of property for private purposes is in breach of the doctrine of eminent domain and since it flagrantly violates Art. 31(2) is ultra vires and unconstitutional.

(4). Since s. 2(f) together with adoption of double standard for fixing ceiling area runs through and forms basis of the whole Chapter III and since s. 23 is a vital, Integral and non-severable part
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of the entire scheme of urban ceiling envisaged by the Chapter III, the whole of Chapter III has to fall along with those two provisions and as such that Chapter is also declared to be ultra vires and unconstitutional. Further, it cannot be disputed that Chapter III comprises the substratum of the entire scheme of urban ceiling contemplated by the enactment incorporating its main provisions while the other Chapters deal with arcillary or incidental matters which from the decorative frills of the main fabric. If the substratum is found to be diseased, invalid and bad in law the entire Act has to go and is accordingly struck down as void and unconstitutional.

(5). Section 11(6), a severable provision, being violative of petitioners' fundamental right under Art. 31 is declared to be ultra vires and unconstitutional.

(6). Section 27, being severable, is also declared ultra vires and unconstitutional to the extent indicated above as being beyond the ambit of the Act and violative of Art. 14 of the Constitution.

Before parting with the matter I would like to refer to the manner in which this important and complicated measure came to be enacted. It cannot be doubted that the 11 sponsoring State Legislatures passed their resolutions under Art. 252(1) with a laudable object, namely to clothe the Parliament with legislative competence to enact a law for the imposition of ceiling on urban immovable property for the country as a whole Though initially a model bill based on the recommendations made by the Working Group in its Report dated July 25, 1970 had been prepared where ceiling was proposed to be imposed on urban property on the basis of monetary value, Parliament later on realized that the implementation of that proposal was beset with several

practical difficulties indicated in the Approach Paper prepared by a Study Group, and, therefore, it was though that ceiling in respect of built-up properties should be brought about through some fiscal and other measures and ceiling on vacant land in urban agglomerations on the lines of the impugned Act should be undertaken. In other words, State wise deep consideration and consultation for over five years had preceded the preparation of the draft Bill and this Court in V.B. Chowdhari's (1)
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case has upheld the legislative competence of Parliament to enact such a measure as a first step towards eventual imposition of ceiling on immovable properties of every other description. However, after the introduction of the Bill on the floor of the house on January 28, 1976, the enactment as drafted in its present form seems to have been rushed through the attenuated Parliament during the Emergency in less than seven hours on February 2, 1976. The Lok Sabha debates clearly show: (a) that the Bill was moved and taken up for consideration at 11.17 hours on that day, (b) that a motion moved by a member that the Bill be circulated for the purpose of eliciting opinion thereon by May 15, 1976 was negatived, (c) that another motion supported by quite a few members that the Bill be referred to a Select Committee with a view to improve the same by removing defects, deficiencies and omissions therein with instructions to the Select Committee to report by April 1, 1976, was also negatived, (d) that though over 150 amendments had been moved (some of which were received by the members on the very day as speeches were in progress), an earnest request to postpone the second reading of the Bill to the following day to enable the members to consider those amendments (many of which were neither formal nor clarificatory but of substance) was also turned down, and (e) that the original time schedule of six hours fixed by the Speaker for the Bill was adhered to and the entire process (including general discussion, clause by clause reading, consideration of the several amendments and the third reading) was completed in undue haste by 18.01 hours. In Rajya Sabha also a request to refer the Bill to a Select Committee went unheeded and the entire process was completed in one day, February 5, 1976. The result is that it has, in the absence of adequate study or discussion about the implications of various provisions thereof, turned out to be an ill-conceived and ill-drafted measure. The measure was, undoubtedly, taken in hand with a view to achieve the unexceptional objectives underlying Art. 39(b) and (c), but as shown above, the enacted provisions misfire and produce the opposite results and also damage or destroy the essential features or basic structure of the Constitution and hence duty-bound I am constrained to strike down this impugned piece of purported socioeconomic legislation. The legislative competence of the Parliament being still there a well-drafted enactment within the constitutional limitations on the subject would be the proper remedy.

I would, therefore, allow the petitions and direct issuance of the appropriate writs sought.
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SEN J. These writ petitions under Article 32 of the Constitution seek to challenge the constitutional validity of the Urban Land (Ceiling and Regulation) Act, 1976 on various grounds. The Act has been placed as item No. 132 in the Ninth Schedule by the Constitution (Fortieth Amendment) Act, 1976. Questions involved are of far-reaching importance affecting the national interest.

The history of the legislation is well-known. The State Legislatures of eleven States, namely, all the Houses of the Legislatures of the States of Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal considered it desirable to have a uniform legislation enacted by Parliament for the imposition of a ceiling on urban property in the country as a whole and in compliance with clause (1) of Article 252 of the Constitution passed a resolution to that effect. Parliament accordingly enacted the Urban Land (Ceiling and Regulation) Act, 1976. In the first instance, the Act, came into force on the date of its introduction in the Lok Sabha that is, January 28, 1976 and covered Union Territories and the eleven States which had already passed the requisite Resolution under Article 252(1) of the Constitution. Subsequently, the Act was adopted, after passing resolutions under Article 252(1) of the Constitution by the State of Assam on March 25, 1976, and those of Bihar on April 1, 1976, Madhya Pradesh on September 9, 1976, Manipur on March 12, 1976, Meghalaya on April 7, 1976 and Rajasthan on March 9, 1976. Thus, the Act is in force in seventeen States and all the Union Territories in the country.

The legislative competence of Parliament to enact the Urban Land (Ceiling and Regulation) Act, 1976 having been upheld by this Court in Union of India etc- v. Valluri Basavaiah Chaudhary,(1) there remains the question of its constitutional validity.

Schedule I to the Act lists out all States, irrespective of whether or not they have passed a resolution under Art. 252(1) authorizing the Parliament to enact a law imposing a ceiling on urban immovable property, and the urban agglomerations in them having a population of two lace or more. The ceiling limit of vacant

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land of metropolitan areas of Delhi, Bombay, Calcutta and Madras having a population exceeding ten lacs falling under category 'A' is 500 sq. metres, urban agglomerations with a population of ten lacs and above, excluding the four metropolitan areas falling under category 'B' is 1000 sq. meters agglomerations with a population between three lacs and ten lacs falling under category 'C' is 1500 sq. metres and urban agglomerations with a population between two lacs and three lacs falling under category 'D' is 2000 sq. metres. The schedule does not mention the urban agglomerations having a population of one lac and above; but if a particular state which passed a resolution under Art. 252(1), or if a State which subsequently adopts the Act, wants to extend the Act to such areas, it could do so by a notification under s.2(n) (B) or s.2 (n) (A) (ii), as the case may be, after obtaining the previous approval of the Central Government.

The primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976, 'the Act' as the long title and the preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the Directive Principles of State Policy under Art. 39(b) and (c).

The Statement, of objects and Reasons accompanying the Bill reads as follows:

"There has been a demand for imposing a ceiling on urban property also, especially after the imposition of a ceiling on agricultural lands by the State Governments. With the growth of population and increasing urbanisation, a need for orderly development of urban areas has also been felt. It is, therefore, considered necessary to take measures for exercising social control over the scarce resource of urban land with a view to ensuring its equitable distribution amongst the various sections of society and also avoiding speculative transactions relating to land in urban agglomerations. With a view to ensuring

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uniformity in approach Government of India addressed the State Governments in this regard, eleven States have so far passed resolutions under Art. 252(1) of the Constitution empowering Parliament to undertake legislation in this behalf."

The Act consists of five Chapters. Chapter I contains the short title and the extant clause and Chapter II contains section 2, which is the definition section. Chapter III deals with 'Ceiling on vacant Land Chapter IV deals with 'Regulation of transfer and use of urban land' and Chapter V contains miscellaneous provisions,

There can be no doubt that the legislative intent and object of the impugned Act was to secure the socialisation of vacant land in urban agglomerations with a view to preventing the concentration of urban lands in the hands of a few persons, speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve to common good, in furtherance of the Directive Principles of State Policy under Art. 39 (b) and (c). The Act mainly provides for the following:

(i) imposition of a ceiling on both ownership and possession of vacant land in urban agglomerations unders. 3, the ceiling being on a graded basis according to the classification of the urban agglomerations under s.4;

(ii) acquisition of the excess vacant land by the State Government under s.10(3), with powers to dispose of the vacant land with the object to subserve the common good under s.23;

(iii) payment of an amount for the acquisition of the excess land in cash and in bonds under s. 14(2), according to the principles laid down in s.11(I) subject to the maximum specified in s.11(6)

(iv) granting exemptions in respect of vacant land in certain cases under ss.20 and 21;

(v) regulating the transfer of vacant land within the ceiling limits under s.26;

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(vi) regulating the transfer of urban or urbanisable land with any building (whether constructed before or after the commencement of the Act, for a period of ten years from the commencement of the Act or the construction of the building whichever is later under s.27;

(vii) restricting the plinth area for the construction of future residential buildings under s.29; and

(viii) other procedural and miscellaneous matters.

The Act is thus intended to achieve the following objectives: (I) to prevent the concentration of urban

property in the hands of a few persons and speculation and profiteering therein; (2) to bring about socialisation of urban land in urban agglomerations to subserve the common good to ensure its equitable distribution, (3) to discourage construction of luxury housing leading to conspicuous consumption of scarce building materials. and (4) to secure orderly urbanisation. Thus the dominant object and purpose of the legislation is to bring about socialisation of urban land.

In order to appreciate the rival contentions, it is necessary to set out the relevant provisions: Section 3 which is all important for the purpose of these writ petitions, provides:

> "3. Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of section 1."

Section 4 divides the urban agglomerations into four broad categories, categories A, B, C and D, and fixes the ceiling limits varying from five hundred sq. metres in Category A to two thousand sq. metres in Category D thereof. The word 'person' is defined in s.2(i) as:

> "2(i) "person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not."

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The definition of the word 'family' in s.2(f) is in the following terms:

> "2(f) "family" in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children."

In order that the burden of compensation, that is, the amount payable for such excess vacant lands by the Government, may not be high, the Act incorporates a specific provision, namely, sub-section (1) of s.11 which fixes the amount broadly on the following basis: (1) eight and one-third of the annual net income from the land during the last five years or where such annual income is not being derived, at rates not exceeding Rs. 10 per sq. metre or Rs. 5 per sq. metre in Categories A and B, and C and D urban agglomerations respectively, and classifying the area into different zones. There is also a ceiling on the maximum amount payable in any single case placed by subsection (6) of s.11. Sub-section (1) s.27 provides for the freezing of all transfers of urban land with or without a building or portion of a building in all agglomerations for a period of ten years from the date of the commencement of the Act or from the date on which the building is constructed.

The constitutional validity of the Act which has been placed in the Ninth Schedule by the Fortieth Amendment, is challenged principally on the ground that, firstly, it is violative of the fundamental rights guaranteed under Arts 14, (19(1)(f) and 31(2), since it seeks to alter the "basic structure" of the Constitution as formulated by this Court in His Holiness Kesavananda Bharti v. State of Kerala and; therefore, has not the protective umbrella of Art.31B, and secondly that it is a law in negation of, and in furtherance of the Directive Principles of State Policy under Art.39(b) and (c) and is, therefore, not protected under Art.31C.

In Waman Rao & Ors. v. Union of India Ors. this Court by its order, in the context of the decision in Kesavananda Bharati's case, has laid down.

> "Amendments to the Constitution made on or after April 24, 1973 by which the 9th schedule to the

Constitution was amended from time to time by the inclusion of

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various Acts and Regulations therein, are open to challenge on the ground that they, or any one or more of them, are beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its basic structure. We do not pronounce upon the validity of such subsequent amendments except to say that if any Act or Regulation included in the 9th Schedule by a constitutional amendment made after April 24, 1973 is saved by Article 31.C as it stood prior to its amendment by the 42nd Amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is put in the 9th Schedule, on the ground that the Amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Articles 14, 19 or 31, will become otiose.

Article 31-C of the Constitution, as it stood prior to its amendment by Section 4 of the Constitution (42nd Amendment) Act, 1976, is valid to the extent to which its constitutionality was upheld in Kesavananda Bharati Article 31-C, as it stood prior to the Constitution (42nd Amendment) Act does not damage any of the basic or essential features of the Constitution or its basic structure."

The validity of the impugned Act is challenged on four grounds Namely the inclusion of an artificial definition of 'family' in s.2 (f) results in total exclusion of a joint Hindu family from the purview of the Act and also in adoption of double standard between a family with major sons, each of whom is a separate unit by himself, and a family with minor children, which constitutes a family unit for fixing a ceiling and thus s.3 of the impugned Act offends against the equal protection clause in Art.14, as persons similarly situate are differentially treated without any rational basis; (2) the impugned Act is inconsistent with, takes away and abridges the fundamental right guaranteed under Art. 31 (2) inasmuch as the fixation of the maximum amount payable under sub-s. (6) of Sec 11, makes the Act confiscatory or at any rate, the amount payable illusory; (3) sub-section (1) of s. 27 of

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he Act freezing all transfers by way of sale, mortgage, gift, lease for a period exceeding ten years or otherwise, of any urban or urbanisable land with a building (whether constructed before or after the commencement of the Act), or a portion of such building, for a period of ten years from such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority, even though such vacant land in an urban agglomeration is within the ceiling limits, is an unreasonable restriction on the fundamental right to property guaranteed under Art. 19 (1); and (4) the 'priorities' laid down in s.23 of the impugned Act are not in keeping with part IV of the Constitution and, therefore, liable to be struck down. It is urged upon these grounds that the impugned Act is flagrantly violative of those aspects of the petitioners' fundamental rights under Arts. 14, 19 and 31 as constitute the basic structure or framework of the Constitution, and therefore, it is not protected under Art. 31B or 31C.

Land in urban areas is a vital physical recourse

capable of generating and sustaining economic and social activities. It should be properly utilised by the community for social good. But the attraction of urban areas has led to profiteering and racketeering in land in these areas. There is also mis-application of this scarce resource of urban land for undesirable purposes. Therefore, a comprehensive policy of effective control of land covering its use. distribution amongst the various sections of the society and individuals and for different social purposes, and its disposal by owners subject to their sharing the profits with the community at large, has been evolved. The Act has been designed to benefit the weaker sections of the community. It also grants exemptions in favour of public institutions and co-operative housing. The imposition of ceiling on land and plinth area of future dwelling units, and regulation of transfer of urban property under the Act, seeks to achieve the objective of social control over the physical resources of land. A unique feature of the Act is that it covers seventeen States and all the Union Territories and provides for aggregation of holdings in urban agglomerations in the different States where the law is applicable for purposes of ceiling limits. In other words, persons holding vacant lands or vacant and other built-up property with dwelling units therein in different urban agglomerations throughout the country will have to make a choice of retaining only one piece of vacant land within the ceiling limit and surrender excess vacant lands else-where.

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Since the Act applies to firms, companies, and undertakings, future construction of industrial or commercial premises requiring large areas cannot take place in the notified urban agglomerations without obtaining the requisite land from the Government. This enables Government to regulate and canalise the location of industries and thus serve the broad policy approach in dispersal of economic activity. Hoarding of land by industrialists based on prospects for expansion in the distant future, is thus sought to be avoided.

The fundamental issue is: Whether s. 23 of the impugned Act impairs the basic structure or framework of the Constitution being violative of Art. 39 (b) and (c) and Art, 31 (2) of the Constitution and is, therefore, not protected under Arts. 31-B and 31-C.

The impugned Act is designed as a law for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons, and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the Directive Principles under Art. 39 (b) and (c). The constitutional validity of s. 23 of the Act depends on whether in truth and substance these objectives have been translated into action. Section 23 of the Act reads:

> "23. (1) It shall be competent for the State Government to allot, by order, in excess of the ceiling limit any vacant land which is deemed to have been acquired by the State Government under this Act or is acquired by the state Government under any other law, to any person for any purpose relating to, or in connection with, any industry or for providing residential accommodation of such type as may be

approved by the State Government to the employees of any industry and it shall be lawful for such person to hold such land in excess of the ceiling limit.

Explanation.-For the purpose of this section,-

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(a) where any land with a building has been acquired by the State Government under any other law and such building has been subsequently demolished by the State Government, then, such land shall be deemed to be vacant land acquired under such other law;

(b) "industry" means any business, profession, trade, undertaking or manufacture.

(2) In making an order of allotment under sub-section (1), the State Government may impose such conditions as may be specified therein including a condition as to the period within which the industry shall be put in operation or, as the case may be the residential accommodation shall be provided for:

Provided that if, on a representation made in this behalf by the allottee, the State Government is satisfied that the allottee could not put the industry in operation, or provide the residential accommodation, within the period specified in the order of allotment, for any good and sufficient reason, the State Government may extend such period to such further period or periods as it may deem fit.

(3) Where any condition imposed in an order of allotment is not complied with by the allottee, the State Government shall, after giving an opportunity to the allottee to be heard in the matter, cancel the allotment with effect from the date of the non-compliance of such condition and the land allotted shall revest in the State Government free from all encumbrances.

Subject to the provisions of sub-sections (1), (2) and (3), all vacant lands deemed to have been acquired by the State Government under this Act shall be disposed of by the State Government to subserve the common good on such terms and conditions as the State Government may deem fit to impose.

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(5) Notwithstanding anything contained in sub-sections (1) to (4), where the State Government is satisfied that it is necessary to retain or reserve any vacant land, deemed to have been acquired by that Government under this Act, for the benefit of the public, it shall be competent for the State Government to retain or reserve such land for the same."

The submission is that though the impugned Act is designed as a law for the imposition of a ceiling on vacant land in urban agglomerations, to subserve the common good, in furtherance of the Directive principles under Art. 39 (b) and (c), the dominant object of the impugned Act for the acquisition of vacant land in urban agglomerations under s. 23 of the Act, was to facilitate the setting up of industries in the private sector and, therefore, the Act was not in furtherance of part IV of the Constitution and void being violative of Art. 31 (2). It was urged that s. 23 of the impugned Act must, therefore, be struck down as unconstitutional, it being not in keeping with part IV of the Constitution was not protected under Art. 31C and that it cannot also have the protective umbrella of Art. 31B as it seeks to alter the basic structure of the Constitution.

Although the impugned Act is enacted with a laudable object, to subserve the common good, in furtherance of the

Directive Principles of state policy under Art, 39 (b) and (c), it appears from the terms of sub-ss.(1), (2) and (3) of s. 23 that it would be permissible to acquire vacant land in urban agglomerations and divert it for private purpose. The whole emphasis is on industrialisaton. The opening words in s. 33 (4) "subject to the provisions of sub-sections (1), (2) and (3)" make the provisions of s. 23 (4) subservient to s. 23 (1) which enables the Government to allot vacant land in an urban agglomeration to any person for any purpose relating to, or in connection with, any industry or for providing residential accommodation of such type as may be approved by the state Government to the employees of any industry. It further makes it lawful for the allottee that is, the industrialist, to hold such land in excess of the ceiling limit. The definition of the word 'industry' in Explanation (b) to s. 23 (1) is wide enough to include any business, profession, trade, undertaking or manufacture, and necessarily includes the private sector. The proviso to s. 23 (2) fortifies that construction of mine. It is incomprehensible that vacant lands in all urban agglomerations throughout the country should be acquired for the
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purpose of setting up industries. More so, that it should permissible to allow setting up of industries for private gain. There is no material placed before us showing that the Government has prepared any blue print for industrialisation of all the urban agglomerations in India in the public sector.

In fact, faced with this difficulty, the learned Attorney General attempted to justify the provisions contained in s.23 by submitting that the opening words in s. 23(4) "subject to the provisions of sub-sections (1), (2) and (3)" must, in the context of the preamble and the Directive Principles under Art 39(b) and (c), be construed to mean "notwithstanding anything to the contrary contained in subsections (1), (2) and (3)" According to him, the "brooding spirit', of the Preamble permeates through the entire section, and, therefore-the provisions of s.23 of the Act should be read in the light of the preamble. The contention cannot be accepted. When the language of the section is clear and explicit, its meaning cannot be controlled by the preamble. It is not for the Court to re-structure the section. The re-structuring of a statute is obviously a legislative function. The matter is essentially of political expediency, and as such it is the concern of the statesmen and, therefore, the domain of the legislature and not the judiciary.

It was, however, urged that s.23(1) of the Act is only an enabling provision, and the real power was under s.23(4), and if there is ambiguity in the language of s 23, it was possible to read the section in the light of the preamble and the Directive Principles under Art. 39(b) and (c) and as such s.23(1) is subject to s.23(4). The use of the words "subject to the provisions of sub-sections (1), (2) and (3)" in s.23(4) takes away the compulsion on the State Government to adhere to the Directive Principles under Art. 39(b) and (c) in making allotment of the vacant lands in an urban agglomeration acquired under the Act. The words "subject to the provisions of subsections (1), (2) and (3)" in s.23(4), appearing in the context of s.23(1) means 'in addition to; if anything is left over after the allotment under s.23(1)'. I cannot, therefore, read the provisions of sub-ss.(1), (2) and (3) s.23 of in the light of the preamble or the Directive Principles under Art. 39(b) and (c). By no rule of

construction can the operation of sub-s(1) of s.23 of the Act be controlled by the operation of sub-s.(4).
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A legislation built on the foundation of Art. 39(b) and (c) permitting acquisition of private property must be for a public purpose, that is, to subserve the common good. In my view, sub-ss. (1), (2) and (3) of s.23 of the Act negate that principle. Furthermore, Art. 31(2) consists of three pre-requisites namely (i) the property shall be acquired by or under a valid law, (ii) it shall be acquired only for a public purpose, and (iii) the person whose property has been acquired shall be given an amount in lieu thereof. The definition of' industry' in Explanation (b) to s. 23(1) is wide enough to include any business, trade or vocation carried on for private gain. There cannot be 'mixed purpose' of public and private to sustain a legislation under Art. 39(b) and (c). The vice lies in s. 23(1) and the Explanation (b) thereto, which on a combined reading, frustrate the very object of the legislation.

One is left with the feeling that sub-ss. (1), (2) and (3) of s. 23 of the impugned Act are meant to promote the interests of the business community and further professional interests. While setting up of an industry in the private sector may, at times, be for the public good, there cannot be acquisition of private property for private gain. Acquisition can only be for a public purpose'. That is to say, a purpose, an object or aim in which the general interest of the community as opposed to the particular interest of the individual, is directly and vitally concerned. The concept of 'public purpose' necessarily implies that it should be a law for the acquisition or requisition of property in the interest of the general public, and the purpose of such a law directly and vitally subserves public interest. If in reality the object of the acquisition under the Act is to set up industries in the private sector as is permissible from the provisions of s. 23(1) of the Act, nothing prevents the State from taking recourse to s. 40 of the Land Acquisition Act, 1894, for which there must be quid pro quo, that is, payment of compensation according to the market value.

Our attention was drawn to the Guidelines issued by the Government of India, Ministry of Works and Housing clarifying the intent and purpose of the provisions of the Act. It may be stated here that these Guidelines cannot supersede or alter any of the provisions of the Act or the rules made thereunder. The Guidelines issued under s. 23 are in these terms:
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> "Section 23 of the Urban Land (Ceiling and Regulation) Act, 1976, governs, inter alia, disposal of vacant land acquired under the Act. In brief, this Section enables the State Government to allot any vacant land for the purpose of an industry or to subserve the common good, or to retain or reserve such land for the benefit of the public.
>
> 2. For the purpose of the Section 'industry' has been given a wider meaning so as to cover any business, profession, trade, undertaking or manufacture.
>
> 3. The section also enables Government to allot land for providing residential accommodation of such type as may be approved by the State Government to the employees of any industry. Thus the excess vacant land acquired by the State Government under the Act can be dealt with in the following manner:
>
> (i) allotted for the purpose of an industry namely,

any business, profession, trade, undertaking or manufacture;

(ii) allotted for the purpose of construction of houses for the employees of an industry specified in item(i) above;

(iii) disposed of to subserve the common good which may include allotment of vacant land for Government purpose, for institutions, etc., and

(iv) retained/reserved for the benefit of the public"

It appears that the Government issued the following guidelines pursuant to the recommendations made at a conference of State Ministers of Housing and Urban Development with a view to implement the policy of socialisation of urban land:

"The 9th Conference of State Ministers of Housing and Urban Development held at Calcutta on the 17th, 18th and 19th December, 1976, considered the matter and

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recommended that, in order to bring about social objectives of the Act more prominently, the utilisation of the excess vacant land should be according to the priorities set down below subject to the prescribed land uses:

(i) Retain/reserve for the benefit of the public for social housing, provision of basic amenities, etc.

(ii) Dispose of to subserve common good which may include allotment of vacant land for Government purposes, local authorities, institutions, etc.

(iii) Allot for the purpose of construction of houses for the employees of industries specified in item (iv) below.

(iv) Allot for the purpose of industry, viz., any business, profession, trade, undertaking of non-polluting manufacture; cottage and small scale and wherever possible ancillary industry, manufacture."

It is significant to notice that there was an attempt made in these aforesaid Guidelines to alter the 'priorities' laid down in s. 23. The Guidelines cannot alter the 'priorities' laid down in the section. The Guidelines are nothing but in the nature of Executive Instructions and cannot obviously control the plain meaning of the section. Where the language of the Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature. The Court cannot be called upon to interpret the provisions of s. 23 of the Act in the light of the Guidelines issued by the Government of India, Ministry of Works and Housing.

I am, therefore, constrained to hold that the provisions of sub-ss. (1), (2) and (3) of s. 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3)" in s. 23(4) which make the setting up of industries the dominant object for the acquisition of vacant land in urban agglomerations under the Act, are not in keeping with Part IV of the Constitution and, therefore, not protected under Article 31-C.

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A legislation which directly runs counter to the Directive Principles of State Policy enshrined in Art. 39(b) and (c) cannot by the mere inclusion in the Ninth Schedule receive immunity under Art. 31B. The Directive Principles are not mere homilies. Though these Directives are not cognizable by the Courts and if the Government of the day fails to carry out these objects no Court can make the

Government ensure them, yet these principles have been declared to be fundamental to the governance of the country. Granville Austin considers these Directives to be aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achievement. He explains:

> "By establishing these positive obligations of the State, the members of the Constituent Assembly made if the responsibility of future Indian governments to find a middle way between individual liberty and the public good, between preserving the property and the privilege of the few and bestowing benefits on the many in order to liberate 'the powers of all men equally for contributions to the common good'."

In short, the Directives emphasise, in amplification of the preamble, that the goal of the Indian polity is not laissez faire, but a welfare State, where the State has a positive duty to ensure to its citizens social and economic justice and dignity of the individual. It would serve as an 'Instrument of Instructions' upon all future governments, irrespective of their party creeds.

Article 38 requires that the State should make an effort to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. In other words, the promise made by the Constitution to the citizens of India in its Preamble is directly included in one of the Directive Principles of State Policy. Article 39, cl. (a) requires that all citizens shall have a right to adequate means of livelihood. Article 39(b) enjoins that the State shall ensure that the ownership and control of the material resources of the community are so distributed as best to
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subserve the common good. Article 39(c) mandates that the State shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Dr. P.B. Gajendragadkar in 'Law, Liberty and Social Justice', observes:

> "These directive principles very briefly, but eloquently, lay down a policy of action for the different State Governments and the Central Government, and in a sense, they embody solemnly and recognize the validity of the charter of demands which the weaker sections of the citizens suffering from social-economic injustice would present to the respective governments for immediate relief."

Chandrachud J. (as he then was) in Smt. Indira Gandhi v. Raj Narain(1) after observing that the ratio of the majority in Kesevananda Bharti's case were merely illustrative of what constitutes the basic structure and are not intended to be exhaustive, observes:

> I consider it beyond the pale of reasonable controversy that if there be any unamendable features of the of the Constitution, on the score that they form a part of the basic structure of the Constitution, they are that: (i) India is a Sovereign Democratic Republic; (ii) Equality of status and opportunity shall be secured to all its citizens, (iii) The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion and that (iv) the Nation shall be governed by a Government of laws, not of men. These in my opinion, are the pillars

of our constitutional philosophy, the pillars therefore of the basic structure of the Constitution."

According to him, the pillars of the Constitution are Sovereign Democratic Republic, Equality of Status and Opportunity, Secularism, Citizen's right to religious worship, and the Rule of Law. With respect, I would add that the concept of social and economic justice-to build a Welfare State-is equally a part of the basic structure or
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the foundation upon which the Constitution rests. The provisions of sub-ss. (1), (2) and (3) of s. 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3)" in s. 23(4) are the very antithesis of the idea of a Welfare State based on social and economic justice. Since these provisions permit acquisition of property under the Act for private purposes, they offend against the Directive Principles of State Policy of Art. 39(b) and (c) and are also violative of Art. 31(2) and therefore, not protected under Art. 31B.

I would, therefore, declare that the provisions of sub-sections (1), (2) and (3) of s. 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3)" in s. 23(4) are ultra vires of the Parliament.

With the striking down of the invalid provisions what remains, that is, the remaining provisions of the impugned Act, including s. 23(4) thereof being in conformity with Part IV of the Constitution and Article 31(2), are valid and, therefore, the impugned Act has the protection of both Article 31-B and Article 31-C.

I find no justification to strike down the whole Act as it would be against the national interest. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits of the organic law of the Constitution it must be allowed to stand as the true expression of the national will. The provisions of sub-ss. (1), (2) and (3) of s 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3)" in s. 23(4), which are, in my view, invalid, cannot effect the validity of the Act as a whole. The test to be applied when an argument like the one addressed in this case is raised, has been summed up by the Privy Council in Attorney-General for Alberta v. Attorney-General for Canada in these words:

> "The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted what survives without enacting the part that is ultra vires at all."

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It is quite clear that the provisions of sub-ss. (1), (2) and (3) of s. 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3)" in s. 23(4) struck down by me are not inextricably bound up with the remaining provisions of the Act, and it is difficult to hold that the legislature would not have enacted the Act at all without including that part which is found to be ultra vires. The Act still remains the Act as it was passed, i.e., an Act for imposition of ceiling on urban land.

In determining the effect of the law upon the individual's right to property, the Court must take judicial notice of the fact of vast inequalities in the existing distribution of property in the country. The Court's concern lies not merely with applying the pre-existing sets of theories, concepts, principles and criteria with a view to

determining what the law is on a particular point. The proper approach should be to view the principles with the realisation that the ultimate foundation of the Constitution finds its ultimate roots in the authority of the people. This demands that constitutional questions should not be determined from a doctrinaire approach, but viewed from experience derived from the life and experience or actual working of the community, which takes into account emergence of new facts of the community's social and economic life affecting property rights of the individual, whenever, among others, the validity of a law prescribing preference or discrimination is in question under the "equal protection" guarantee.

It should be remembered that the Directive Principles cannot be regarded only as idle dreams or pious wishes merely by reason of the fact that they are not enforceable by a court of law. A rule of law in facts does not cease to be such because there is no regular judicial or quasi-judicial machinery to enforce its commands. An attempt to create a truly social Welfare State also carries with it the idea that in a country like India concentration of wealth in the country must be done away with and its distribution on an equitable basis effected in order to bridge the gap between the rich and the poor. The very purpose of creating such a state is to benefit the weaker and poorer sections of the community to a much greater extent than the rich persons so that the living standards of the people in general may improve. In fact, in such a State, all welfare schemes in their operation generally tend to benefit the poor people to a much greater extent than others. If an equal protection guarantee were enough to invalidate such schemes, improvement in the economic
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and social conditions of the country would be impossible. One should not be swayed away by emotions but should be guided by the real needs of the country. Hence a paradoxical situation should be avoided by refusing to perpetuate the existing inequality among the social classes and maintain that gap to the same extent as before by intending to pay to the rich compensation at the same full rates as in the case of the poorer sections of the community.

The impugned Act is meant to remove inequalities with a view to promote 'the greatest happiness of the greatest number'. During the last thirty years much has been done to implement the State's policy of socialisation of agricultural land by imposition of a ceiling on agricultural holding. There is much that still remains to be done. There is need for prevention of concentration of wealth in a few hands in the urban areas and to provide for equitable distribution of vacant land among others. The great disparity between the rich and the poor is more visible in the urban areas particularly in the great cities. A majority of the people in the urban areas are living in abject poverty. They do not even have a roof over their heads. Concentration of wealth in a few hands is not conducive to the national well-being.

The challenge to the validity of the artificial definition of 'family' in s.2(f) of the impugned Act must fail. The Court has recently upheld the validity of an identical definition of 'family' appearing in the different State laws relating to imposition of ceiling on agricultural land. Some marginal hardship is inevitable in the working of the legislation. The ultimate object is to reduce inequalities in the larger interest. That takes us to the question whether the definition of 'family' in s.2(f) of the

Act results in the exclusion of a joint Hindu family.

The definition of 'family' contained in s.2(f) is in the following terms:

"2.(f) "family" in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children."

As a result of the artificial definition of 'family' in s.2(f), there is no denying the fact that a joint Hindu family is excluded from the purview of the Act. Section 3 of the Act provides that no person, on

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and from the commencement of the Act, shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applied. The word 'person' is defined in s.2(i) as:

"2.(i) "person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not;"

The question is whether the total exclusion of joint Hindu family renders the Act void and unconstitutional as violative of Art.14. I do not think that this is so. Parliament deliberately excluded a joint Hindu family from the purview of s.3 of the impugned Act. As already pointed out in Vasavaiah Chaudhary's case, Parliament was beset with difficulties in imposing a ceiling on urban immovable property. While dealing with imposition of ceiling on vacant urban land it was presumably faced with another difficulty, viz., the institution of a joint Hindu family. According to the Mitakshara School of Hindu Law, there is community of interest and unity of possession. Under the Mitakshara School a copartner cannot predicate the extent of his share, while under the Dayabhaga school a member of joint Hindu family takes as a tenant in common. We, therefore, do not find anything wrong in excluding a joint Hindu family. The impugned Act applies to Hindus, Mohamedans and Christian alike. By the exclusion of a joint Hindu family the members of a joint Hindu family, whether governed by the Mitakshara School or the Dayabhaga School, were brought at par with others. The contention that the impugned Act offends against Art.14 must, therefore, fail.

The contention that the amount fixed by sub-s.(6) of s.11 of the impugned Act is totally arbitrary and illusory since there is no nexus between the value of the property and the amount fixed and, therefore, the maximum amount fixed under sub-s.(6) makes the Act confiscatory in total abrogation of the fundamental right guaranteed under Art.31(2) cannot be accepted. The Constitution (25th Amendment) Act, 1971, which came into force on April 20, 1972, by s.2(a) substituted the word 'amount' for the word 'compensation' in the new Art.31(2), which reads:

"31(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or

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requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash."

Under the original Art.31(2), no property could be acquired for a public purpose under any law, unless it provided for compensation of, or acquired and either fixed the amount of

the compensation, or specified the principles on which, and the manner in which, the compensation was to be determined and given.

It will be seen that Art.31(2) provides for acquisition or requisitioning of the property for an amount which may be fixed by such law, or which may be determined in accordance with such principles and given in such manner as may be specified in such law. No such law can be called in question on the ground that the amount is not adequate, or that the whole or any part of it is to be given otherwise than in cash. Section 2(b) of the 25th Amendment Act inserted a new clause (2B) to Art.31 which provides:

> "31.(2B) Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2)."

The substitution of the neutral word 'amount' for the word 'compensation' in the new Art.31(2) still binds the legislature to give to the owner a sum of money in cash or otherwise. The legislature may either lay down the principles for the determination of the amount or may itself fix the amount. The choice open to the legislature is that the amount should be directly fixed by or under the law itself or alternatively, the law may fix principles in accordance with which the amount will be determined.

Sub-section (1) of s.11 reads:

> "11(1) Where any vacant land is deemed to have been acquired by any State Government under sub-section (3)
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> of section 10, such State Government shall pay to the person or persons having any interest therein,-
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> (a) in a case where there is any income from such vacant land, an amount equal to eight and one-third times the net average annual income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification issued under sub-section (1) of section 10; or
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> (b) in a case where no income is derived from such vacant land, an amount calculated at a rate not exceeding-
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> (i) ten rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category, A or category B specified in Schedule 1; and
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> (ii) five rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category C or category D specified in that schedule."

In order that the burden of compensation, that is, the amount payable under Art.31(2) for taking over vacant land in excess of the ceiling limit in sub-s. (3) of s.10 by the government may not be high, the Act incorporates a specific provision in sub-s. (6) of s.11 to fix a ceiling on the maximum amount payable in any single case. The sub-section reads:

> "11(6) Notwithstanding anything contained in sub-section (1) or sub-section (5), the amount payable under either of the said sub-sections shall, in no case, exceed two lakhs of rupees."

It is not suggested that sub-s.(1) of s. 11 does not lay down any principles for determination of the amount payable for the taking of excess vacant lands in an urban agglomeration or that the principles laid down in sub-s.(1) are not relevant for the determination of the amount payable. It is also not suggested that payment of the amount

at the rate of Rs. 10 per sq. metre and Rs. 5 per sq. metre,
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for the vacant land in categories and B, and categories C and D respectively, makes the amount illusory or the Act confiscatory. The submission is that the fixation of the maximum amount payable at Rs. 2 lacs in a single case by sub-s.(6) makes the amount payable under sub-s (1) wholly illusory and, therefore, the Act is confiscatory. That cannot be so, because the fixation of ceiling on the maximum at Rs. 2 lacs under s.11(6) implies that it would affect only persons owning 20,000 sq. metres of vacant land in metropolitan cities like Delhi, Calcutta, Bombay and Madras or large cities like Hyderabad, Bangalore, Poona, Kanpur and Ahmedabad falling in categories A and B, or persons owning 40,000 sq. meters in big cities like Lucknow, Allahabad, Nagpur, Jaipur etc. falling in categories C and D. One is left to wonder how many own such vast tracts of vacant land in such cities. If any, very few indeed. Even if there are, the amount cannot be related to the value of the property taken. It is pure arithmetics. Twenty thousand sq. metres would make 23,920 sq. yards and forty thousand sq. metres 47,840 sq. yards. In a city like Delhi, Calcutta, Bombay and Madras the value of a square yards of vacant land would depend upon the situation of the land. If that be the criteria, then there can be no ceiling on vacant land in urban agglomerations, much less geiling on immovable property in such cities, when it comes to be imposed. The State has not the capacity to bear the burden. If the contention were to prevail, then no law for the implementation of the Directive Principles of State Policy under Art. 39(b) or (c) can ever be implemented.

We may recall the words of Pandit Jawaharlal Nehru, who while introducing the Constitution (Fourth Amendment) Act, 1955, said in Parliament:

> "If we are aiming, as I hope we are aiming and verepeatedly say we are aiming, at changes in the social structure, then inevitably we cannot think in terms of giving what is called full compensation. Why ? Well, firstly because you cannot do it, secondly because it would be improper to do it, unjust to do it, and it should not be done even if you can do it for the simple reason that in all those social matters, laws etc., they are aiming to bring about a certain structure of society different from what it is at present. In that different structure among other things that will change is this, the big, difference between the have's and the havenot's. Now, if we are giving full
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> compensation, the have's remain the have's and the have-not's, have-not's. It does not change in shape or form if compensation takes place. Therefore, in any scheme of social engineering, if I may say so, you cannot give full compensation-apart from the patent fact that you are not in a position-nobody has the resources-to give it."

There can be no scheme for nationalisation of any industry, there can be no socioeconomic measures enacted if the concept of 'just equivalent' were to be introduced even after the 25th Amendment. To emphasise the point that the amount of Rs. 2 lacs fixed under sub-s.(6) of s.11 makes the Act confiscatory, our attention was drawn to the fact that the petitioner in writ Petition No. 350 of 1977, Maharao Saheb shri Bhim Singhji, the former Maharana of Kotah owns 971.50 acres of vacant land appurtenant to and covered under

his Umed Bhawan Palace in the city of Kotah, which is an urban agglomeration falling under category 'D', and which stands requisitioned under s.23(1) of the Defence and Internal Security of India Act, 1971. There is no dispute that the property of the Maharana is valued for the purposes of the Rajasthan Lands and Buildings Tax Act, 1964, at Rs. 4,12,27,726.84. Does it mean that the amount should be geared to the value of the vacant land taken under sub-s. (3) of s 10? When the Court has no power to question the adequacy of the amount under Art.31(2), can it be said that the amount fixed determined according to the principles laid down in sub-s.(1) of s.11, subject to the maximum fixed under sub-s.(6) thereof is illusory merely because of inadequacy?

Who are we to say that it should be 10 per cent or less, or 50 per cent or more. The legislature in its wisdom has laid down the principles and fixed a ceiling on the maximum amount payable. That is a legislative judgment and the Court has no power to question it. Seeravai in his book on Constitution, 2nd Ed., vol.I, p.656, while dealing with the Fourth Amendment states that in permitting 'inadequate compensation' the 4th Amendment removed a fixed yard-stick and made all discussion about 'relevant' and 'irrelevant' principles meaningless. The learned author says:

> "If the questions were asked, why has the law fixed compensation amounting to 60 per cent and not to 70 or 50 per cent of the market value, the answer would be that in the legislative judgment the amount fixed by the law was
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> a fair and just compensation for the acquisition of property under the at law, and if a law fixing compensation at amounts ranging from 90 to 50 per cent or less, of the market value of the property acquired, cannot be struck down by a Court, equally, principles of compensation cannot be struck down when they produce the same result. The consequences of the transformation brought about by the 4th Amendment is that 'principles of compensation' do not mean the same thing before and after the 4th Amendment."

As the learned author explains, 'considerations of social justice are imponderable and, therefore no fixed money value can be put on them by any principle', and goes on to say 'The question whether the Court can go into the question whether the amount is illusory is difficult to answer'. The legislature considers a maximum amount of Rs.2 lacs to be a fair and just recompense for the acquisition of excess vacant land in an urban agglomeration. By no standard can an amount of Rs.2 lacs be considered to illusory.

The 25th Amendment has placed the matter of adequacy of compensation beyond the pale of controversy by substituting the word 'amount' for the word 'compensation' in Art.31(2) and made the adequacy of the amount payable for acquisition or requisition of property nonjusticiable.

In Kesavananda Bharti's case, the Court upheld the constitutional validity of the 25th Amendment. The impact of the new Article 31(2) was also considered as well as the content and meaning of the word 'amount'. According to the majority, the amount fixed or determined to be paid cannot be illusory. But one thing is clear the meaning which the Court placed on the word 'compensation' in R. C, Cooper's case of adequacy of compensation and on relevant principles has been held to have been nullified by the 25th Amendment.

The two decisions directly in point are the State of Kerala & Anr. v. The Gwalior Rayon Silk Mfg. Co. and State

of Karnataka v. Ranganatha Reddy. In Gwalior Rayon's case the Court upheld
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the validity of the Kerala Private Forests (Vesting and Assignment) Act, 1971, which provided for the vesting of private forest lands held in Janman rights, even though there was no provision for payment of compensation. The Court held that since the Act envisaged a scheme of agrarian reform, it was protected under Art.31A and could not be challenged on the ground that it take aways, a bridges or abrogates the fundamental rights guaranteed by Arts.14, 19 and 31. In Ranganatha Reddy's case the Court upheld a scheme for nationalisation of contract carriages in the State, since it laid down the principles for the determination of the amount payable under Art.31(2) and they were not irrelevant for the determination of the amount. Untwalia J. speaking for the majority observed:

> "On the interpretations aforesaid which we have put to the relevant provisions of the Act, it was difficult rather impossible-to argue that the amount so fixed will be arbitrary or illusory. In some respects it may be inadequate but that cannot be a ground for challenge of the constitutionality of the law under Article 31(2)."

Krishna Iyer J. in a separate but concurring judgment after deducing the discernible principles from the decision in Kesavananda Bharati's case, held that the 25th Amendment bars the Court's jurisdiction to investigate the adequacy of the amount. In view of these two decisions, the contention that fixation of maximum amount by sub-s. (6) of s. 11 renders the amount payable under sub-s. (1) illusory or in the alternative makes the Act confiscatory cannot be accepted.

There still remains the contention regarding the invalidity of sub-s. (1) of s. 27, which reads:

> "27. (1) Notwithstanding anything contained in any other Law for the time being in force, but subject to the provisions of sub-section (3) of section 5 and sub-section (4) of section 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever
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> is later, except with the previous permission in writing of the competent authority."

It is urged that sub-s. (1) of s. 27 confers arbitrary and uncontrolled powers on the competent authority to grant or refuse permission for transfer and that the conferral of such uncontrolled and uncanalised power without any guidelines renders the provision illegal and void and unenforceable being an unreasonable restriction on the right to acquire, hold and dispose of property guaranteed under Art. 19(1(f). It is said that the matter is left to the whim and fancy of the competent authority, and the power so conferred is capable of misuse and thus be an instrument of great oppression. The learned Attorney General tried to meet the contention by urging that there was no reason to think that the competent authority would refuse to grant permission where the transaction is bona fide. According to him, the competent authority would be justified in refusing to grant permission where the transaction is calculated to

defeat the provisions of the Act. It is said that the whole object of freezing of the transactions was to hold the price line of urban land. He drew our attention to the guidelines issued by the Government of India, Ministry of Works and Housing to the various State Governments directing that all applications for grant of permission under sub-s. (1) of s. 27 of the Act should be dealt with expeditiously with a view to prevent any inconvenience to the members of the public and further that permission should be granted, as a matter of course, within three days of the receipt of such application.

In my judgment, there is no justification at all for the freezing of transactions by way of sale mortgage, gift or lease of vacant land or building for a period exceeding ten years, or otherwise, for a period of ten years from the date of the commencement of the Act, even though such vacant land with or without building thereon falls within the ceiling limits. In Excel Wear v. Union of India & Ors. the Court held that the right to carry on a business guaranteed under Art. 19(1) (g) carries with it the right not to carry on business. It must logically follow, as a necessary corollary, that the right to acquire, hold and dispose of property guaranteed to a citizen under Art. 19(1)(f) carries with it the right not to hold any property. It is difficult to appreciate how could a citizen be compelled to own property against his will.

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If vacant land owned by a person falls within the ceiling limits for an urban agglomeration, he is outside the purview of s. 3 of the Act. That being so, such a person is not governed by any of the provisions of the Act. When this was pointed out to the learned Attorney General, he was unable to justify the imposition of the restriction imposed by sub-s. (1) of s. 27 in case of land falling within the ceiling limits as a reasonable restriction. It must, accordingly, be held that the provision of sub-s. (1) of s. 27 of the impugned Act is invalid insofar as it seeks to affect a citizen's right to dispose of his urban property in an urban agglomeration within the ceiling limits.

I would for the reasons stated, declare sub-sections (1) (2) and (3) of section 23 and the opening words "subject to the provisions of sub-sections (1), (2) and (3)" in section 23(4) of the Urban Land (Ceiling and Regulation) Act, 1976 as ultra vires of the Parliament and that these provisions are not protected under Articles 31-B and 31-C of the Constitution, and further declare that sub-section (1) of section 27 of the Act is invalid insofar as it imposes a restriction on transfer of urban property for a period of ten years from the commencement of the Act, in relation to vacant land or building thereon, within the ceiling limits.

Having struck down sub-sections (1) (2) and (3) of section 23 and the opening words "subject to the provisions of Sub-sections (1), (2) and (3)" in section 23(4) of the Act, I would declare the remaining provisions of the Urban Land (Ceiling and Regulation) Act, 1976, including sub-section (4) of section 23 thereof as valid and constitutional.

In the result, the writ petitions, except to the extent indicated, must fail and are dismissed. There shall be no order as to costs.

S.R. Petitions dismissed.

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