PETITIONER:
STATE OF GUJARAT & ANR.

Vs.

RESPONDENT:
KAMLABEN JIVABHAI & ORS.

DATE OF JUDGMENT21/04/1989

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
OJHA, N.D. (J)
KULDIP SINGH (J)

CITATION:
1989 AIR 1485 1989 SCR (2) 687
1989 SCC Supl. (2) 440 JT 1989 (2) 163
1989 SCALE (1)1039

ACT:
Gujarat Surviving Alienations 'Abolition Act, 1963--Sections 2 (3)(d), 6 & 13--Act protected in view of inclusion in Ninth Schedule-Section 2(3)(d)---Alone specifically excluded from protection of Article 31B--Law relating to agrarian reform--Held the rights of the respondents arising out of the forest area validly extinguished--Are entitled to payment of compensation notwithstanding the provisions of Art. 14, 19 & 31 of the Constitution of lndia by virtue of Art. 31(A)(1).

HEADNOTE:
One Darbar Harsurvala by virtue of a declaratory decree made in 1884 had the hereditary right of collecting grass, firewood, timber etc. from Gir Forest in the erstwhile state of Junagarh. This right devolved on his son Jiva Vala. The State by an agreement dated 10th August 1914 agreed to pay Rs.3,500 every year to Jiva Vala and on his demise to his heirs, in lieu of the right to collect grass, firewood etc. In January 1965 the revenue authorities issued a notice to the Respondents--successors-in-interest of Harsurvala that the right to
receive the aforesaid amount had come to an end on the coming into force of the Gujarat Surviving Alienations Abolition Act, 1963 and asked them to refund the amount paid to them for the year 1963-64. The respondents filed a declaratory suit for a declaration that they continued to enjoy the right to receive Rs.3,500 hereditarily and for an injunction restraining the State from recovering the amount already paid to them. The Trial Court dismissed the suit. On appeal the District Judge allowed the appeal holding that the right to receive the amount annually had not come to end. The High Court confirmed the decree passed by the District Judge. The State came up in appeal by special leave against that judgment of the High Court. Allowing the appeal, this Court.
HELD: The Gujarat Surviving Alienations Abolition Act, 1963 was passed with the object of abolishing certain alienations which were not affected by the earlier enactments which had been enacted for the abolition of various kinds of

alienations in the State of Gujarat. [690G]
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The Act is included in the Ninth Schedule to the Constitution as Item No. 33. [692F]
Sub-clause (d) of clause (3) of section. 2 of the Act having been specifically excluded, the said clause does not receive the protection of Article 31-B of the Constitution of India. [692G]
The 1963 Act should be construed as having the effect of bringing about the extinguishment of the right in an estate for the purpose of better management of the forest area keeping in view the interests of the people of the State in general, and of the people living in or around the Gir Forest, in particular. [696C]
In order to treat a particular law as a part of an agrarian reform contemplated under Art. 31 A(1) it is not necessary that on the land which is the subject matter of the said law actual cultivation should be carried on. [695E]
In the instant case, the right which the family of the respondents possessed was the right to collect grass, fire-wood and timber etc. from the Gir Forest and that right had already been surrendered under the agreement dated 10-8-1914 by the said family in lieu of the annual payment of Rs.3,500. The right which was being enjoyed by the predecessor-in-interest of the respondents was a pasture. [693C-D]
The extinguishment of the right to receive a certain amount in lieu of the right to remove timber, grass, etc. from a forest area, therefore, formed part of the process of agrarian reform contemplated under Art. 31-A(1) as there was clear nexus between the agreement to pay the amount and the rights arising out of the forest area. [695H; 696A]
The respondents are entitled to the payment of whatever compensation is payable under the Act notwithstanding the provisions of Article 14 and 19 and Articles 31 of the Constitution of India. [696E-F]
State of Kerala & Anr. v. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc. [1974] 1 SCR 671, referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1357 of 1973.
From the Judgment and Order dated 10.10.1972 of the Gujarat High Court in Second Appeal No. 93 of 1968.
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G.A. Shah and M.N. Shroff for the Appellants.
Krishan Kumar and Vimal Dave (N.P.) for the Respondents.,
The Judgment of the Court was delivered by
VENKATARAMIAH, J. The question for consideration in this case is whether the hereditary right of the respondents to recover a sum of Rs.3,500 per annum under an agreement dated 10.8.1914 entered into between the predecessor-in-interest of the respondents and the former princely State of Junagadh came to an end by virtue of provisions contained in the Gujarat Surviving Alienations Abolition Act, 1963 (hereinafter referred to as 'the Act').
There was one Darbar Harsurvala of Mandavad in the former princely State of Junagadh. He had a hereditary right to collect certain quantities of grass, fire-wood and timber from the Gir Forest in the State of Junagadh and that right was recognised by a declaratory decree made by the Rajasthanik Court of Kathiawar in the year 1884. On the death of Harsurvala the said right was being enjoyed by his son Jiva

Vala till the year 1914. On 10th August, 1914 an agreement was entered into between Jiva Vala and the State of Junagadh under which the State of Junagadh agreed to pay every year (commencing with 1st September of the preceding year and ending with the 31st August of the succeeding year) in the month of January a sum of Rs.3,500 to Jiva Vala and after him to the heirs claiming under him in lieu of the right to collect grass, fire-wood and timber which was being exercised by Jiva Vala. Accordingly, Jiva Vala was receiving the sum of Rs.3,500 every year and on his death his son Kalubhai was receiving the said sum every year from the State of Junagadh and on the State of Junagadh becoming part of the Union of India from the Saurashtra State, then from the State of Bombay in which Saurashtra State was merged and thereafter from the State of Gujarat which came to be established under the Bombay Reorganisation Act, 1960 till his death. After his death Respondent No.1 --Kamlaben, the wife of Kalubhai and the other respondents, who were children of Kalubhai were receiving the amount due to them till the year 1964. However, in January, 1965 the Mamlatdar of Visavadar issued notice under the orders of the Collector, Junagadh to the respondents stating that the right to receive the said amount had come to an end on the coming into force of the Act, i.e., the Gujarat Surviving Alienations Abolition Act, 1963, which had come into force on 1st October, 1963 and threatening the respondents that measures such as attachment etc. would be taken if the amount

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paid for the year 1.9.1963 to 31.8.1964 was not refunded by them to the State Government. Thereupon the respondents instituted the suit before the Court of the Civil Judge, Junagadh out of which this appeal arises for a declaration that they continued to enjoy the right to receive the sum of Rs.3,500 per annum hereditarily and for an injunction restraining the appellants, the State of Gujarat and the Collector of Junagadh from taking any action to recover the amount which had already been paid to them. The Trial Court dismissed the suit. Aggrieved by the judgment and decree of the Trial Court, the respondents filed an appeal before the District Judge, Junagadh in Civil Regular Appeal No. 135 of 1966. The District Judge allowed the appeal holding that the right to receive the amount had not come to an end on the coming into force of the Act. The decree passed by the learned District Judge was confirmed by the High Court of Gujarat in Second Appeal No. 93 of 1968 vide its Judgment dated 10.10.1972. The appellants have filed this appeal by special leave against the judgment of the High Court.

There is no dispute about the facts involved in this case. The right of Harsurvala to take grass, fire-wood and timber from the Gir Forest belonging to the State of Junagadh had been declared in a decree (Exhibit 21) passed by the Rajasthanik Court on April 14, 1884. By a further agreement dated 10th August, 1914 (Exhibit 24) which had been arrived at between Jiva Vala, descendant of Harsurvala and the State of Junagadh, the State of Junagadh had agreed to pay every year a sum of Rs.3,500 to Jiva Vala and his heirs in lieu of the right to collect grass, fire-wood, timber from the Gir Forest, as stated above. That the State of Junagadh and then the State of Saurashtra, the State of Bombay and the State of Gujarat were paying the said amount annually to Jiva Vala and his successors till the year 1964. The only question which arises for consideration is whether the said right to receive Rs.3,500 per annum came to an end on the coming into force of the Act.

The Act was passed with the object of abolishing certain

alienations which were not affected by the earlier enactments which had been enacted for the abolition of various kinds of alienations in the State of Gujarat and to provide for matters consequential and incidental thereto. The expression 'alienation', as defined in clause (3) of section 2 of the Act reads thus:

"3, 'alienation' means--

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(a) any right in respect of an aghat land enjoyed by an aghat holder immediately before the appointed day,

(b) any right in respect of a Taluqdari watan enjoyed by the holder thereof immediately before the appointed day,

(c) any right, with or without any condition of service, in respect of any other land, village or portion of a village and consisting of--

(i) any proprietary interest in the soil coupled or not coupled with exemption from the payment of the whole or part of the land revenue, or

(ii) a right only to the land revenue or a share of land revenue of the land, village or portion of a village,

enjoyed by the holder thereof for the time being and subsisting immediately before the appointed day in limitation of the right of the State Government to assess the land or village or portion of a village to land revenue in accordance with the Code, whether by virtue of an express grant or recognition as a grant by the ruling authority for the time being or otherwise, or

(d) any right to any cash allowance or allowance in kind, by whatever name called, payable by the State Government and enjoyed by any person immediately before the appointed day;"

Section 6 of the Act reads thus:

"6. Abolition of alienations together with their incidents and alienated lands liable to payment of land revenue.Notwithstanding any usage or custom, settlement, grant, agreements, sanad or order or anything contained in any decree or order of a court or any law for the time being applicable to any alienation, with effect on and from the appointed day--

(a) all alienations shall be and are hereby abolished;

(b) save as expressly provided by or under this Act,

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all rights legally subsisting on the said day under such alienations and all other incidents of such alienations (including any right to hold office, or any liability to render service appertaining to an alienation) shall be and are hereby extinguished;

(c) subject to the other provisions of this Act, all alienated lands shall be, and are hereby made liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder; and accordingly the provisions therein relating to

unalienated land shall apply to all alienated lands."

On such abolition the alienee is entitled to compensation as provided in section 13 of the Act, if the alienation is one covered by section 2(3)(d) of the Act.

The right to receive a sum of Rs.3,500 per annum which the respondents were enjoying admittedly did not fall under sub-clauses (a), (b) and (c) of clause (3) of section 2 of the Act. The question is whether the said right falls under sub-clause (d) of clause (3) of section 2 of the Act and if it falls under that clause whether the payment of the said sum can be abolished constitutionally under the Act. Sub-clause (d) of clause (3) of section 2 of the Act is very widely worded and refers to any right to any cash allowance or allowance in kind, by whatever name called, payable by the State Government and enjoyed by any person immediately before the appointed day.

The Act is included in the Ninth Schedule to the Constitution of India as Item No. 33 which reads thus:

"33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963), except in so far as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of section 2 thereof."

Sub-clause (d) of clause (3) of section 2 of the Act having been specifically excluded, the said clause does not receive the protection of Article 31B of the Constitution of India. The question which remains to be considered is whether the said sub-clause can be deemed to be protected by Article 31A of the Constitution of India. Article 3 IA of the Constitution of Indian refers to matters described in sub-clauses (a) to (e) of Article 31A(1) of the Constitution of India. It is not claimed

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on behalf of the State Government that the present case falls under sub-clauses (b) to (e) of Article 31A(1) of the Constitution of India. It is, however, urged that the present case falls under sub-clause (a) of clause (1) of Article 31A of the Constitution of India, which reads thus:

"(a). the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or"

In other words it is urged that the provision in question should be treated as a part of a legislation intended for bringing about agrarian reform to which Article 31A(1)(a) of the Constitution of India is attracted. In the instant case the right which the family of the respondents possessed was the right to collect grass, fire-wood and timber etc. from the Git Forest and that right had already been surrendered under the agreement dated 10.8.1914 by the said family in lieu of the annual payment of Rs.3,500. In an earlier decision in Civil Application No. 1399 of 1968 decided on 18/19.3.1971 a Division Bench (J.M. Mehta and A.D. Desai, JJ.) of the Gujarat High Court had held that sub-clause (d) of clause (3) of section 2 of the Act was not ultra vires so far as the alienation in question was by way of an agrarian reform. The judgment in that case had been delivered by J.M. Mehta, J. The Judgment out of which the present Second

Appeal arises was also rendered by J.M. Mehta, J. himself. Distinguishing his earlier decision from the present case J.M. Mehta, J. has observed thus:

> "In the present case the right of plaintiff has originated in the right to take forest produce of the Gir Forest belonging to the former Junagadh State and which had been enjoyed by the ancestor Shri Harsurvala. The right was recognised by the Rajasthanic Court of the then Kathiawad Agency. It was under the agreement,
> Ex. 24 dated August 10, 1914 that this right was commuted into a lump sum amount of Rs.3,500 and this was enjoyed hereditarily by the plaintiffs' ancestor. Therefore, this alienation has nothing to do with any agrarian reform and this alienation would not fall within the section 2(3)(d) so that it can have any immunity from the challenge. The State could only succeed if the term 'alienation' in section 2(3)(d) is interpreted in such wide context which would make it ultra vires as per the settled legal position in the
> aforesaid Divi-
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> sion Bench decision. That is why narrow interpretation was given by me confining to only those alienations which were incidental to the agrarian reform. The present alienation which consisted of cash allowance as per Ex. 24 is not incidental to any agrarian reform, and therefore, ,the Act would not abolish this alienation. The plaintiffs' rights are to take forest produce and on commutation of their rights by Ex. 24 they are property rights. When such allowance is being paid the right to this cash allowance could never be acquired by the State as per the aforesaid settled legal position ....."

In view of the foregoing the High Court held that section 2(3)(d) of the Act should be read down and construed as not including payment of cash allowance of the type in question. It held that otherwise the said clause would be violative of Articles 14, 19 and 31 of the Constitution of India.

It is not disputed by the learned counsel for the State Government that unless the present case receives the protection of Article 3 IA of the Constitution of India the action taken by the State Government to treat the right of the respondents as having come to an end would be unconstitutional since it would be violative of Articles 14, 19 and 31 of the Constitution of India.

It is, therefore, necessary to examine the nature of the transaction under which the amount of Rs.3,500 was payable every year to the respondents on the hereditary basis in order to find out whether the abolition of the said right can be considered as a part of agrarian reform which receives the protection of Article 31A of the Constitution of India. An extract of the Records of Rights giving particulars of the agreement dated 10th August, 19 14 entered into between Vala Jiva Harsur and the State of Junagadh is produced before the Court. It shows that Vala Jiva Harsur, the predecessor-in-interest of the respondents had the right to remove from the Gir Forest every year (i) 75 cart loads of teak wood, (ii) 100 cart loads of atcot wood, (iii) 600 cart

loads of sarpan, and (iv) 250 cart loads of grass, in addition to the right of grazing of cattle and removing two lakhs bundles of grass during the time of famine. It is clear from the above statement that certain rights which the family of respondents possessed in the land comprised in the Gir Forest were agreed to be surrendered against payment of Rs.3,500 annually. It is no doubt true that long before the date on which the Act came into force the agreement had come into existence but it was a

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right which was originally annexed to land. It may be that the said land formed part of the said forest, but still it falls within the definition of the expression 'estate' in clause (a) of Article 31A(2) of the Constitution of India. Article 31A(2)(a)(iii) states that any land held or let for purposes. of agriculture or for purposes ancillary thereto, including waste land, forest land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans is included in the expression 'estate' for purposes of Article 3 IA of the Constitution of India. Article 3 IA, as it stood on the date of the passing of the Act, provided that notwithstanding anything contained in Article 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Article 14 or Article 19 or Article 31 of the Constitution of India. The expression 'rights' is again defined in Article 31A(2) of the Constitution of India as in relation to an estate, including any rights vesting in a proprietor, sub-proprietor, underproprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. It is an inclusive definition. The Fight which was being enjoyed by the predecessor-ininterest of the respondents was a right in a waste land or a forest land or a land for pasture. In order to .treat a particular law as a part of an agrarian reform, it is not necessary that on the land which is the subject matter of the said law actual cultivation should be carried on. In the State of Kerala and Anr. v. The Gwalior Rayon silk Manufacturing (Wvg.) Co. Ltd. etc., [1974] 1 S.C.R. 671 the. constitutionality of the Kerala Private Forests (Vesting and Assignment) Act, 1971 came up for consideration before this Court. In that case one of the questions which arose for consideration was whether the said Act which related to private forests envisaged a scheme of agrarian reform. In that case this Court held that even though the said legislation had the effect of extinguishing or modifying rights annexed to or arising out of the forest land it could be considered as part of agrarian reform because such forest lands also if prudently and profitably exploited could bring about relief to people engaged in agriculture. This Court further observed in that case that agrarian reform was more humanist than mere land reform and scientifically viewed covered not merely abolition of intermediary tenures, zamindaris and the like but restructuring of village life itself taking in its broad embrace the socia-economic regeneration of the rural population. In the present case the extinguishment of the right to receive a certain amount in lieu of the right to remove timber, grass, etc. from a forest area, therefore, formed part

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of the process of agrarian reform as there was clear nexus between the agreement to pay the amount and the rights

arising out of the forest area. It is significant that under the agreement of the year 1914 the State of Junagadh undertook to pay Rs.3,500 every year hereditarily in lieu of the rights which the predecessor-in-interest of the respondents had in the forest area, thereby meaning that if the amount was not paid, the original right to carry timber, grass etc. from the forest area would revive. It cannot, therefore, be said that the extinguishment of the right to receive money alone unconnected with land was contemplated in the instant case. When once the above conclusion is reached then the legislation in question should be construed as having the effect of bringing about the extinguishment of the right in an estate for the purpose of better management of the forest area keeping in view the interests of the people of the State in general and of the people living in or around the Gir Forest in particular. Sub-clause (d) of clause (3) of section 2 of the Act should be deemed to include the cash allowance of the type involved in this case and the Act must be held to be valid even though it affects the rights of the respondents which undoubtedly originated from the land covered by the forest area. We, therefore, hold that the view taken by the High Court that it the transaction in question is construed as covered by sub-clause (d) of clause (3) of section 2 of the Act, the Act would become void to that extent is not correct. We are of the view that the legislation has the effect of validly extinguishing the right of the respondents to receive annually a sum of Rs.3,500 on a hereditary basis. The respondents are entitled to the payment of whatever compensation is payable under the Act notwithstanding the provisions of Articles 14 and 19 and Article 31 of the Constitution of India (as it existed prior to its deletion).

We, therefore, set aside the judgment of the High Court and dismiss the suit instituted by the respondents. We, however, make it clear that the dismissal of the suit does not come in the way of the respondents being paid whatever compensation they are entitled to under the Act. If such compensation has not been paid yet, the authority concerned shall proceed to compute the amount of compensation payable to the respondents and to disburse it within three months from today.

The appeal is accordingly allowed. No costs.

R.N.J. Appeal allowed.

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