

CASE NO.:
Writ Petition (civil) 12598 of 1985

PETITIONER:
Shri Kirshna Gyanoday Sugar Ltd. & Anr.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 18/02/2003

BENCH:
S. RAJENDRA BABU, D.M.DHARMADHIKARI & G.P.MATHUR.

JUDGMENT:

J U D G M E N T

[With W.P.(C) No.1600/86, T.C.(C) No.26/85, W.P.(C) No.1487/86, W.P.(C) No.1260/86, SLP[C] No. 7887/94, W.P.(C) No.83/86, Cont.Pet (C) No.298/97 and T.C.(C) No.66/99]

RAJENDRA BABU, J. :

W.P.[C] Nos. 12598/85, 1600/86, 1487/86 & 1260/86

The Bihar Sugar undertakings [Acquisition] Act, 1976 [Bihar Act XIII of 1977] [hereinafter referred to as 'the Act'] was passed by the State Legislature and received the assent of the President on June 4, 1977 and was published in the Gazette on June 30, 1977. The Act was to provide for acquisition and transfer of certain sugar undertakings in the State of Bihar and for matters connected therewith or incidental thereto. Under Section 3 of the Act, the undertakings listed in the Schedule stood transferred to and vested in the Government of Bihar or a Corporation with all the assets, liabilities, rights, titles, interest and obligation including any mortgage, charge of other encumbrance or lien trust of similar obligations attaching to the undertaking. Under Section 2(h) of the Act 'schedule undertaking' is defined to mean an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power in a factory specified in the schedule and comprises of several items as set out therein.

The undertakings mentioned in the Schedule are eight in number. Under Section 17 of the Act, the State Government was authorised to add other sugar undertakings to be included in the Schedule by notification.

On 29.10.1978, a notification was issued under Section 17 of the Act to include 16 more sugar undertakings including the three sugar mills of the petitioners in the Schedule to the Act.

Several writ petitions were filed in the Calcutta High Court challenging the notification issued under Section 17 of the Act which included the petitioners' sugar mills thereunder. Interim stay was granted restraining possession being taken over on 31.10.1978. On 12.7.1979, the writ petitions were heard together and were allowed and the Act as well as the notification under Section 17 of the Act were declared ultra vires and the take-overs were quashed. On 28.10.1979, the State Government preferred appeals to the Division Bench of the High Court. In the pending appeals, the Petitioners sought leave to withdraw their writ petition C.R.No.784 of 1978 and the Division Bench dismissed the writ petition as withdrawn and set aside the judgment under appeal so far as the petitioners therein were concerned. On 5.7.1983, the distillery at Hathua was sold by the petitioners to United Distilleries (P) Ltd. The petitioners, on 21.9.1984, requested

the respondents to take over possession of the three sugar mills. Thereafter a notification was issued by the State Government on 29.9.1984 purporting to withdraw the notification dated 29.10.1978 to the extent it related to the three sugar mills of the petitioners stating that this notification was issued pursuant to the order of the Division Bench of the High Court dated 18.9.1984. Writ petitions were filed in the Calcutta High Court challenging the notification dated 29.9.1984 proposing to withdraw the acquisition. The High Court granted stay of the operation. Workers of the petitioners also filed writ petition in the Patna High Court challenging the notification dated 29.9.1984. Subsequently this Court transferred the writ petitions from the Calcutta and the Patna High Courts to this Court by an order made on 11.2.1985.

In the meanwhile, an Ordinance was issued by the Bihar Government so as to acquire the sugar mills of the petitioners. Writ petition was filed before this Court challenging the Ordinance. Now, the Ordinance is replaced by Act 12 of 1985 and that the Act is also under challenge before us.

On behalf of the petitioners, five major contentions have been urged :

1. That the impugned enactment is beyond the legislative competence of the State of Bihar since the industries covered by the enactment fall under Entry 52 of List I to the Seventh Schedule to the Constitution;
2. That the decision in *Ishwari Khetan Sugar Mills (P) Ltd. & Ors. vs. State of U.P. & Ors.*, 1980 (4) SCC 136, stands overruled by the decision in *Synthetics & Chemicals Ltd. & Ors. vs. State of U.P. & Ors.*, 1990 (1) SCC 109;
3. Inclusion of alcohol industries in the list of scheduled industries in the Industries [Development and Regulation] Act, 1951 detracts legislative power of the States to acquire distilleries;
4. Entry 42 of List III to the Seventh Schedule to the Constitution provides for acquisition of property and does not deal with take-over of industries under Entry 24 of List II to the Seventh Schedule to the Constitution, which are subject the provision of Entry 57 of List I to the Seventh Schedule to the Constitution;
5. The Act has failed and, therefore, must be declared to be invalid.

Before we embark upon the consideration of the various contentions urged before us, it is necessary for us to refer to the decision of this Court in *R.C.Cooper vs. Union of India*, 1970 (3) SCR 530. In that decision the scope of Entry 42 of List III to the Seventh Schedule to the Constitution has been considered in detail. After tracing the history of the different entries in Lists I and II in relation to acquisition of property, this is what this Court stated:

"Before the Constitution (Seventh Amendment) Act, Entry 33 List I invested the Parliament with power to enact laws with respect to acquisition or requisitioning for the purpose of the Union, and Entry 36 List II conferred upon the State Legislature the power to legislate with respect to acquisition or requisitioning for the remaining purposes. Those entries are now deleted, and a single Entry 42 List III invests the Parliament and the State Legislatures with power to legislate with respect to "acquisition and requisitioning" of property. By Entry 42 in the Concurrent List power was conferred upon the Parliament and the State Legislatures to legislate with respect to "Principles on which compensation for property acquired or requisitioned for the purpose of the Union or for any other public purpose is to be determined, and the form in which such compensation is to be given". Power to legislate for acquisition of property is exercisable only under Entry 42 List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists: *Rajahmundry Electric Supply Corporation Ltd. v. The State of Andhra*, 1954 SCR 779 at p.785. [p.567] [underlining by us]

This decision clearly enunciates that the power to acquire property is a

separate, distinct and independent power and is not an incident of the power to legislate under other entries. Therefore, such power could be exercised by the State and is not covered by either Entry 7 or Entry 52 of List I.

Shri Ranjit Kumar submitted that the decision in R.C.Cooper's case stands on a different footing as at the relevant time, when in that case Bank Nationalisation was challenged Article 31 was available and in the present cases, it does not exist. There are no competing entries in List I of the Seventh Schedule to the Constitution because the Bank Nationalisation was done by the Central Government itself.

None of these contentions have a bearing upon the aspect we are considering. In R.C.Cooper, this Court considered the scope of Entry 42 of List III to the Seventh Schedule to the Constitution, which did not depend upon the existence of Article 31 of the Constitution or the manner or the extent to which undertakings were taken over. Independent of these aspects the ambit and width of Entry 42 of List III has been explained by this Court which was reiterated by this Court in Ishwari Khetan's case.

Following decision in R.C. Cooper's case, in Ishwari Khetan's case this Court stated as follows:

"There is thus a long line of decisions which clearly establishes the proposition that power to legislate for acquisition of property is an independent and separate power and is exercisable only under Entry 42, List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists. This power of the State legislature to legislate for acquisition of property remains intact and untrammelled except to the extent where on assumption of control of an industry by a declaration as envisaged in Entry 52, List I, a further power of acquisition is taken over by a specific legislation." [p.154]

Though there are two judgments rendered, both the judgments are agreed that the matter could be disposed of on the ground that the legislation falls under Entry 42 of List III and cannot be related to Entry 7 or Entry 52 of List I. When the impugned enactment truly falls within Entry 42 of List III "acquisition and requisitioning of property" there is a reluctance on our part to enter upon an examination of the mutually competing claims of Entry 7 or Entry 52 of List I and Entry 24 of List II. Entries which deal with "industries" and "acquisition" are entirely different subject-matters. Therefore, we do not think it is any longer open to the learned counsel for the petitioners to contend that impugned acquisition of sugar undertakings is beyond the competence of the State Legislature.

The argument advanced on behalf of the petitioners that the decision in Synthetics & Chemicals Ltd.'s case overrules the decision in Ishwari Khetan's case is plainly untenable. In Synthetics & Chemicals Ltd.'s case, this Court was concerned with the question of levy of excise duty on alcohol not fit for human consumption and three questions have been posed by this Court for consideration and they are as under:

- (i) whether the power to levy excise duty in case of industrial alcohol was with the State legislature or the Central Legislature?
- (ii) what is the scope and ambit of Entry 8 of List II of the Seventh Schedule of the Constitution?
- (iii) whether, the State Government has exclusive right or privilege of manufacturing, selling, distributing, etc. of alcohols including industrial alcohol. In this connection, the extent, scope and ambit of such right or privilege has also to be examined.

None of these questions cover the aspects raised before us. Therefore, we hold that the decision in Synthetics & Chemicals Ltd.'s case does not overrule impliedly or otherwise the decision in Ishwari Khetan's case. The argument that

at any rate the take-over of distillery is bad cannot also be sustained inasmuch as the concept of acquisition of an undertaking is an entirely different matter from the control and regulation of the industries.

The argument that a sugar undertaking is a going concern and cannot constitute property within the meaning of Entry 42 of List III is exploded by this Court in R.C.Cooper's case in the following words :

"Under that entry "property" can be compulsorily acquired. In its normal connotation "property" means "highest right a man can have to anything, being that right which depend on another's courtesy: it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with injured". The expression "undertaking" in s.4 of Act 22 of 1969 clearly means a going concern with all its rights, liabilities and assets-as distinct from the various rights and assets which compose it. In Halsbury's Laws of England, 3rd Edn., Vol6, Art.75 at p.43, it is stated that "Although various ingredients go to make up an undertaking, the term describes not the ingredients but the completed work from which the earnings arise."

Transfer of and vesting in the State Corporation of the entire undertaking of a going concern is contemplated in many Indian Statutes: e.g., Indian Electricity Act, 1910, ss.6, 7 & 7A; Air corporation Act, 1953, ss.16 & 17; Imperial Bank of India Act 1920, ss.3 & 4; State Bank of India Act, 1955, s.6(2), (3) & (4); State Bank of India (Subsidiary Banks) Act, 1959; Banking Regulation Act, 1949, s.36 AE; and Cotton Textile Companies Act, 1967, ss.4(1) & 5(1). Power to legislate for acquisition of "property" in Entry 42 List III therefore includes the power to legislate for acquisition of an undertaking. But, says Mr.Palkhivala, liabilities of the banks which are included in the connotation of the expression "undertaking" cannot be treated as "property". It is however the assets, rights and obligations of a going concern which constitute the undertaking; the obligations and liabilities of the business form an integral part of the undertaking, and for compulsory acquisition cannot be divorced from the assets, rights and privileges. The expression "property" in Entry 42 List III has a wide connotation, and it includes not only assets, but the organisation, liabilities and obligations of a going concern as a unit. A law may, therefore, be enacted for compulsory acquisition of an undertaking as defined in s.5 of Act 22 of 1969." [pp.567-568]

The learned counsel for the petitioners adverted to the Sugar Undertaking [Taking over of Management] Act, 1978 [hereinafter referred to as 'the 1978 Act'] which was enacted by Parliament to provide for the take-over in public interest of the management of certain sugar undertakings and contended that the impugned enactment is also for better management of sugar industries and, therefore, the two enactments overlap the same field. He also submitted that in the guise of acquisition of undertaking what is really sought to be done by the State Government is to take over the management of the sugar undertakings in the manner as sought to be done under the 1978 Act.

The 1978 Act was enacted to provide for temporary taking over of the management of certain sugar undertakings in certain situations for the purpose of mainly to maintain the continuity of production of sugar for avoiding undue hardship to cane producing farmers and to best subserve the interests of all sections of the people for a limited period the management of every sugar undertaking which fails or ceases to manufacture sugar or which fails to pay promptly amounts due for the cane acquired for the purposes of the undertaking. After the expiry of the period mentioned therein which at any rate shall not exceed seven years from the date of vesting, the management of the undertaking shall revert back to the original owners thereof. The Industries [Development and Regulation] Act, 1951 also contemplates certain provisions under Chapter III-A for direct management or control of industrial undertakings by the Central

Government, that is, in certain cases, the Central Government has always exercised such powers of taking over of the management of the industrial undertakings for a temporary period in certain situations.

The Statement of Objects and Reasons set out in the impugned Act are, inter alia,

"It is proposed to nationalise these sick mills and the distilleries in the larger public interest and in the interest of the State economy and also in the interest of the cane growers and labourers."

The Objects and Reasons of the Central Act are clearly to make provision for taking over the management of the defaulting sugar undertakings for a specified period. It is thus clear that the objects, purpose and provisions of the two enactments are entirely different. Further even when the State becomes the owner of the sugar undertaking, it is possible for the Central Government in exercise of its power under the 1978 Act or under the Industries [Development and Regulation] Act to take over the management. Therefore, the two powers exercised are different and distinct. But a comparison of the provisions of the two enactments will make it clear that it is not merely to take over the management but to take over the entire undertaking that the impugned Act has been brought into effect. It is not merely the management that is vested but the entire undertaking that is vested in the Government. Further return of the undertaking after a certain period does not arise either. The contention, therefore, urged that the exercise of power under Entry 42 of List III to acquire the undertaking is not for the avowed purpose of taking over of the entire undertaking but the management is not tenable and, therefore, rejected. Nor is the contention that the two enactments, the 1978 Act and the impugned Act overlap is also not well founded.

The contention advanced now is that the sugar undertakings were taken over by the Bihar Ordinance 38 of 1985 replaced by Act XII of 1985 as early as 21.10.1985. Now it is urged that none of the objectives of the said Act have been achieved; that the purposes for which the enactment was made having failed impugned Act cannot be enforced, and that Act should be declared to be invalid and, in this context, reliance is placed on the decision of this Court in *Malpe Vishwanath Acharya & Ors. vs. State of Maharashtra & Anr.*, 1998 (2) SCC 1.

Let us examine the circumstances that have arisen in this case after the Act came into force. On the Ordinance coming into force, the validity of the same was challenged and taking over of the distillery was stayed and in fact one of the distilleries the possession of which had already been taken over was handed back subject to certain conditions. The interim order was in force throughout. When the Government carries out an experiment for various purposes in the commercial or economic field, it has its own hazards particularly when the courts intercede, grant interim orders, the objectives of the Act cannot be achieved at all. In this background it becomes hazardous to examine the contentions put forth on behalf of the Petitioners whether if the Act had failed or not particularly when it has not been put into full force. The situation dealt with in *Malpe Vishwanath Acharya* is altogether different. What was noticed therein is that when the Act was enacted, though valid, with the passage of time some of the provisions thereof like freezing of rent it became irrational and unjust and, therefore, violated Article 14 of the Constitution. It is in those circumstances the law was declared to be invalid and not otherwise. Therefore, this contention also does not appeal to us.

It was lastly contended by Shri Ranjit Kumar that the valuation of the sugar undertaking on the basis of book value is not reasonable. The manner in which value of the properties should be taken either book value or any other value cannot be examined by us because book value is one of the methods in which the values of undertakings are determined. There is no material placed before the court to show as to what other method could be adopted which would be more reasonable or as to how the book value taken does not reflect the true value of the undertakings. Therefore, it is difficult to conclude one way or the other on the basis of this contention. Hence it is rejected.

W.P.[C] No.83 of 1986

This writ petition is filed by United Distilleries {P} Ltd., which is stated to have purchased a distillery with the bottling plant under an agreement dated September 20, 1982. It is contended on behalf of the petitioners that petitioner distillery is not covered by the Act for the following reasons:

1. The object of the Act is to acquire only such distilleries as have been operating till as late as the recent past, that is, the crushing season 1984-85 as ancillary units or sister concerns or subsidiary mills of certain specified sugar mills;
2. The vesting under Section 3(1) of the Act is only of a sugar schedule undertaking if they were immediately before the appointed day in the ownership, possession, power or control of the undertaking;
3. Various other provisions, for instance, Sections 6, 7, 1st Schedule, 2nd Schedule etc. do not even mention the petitioners nor provide for any compensation for it;
4. Section 4, which provides for consequences of vesting, applies only to properties which, in the first place, get vested in the State in terms of Section 3, which have been till as late as immediately before the appointed date, that is, 16.12.1985 in the ownership, possession, power and control of the undertaking. Hence that part of the section, namely, sub-section 4(ii)(e) also has applicability only to such an executory agreement or promise [as distinct from an executed Agreement] of transfer or disposition of property which has so far, that is, till as late as immediately before the appointed day, i.e., 16.12.1985 not resulted in the absolute, final and complete transfer of the property in favour of a third party. The said provision, it is submitted, has no applicability to transfer or disposition of property which has been finally completed long before the appointed day, 16.12.1985. Thus the transfer of the distillery by SKG in favour of the petitioners on 5.6.1983 is not affected by Section 4(4)(ii)(e).

The other argument advanced on behalf of the petitioners is that in the event this argument is not accepted, acquisition of property by the State on any ground pertaining to a period anterior to the date 29.9.1984 is per se arbitrary and violative of Article 14 of the Constitution because on that date the State had itself withdrawn the initial acquisition of the said sugar mills under the 1976 Act thereby accepting that all transfers prior to 29.9.1984 were unobjectionable and valid; that by Section 2(h)(i) of the 1976 Act, even a distillery owned and controlled by a wholly independent and separate person is also roped in; that further the Act does not make any provision to exclude the bona fide purchaser for value and such inclusion treats unequals as equals and does not provide any machinery for identifying such bona fide purchasers for value but on the other hand, Section 4(4)(ii)(e) declares that all transfers after 29.10.1978 shall be invalid; that the 'adjacent' location of the distillery in the factory premises of the sugar undertaking is merely an accidental circumstance and that does not indicate that the distillery has any connection or is a related distillery and a related distillery need not necessarily be adjacently located and that aspect is irrelevant for any consideration of finding out whether the distillery has any connection with the sugar undertakings or not; that the application of Section 4(4)(ii)(e) retrospectively from 29.10.1978 to the transfer of property, namely, distillery without compensation renders the Act wholly arbitrary, unreasonable, confiscatory and violative of Articles 14, 19(1)(g) and also Articles 19(1)(f) read with Article 31 [as they stood before the Constitution Forty Fourth Amendment] or alternatively, Article 300A for the reason that at the time when the transfer in favour of the petitioners was made i.e. on 5.6.1983; that in the earlier Act, the distillery was not sought to be acquired nor was there any restriction on the transfer of distillery at any time; that it is at that distillery which had been transferred and the Government could not take action by bringing any retrospective provision to affect the interests of Petitioners.

Shri Rakesh Dwivedi, learned senior counsel appearing for the State of Bihar, drew our attention to the background in which this enactment has been brought into force. He pointed out the various circumstances set forth in the counter affidavit which led to the enactment and which are also available in the short cause title of the enactment to take over the sugar undertakings and that enactment having been struck down by the Calcutta High Court and thereafter when the appeal was pending, the writ petitions having been withdrawn the whole object of the Act stood misfired. In the meanwhile, several actions had been taken by several persons to transfer or sell the distilleries which were making profits and part of the sugar undertakings. In that background, the enactment was made considering the history of this legislation, certain provisions of the Act have come into force from as early as 29.10.1978. He further submitted that the lease deed itself indicated that the distillery is in existence in the common premises along with the sugar undertakings. The Agreement to sell also contemplates acquisition of the property. Clause (h) of the Indenture contemplated the nationalisation of the sugar mill as a consequence of which the distillery also being taken over. Therefore, it cannot be stated that it is not within the contemplation of the parties at all. Shri Dwivedi further submitted that though Section 4(4)(ii)(e) retrospectively comes into force from 29.10.1978 inasmuch as the sale in favour of the Petitioners having been made only on June 5, 1983, it is not necessary to examine the retrospective nature of the provisions of the Act anterior to that date.

Elaborating his first contention, Shri Gupta for the petitioner submitted that in the Bihar Act XIII of 1977 "scheduled undertaking" means an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power in a factory specified in the schedule and comprises of several components but does not include a 'distillery'. It is only in the impugned Act 'distillery' is subsequently included by an inclusive definition which reads as follows :-

"Section 2(h) : 'Scheduled undertaking' means an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power in a factory specified in the First Schedule and includes :-

(i) Distillery Paper unit and all lands, buildings, works, plants, machinery, equipments, instruments, stores, vehicles, Railway siding in or adjacent to the mill;

X X X X"

(rest is not relevant for our purpose)

He firstly contended that on the date of the Act coming into force the distillery was no longer in the ownership, possession, power and control of the sugar undertaking on 16.12.1985 when the Act came into force and it is only assets of the scheduled undertaking which are part thereof that stood taken over or vested in the Government; that the Statement of Objects and Reasons and the Preamble indicate that the object of the Act was to acquire only such distilleries as had been operating till as late as the crushing season 1984-85 and ancillary units or sister concerns or subsidiary mills of certain specified sugar mills and various other provisions do not even advert to a person of the nature of the petitioner by not providing for any compensation and, therefore, the distillery in question falls completely outside the scope of the impugned Act. In this context, he placed strong reliance upon the decisions in *Brett vs. Brett*, 1824-34 All E.R. 776; *Hawkins vs. Gathercole*, 1855 (43) ER 1125; *Utkal Contractors vs. State of Orissa*, 1987 (3) SCC 279; *Girdhari Lal vs. Balbir Nath*, 1986 (2) SCC 237, and *Reserve Bank of India vs. Peerless*, 1987 (1) SCC 424. He also submitted that Section 4 as a whole is a provision for enumerating certain consequences of vesting and applies only to properties which in the first place get vested in the State in terms of Section 3, that is, properties which have been till as late as immediately before the appointed day (16.12.1985) in the ownership, possession, power and control of the undertaking; that hence a part of Section 4(4)(ii)(e) has also applicability only to such an executory agreement or promise as distinct from an executed agreement of transfer or disposition of property which has so far, that is, till as late as immediately before the appointed day (16.12.1985) not resulted in the absolute, final and complete transfer of the property in favour of a third party; that it has no

applicability to a transfer or disposition of property which has been finally completed long before the appointed day (16.12.1985); that thus the transfer of the distillery in question in favour of the petitioner on 5.6.1983 is not affected by the said provision.

The impugned Act seeks to take over the sugar undertakings including a 'distillery' operated in such undertaking. What is urged before us comes in the teeth of Section 4(4)(ii)(e) and if we correctly understand the scope of this provision, the arguments advanced on behalf of the parties can be truly appreciated and, for that purpose, it is necessary to set out that provision in full which is as follows :-

"Section 4. Certain consequences of vesting.-

(4) (ii) For removal of doubts, it is hereby declared that, save as otherwise expressly provided in this section or in any other section of this Act.-

(e) Notwithstanding any provision in any other law, all the transfer, disposition of properties moveable or immoveable either in part or in whole made after 29th October, 1978 of the scheduled undertaking shall be invalid and stand annulled. The Collector shall take possession of such properties with the properties of the undertaking."

Section 4 falls into different parts. The first part is covered by a non-obstante clause by which the properties along with encumbrances and to what extent vest in the State and clause (4)(i) covers such a situation. But clause 4(ii) opens with a clause "for removal of doubts, it is hereby declared that, save as otherwise expressly provided in this section or in any other section of this Act. and thereafter clause 4(ii)(e) is set out. The opening clause "removal of doubts" does not fit in the non-obstante clause with which Section 4(4)(ii)(e) opens. Indeed, the object of Section 4(4)(ii)(e) is evident from the very language employed in that provision which indicates that irrespective of any provision in any other law transfer, disposition of properties moveable or immoveable either in part or in whole made after 29th October, 1978 of the scheduled undertaking shall be invalid and stand annulled and the Collector shall take possession of such properties with the properties of the undertaking. In correctly reading the enactment as a whole what we have to do is to treat this provision as an independent provision which provides for consequences to which we have adverted to, that is, nullification of all alienations effected after 29th October, 1978 of the properties and taking over of the same. That is, because under the prior enactment a notification has been issued on 29.10.1978 to take over the sugar mills under Section 17 of the Act then in force. Therefore, there is definitely a cloud in relation to properties belonging to the sugar undertaking which were sought to be taken over. Not only that day is relevant for the purpose of taking over but also if the objectives of the Act have to be achieved situations will have to be taken note of which have arisen prior to the date of the enactment and, therefore, it becomes absolutely necessary to make proper provisions to cover such situations. If the said transaction stood nullified the fact that the properties stood transferred to the petitioner on 5.6.1983 will not be of any consequence and that property will have to be treated as the property of the sugar undertaking being taken over under the impugned Act. Therefore, the exercise suggested by the learned counsel as to the restricted construction that has to be placed on the expression 'distillery' in Section 3(1) or Section 4 cannot be accepted. The decisions referred to by the learned counsel cannot be of any assistance on the construction made by us on the provisions of the Act. If on the date of coming into force of the Act, the transactions entered into after 29th October, 1978 stood annulled in respect of the properties that are being taken over, the said properties must be held as still the properties of the sugar undertaking. Thus if the true effect of Section 4(4)(ii)(e) is borne in mind, the distillery of the petitioner must be deemed to be in the ownership, possession, power and control of the undertaking on the appointed day. Hence, we reject the first contention of the learned counsel that the Act has no applicability to the distillery of the petitioner.

The contention on behalf of the petitioner that there is no reference to the petitioner nor any compensation is provided under Sections 6 and 7 and First

and Second Schedules to the Act is not correct. There was no need to mention the petitioner's name in any one of these provisions. Indeed, in C.B. Gautam's case it was held that where the agreement for sale itself provided that the property was intended to be sold free from all encumbrances or leasehold rights, and the property vested in the Central Government free from all encumbrances, the holders of encumbrances and leasehold interests would have to obtain their compensation from the amount awarded by Government as purchase price to the owner of the property. The provision of the impugned enactment in so far as compensation is concerned is Section 7 of the Act. The said Section does not say to whom the amount is to be paid and such amount will have to be given to all those persons who are interested in the property after meeting prior claims as indicated in the said provision. Therefore, we do not think that we can proceed on the basis that no provision for compensation is made to attract the wrath of Article 31 of the Constitution.

The next contention put forth by the learned counsel for the petitioner is that the acquisition of the petitioner's properties by the State anterior to 29th September, 1984 is per se arbitrary because on that day the State had itself withdrawn the initial acquisition of the said sugar mills under the 1976 Act thereby accepting that all transfers prior to 29.9.1984 were unobjectionable and valid. This contention plainly has no force. Law can be made not only prospectively but also retrospectively. The State had enacted earlier Act 13 of 1977 which was declared to be invalid and thereafter in appeal the said decision had been challenged and subsequently the Notification dated 29.10.1978 under Section 17 of that Act had been issued which stood withdrawn subsequently and which was also the subject matter of challenge. In that background, it cannot be said that by reason of withdrawal of the acquisition of the said sugar mills would result in acceptance of the transfers prior to 29.9.1984. Therefore, this argument of the learned counsel is untenable and is rejected.

Relying upon the decision of this Court in C.B. Gautam vs. Union of India & Ors., 1993 (1) SCC 78, Shri Gupta contended that the distillery belongs to a wholly independent and separate person who is a bona fide purchaser of value and no provision is made to identify such purchasers but declares under Section 4(4)(ii)(e) that all transfers after 29.10.1978 to be invalid; that while interpreting a similar provision arising under the Income Tax Act under Section 269-UE under which the properties would vest in the Government free from all encumbrances and considering the scheme of the provision of the Income Tax Act, this Court in C.B. Gautam's case stated that an order made for compulsory purchase under Section 269-UD has the effect of vesting the property in the Central Government free from all encumbrances or leasehold rights the value of which might not be reflected in the apparent consideration mentioned in the agreement for sale; that such encumbrance holders and holders of leasehold rights might not have anything to do with the attempt at tax evasion which was intended to be plugged and the Government would be liable to pay as compensation to the owner of the property an amount equal to the amount of apparent consideration; that the leasehold rights would get destroyed and would be handed over to the appropriate authority; that similar would be the position in a mortgage; that the apparent consideration even if it is equivalent to the fair market value would be indicative of the market value of the property subject to such encumbrances and in such a case the properties would be compulsorily purchased and amount to be paid for the purchase would be only equal to the apparent consideration and this apparent consideration would not take into account the value of the encumbrances on the property like mortgages and so on or the leasehold rights. This Court in that background held that the provisions of Section 269-UE insofar as it provides that the property in respect of which an order under sub-section (1) of Section 269-UD is passed shall vest in the Central Government free of all encumbrances cannot be valid inasmuch such provision has no rational nexus with the object of the legislation which is avoiding evasion of tax and therefore, was read down so as to make them inapplicable to bona fide encumbrances holders in possession. Further, this Court also noticed a distinction between acquisition of property by pre-emptive purchase and acquisition of property. Adverting to the decision in Rambhai Manja Nayak vs. Union of India, 1983 (142) ITR 211 (Guj. HC), (affirmed by this Court in Rambhai Manjanath Nayak vs. Union of India, 1992 (4) SCC 742) this Court in Gautam's case held that there was a similar provision that the property in question vest in the Central

Government free from all encumbrances under provision of Section 269-I(4) of the Income Tax Act. In the said decision, the Gujarat High Court held that it is only after all interests - proprietary as well as possessory - are extinguished by the acquisition of the property that the property vests absolutely in the Central Government. This view was distinguished by this Court by stating that in that case the Court was concerned with compulsory acquisition under Chapter XX-A of the Income Tax Act and such a situation cannot be compared with the case before the Court which is one of compulsory pre-emptive purchase made by the Central Government in which amount to be paid is only apparent consideration which does not take into account the value of encumbrances. The present case is clearly one for acquisition of property as demonstrated in the earlier part of this judgment and not by way of any pre-emptive purchase of the type with which this Court was concerned in C.B. Gautam's case. The decision of this Court in Harshad Shantilal Mehta vs. Custodian & Ors., 1998 (5) SCC 1, merely follows the decision in C.B. Gautam's case and does not lay down any new principle. We think, there is no justification whatsoever for the petitioner to contend that the provision contained in Section 4(4)(ii)(e) is in any way invalid on the basis of these two decisions.

The learned counsel contended that only a distillery connected or related to the sugar undertaking can be acquired and it cannot be presumed so by reason of its proximity to the location of the sugar undertaking. This argument does not assume any significance in the view we have taken. There cannot be serious dispute that the distillery and sugar undertaking are inter-connected in several ways, particularly by supply of molasses manufactured by the latter. By virtue of Section 4(4)(ii)(e), ownership, possession, power or control continues to be with sugar undertaking and, in addition, its location is an additional factor to ascertain whether it is a related industry or not. Thus, we find no substance in the contention that the distillery cannot form subject matter of acquisition.

It is next contended that the application of Section 4(4)(ii)(e) retrospectively from 29.10.1978 to the transfer of distillery without compensation renders the whole Act arbitrary, unreasonable, confiscatory and violative of Articles 14, 19(1)(g), 19(1)(f) and Article 31 or alternatively Article 300A for the reason that at the time when the transfer was made, that is, 5.6.1983. In this context, strong reliance has been placed on the decision of this Court in Chairman, Railway Board & Ors. vs. C.R. Rangadhamaiah & Ors., 1997 (6) SCC 623; State of A.P. & Ors. vs. McDowell & Co. & Ors., 1996 (3) SCC 709, and State of Gujarat & Anr. vs. Raman Lal Keshav Lal Soni & Ors., 1983 (2) SCC 33.

In Chairman, Railway Board's case, the point that arose for consideration was whether pension as admissible under the rules in force at the time of retirement could be retrospectively reduced. This Court held the same as unreasonable and arbitrary and, therefore, violative of Articles 14 and 16. This Court explained the scope of Articles 19(1)(f) and 31 which were not in existence on the date of the notification but in existence when the notifications were made effective retrospectively and so no challenge could be based on them. It is no doubt true that a challenge could be based on Articles 31 and 19(1)(f) in a matter of this nature when the enactment has retrospective operation from 29.10.1978, but there are several reasons why nothing follows from this situation. Firstly, the transfer itself has been in favour of the petitioner on 5.6.1983, that is, long after the constitutional provisions stood deleted. The context of a pensioner who has a prior vested right and was receiving such pension being deprived of such pension by giving him a lesser sum is altogether a different circumstance and, in the present case, it cannot be said that there is no provision for payment of compensation.

The decision of this Court in State of Gujarat & Anr. vs. Raman Lal Keshav Lal Soni has absolutely no relevance to the present case. In that case, it was held that the Government servants do not lose their status merely on being sent to some institution or body controlled by the Government and on being paid out of the funds of that institution or body; that a retrospective amendment of the enactment creating a differential classification in relation to their original position and depriving the ex-municipal employees of their present status of government servants and consequential benefits would be violative of Articles 14 and 31. No such right arises in so far as petitioner in the present case is concerned.

Further, the learned counsel contended that sugar undertaking sought to be acquired was defined in a different manner under the earlier enactment, that is, Bihar Sugar undertakings [Acquisition] Act, 1976, though several aspects of the components of the sugar undertaking were mentioned, it did not refer specifically to a distillery and thus it was never under the contemplation of the Act on the earlier occasion to acquire a distillery. But when all properties are sought to be acquired even if not specifically set out therein, it is rather doubtful to say that a distillery will not be included in it. In the present Act position is made abundantly clear. In the circumstances, we think that the contention of the learned counsel that retrospective operation of Section 4(4)(ii)(e) is bad, cannot be sustained.

Inasmuch as all the contentions of the petitioner have been rejected, these petitions shall stand dismissed.

T.C.[C] Nos.26/85 and 66/99

In view of the order made by us in the writ petitions, T.C.[C] Nos.26/85 and 66/99 have become infructuous and stand disposed of accordingly.
Cont.Pet.[C] No.298/97

This petition was filed for enforcement of the order made by this Court on 7.2.1986. The stand of the petitioners is that there is non-compliance of the direction given by this Court in the manner provided therein. Various contentions are put forth before us to interpret the said order and to contend that the manner of compliance by respondents is not sufficient by a process of circuitous reasoning. It is clear that unless there is a wilful disobedience, which can be spelt out from the conduct of the respondents, no action can be taken in contempt. Hence the notice issued shall stand discharged and the proceedings shall stand dropped.

SLP[C] No.7887/94

The facts that have arisen and the issues involved in this appeal by special leave are different from those that have arisen in the aforesaid writ petitions and the transfer cases. Hence, this petition be delinked from the present batch of cases.