THE

MADRAS LAW JOURNAL

I] JANUARY [1967

NOTES OF RECENT CASES.

Krishnaswami Reddy, J
2nd August, 1966

Parthasarathy Padayachi *v.* Thiruvengadam
Crl R. C No 1088 of 1965.
Crl R P No 1071 of 1965.

Criminal Procedure Code (V of 1898), section 263 (h)—Record in cases where there is no appeal—Finding in the case of conviction—Brief statement of the reasons therefor to be given.

Under clause (*h*) of section 263, Criminal Procedure Code, the Magistrate while giving a finding in the case of conviction, has also to give a brief statement of the reasons therefor In the absence of the reasons for the finding it is not possible to find the correctness or otherwise of the finding.

E S Govindan and *Habibullah Badsha*, for Petitioners

M Srinivasagopalan and *B Rajagopalan*, for Respondent

V.S

Conviction set aside.

Veeraswami and *Natesan, JJ*
3rd August, 1966.

S Sundara Komaya Naicker *v* Authorised Officer of Land Reforms.
W P Nos 1302 and 1303 of 1966.

Madras Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961), section 10 (5) and Rule 8 of the Rules framed under the Act—Service of notice on concerned persons—Personal service to be effected before service by affixture attempted—Service by affixture at the first instance—Irregular—Writ

Under Rule 8 (*d*) of the rules framed under the Madras Land Ceiling Act, in the case of individuals notice should be served by delivery or tender of the same to the person concerned or his Counsel or authorised agent or to some adult member of the family, or by sending the notice to the concerned person by registered post, acknowledgment due Clause (*iv*) of sub-rule (*d*) of rule 8 provides that if none of the aforesaid modes of service is practicable, service may be effected by affixing the notice in some conspicuous part of the last known place of residence or business of the person concerned. Service by affixture without taking the other modes of service would be irregular and not in compliance with the rule.

On the facts it was held that no prejudice has been caused and no writ would issue.

Dolia, for Petitioner.

Government Pleader, for Respondent.

V.S.

Petition dismissed.

Ramakrishnan, J
25*th August*, 1966.

Packiri Mohamad *v.*
Abdul Rahman.
S A (Crl) No 503 of 1966 (P.)
and Crl M P No 1942 of 1966.

Penal Code (*XLV of* 1860), *section* 504—*International insult with the intent to provoke breach of peace—Reaction of a normal person to the insult and retaliation in a violent manner—Test—Section* 95—*Act causing slight harm—Offence committed on the eve of election, long lapse of time,* de minimis—*Factors for not ordering fresh trial*

Criminal Procedure Code (*V of* 1898), *section* 342—*Examination of accused—Omnibus examination of all accused—Irregular and vitiates trial.*

Under section 504 of the Penal Code, it is not the capacity of the individual who is alleged to have been insulted to retaliate which is the true test The true test whether a normal person in the position of the person insulted, would have reacted to the use of the particular insulting words, by retaliation in a violent manner, and thereby a breach of the peace would have been caused

Where the trial Court had not carefully followed the provisions of section 342 of the Criminal Procedure Code and had not questioned the accused separately in regard to the facts of the prosecution case appearing against each of them but had combined the questions in an *omnibus* fashion, the procedure would be irregular and vitiate the trial.

In view of the facts that the act was committed on the eve of elections, that a long lapse of time has occurred, and by applying the principle of *de minimis* embodied in section 97 of the Penal Code, that an act causing only slight harm need not be made the subject-matter of an elaborate criminal prosecution, a fresh trial need not be ordered

T. S Arunachalam, for Appellant.

V.S.

Appeal dismissed.

Ramakrishnan, J
9*th September*, 1966

Natesa Pillai *alias* Dorairaja Pillai *v*
Public Prosecutor, Pondicherry
S A (Crl) No 541 of 1965 (P).

French Code of Criminal Procedure, Articles 202 (2), 216—*Receiver*—Partie civile *moving for the prosecution of Receiver and for damages—Found guilty of breach of trust by trial Court as a correctional Court—Award of damages to* partie civile—*Appeal by Receiver—Acquittal—Appeal to High Court by* partie civile *by way of* cassation—*No jurisdiction to interfere with acquittal at the sole instance of* partie civile—*Liability of Receiver, a civil one—Open to* partie civile *to take civil proceedings against Receiver*

There is no jurisdiction to interfere with the order of acquittal, at the sole instance of the *partie civile* by the High Court in the exercise of its power of *cassation*

Article 202 (2) of the French Code of Criminal Procedure confers a right of appeal (1) to the accused party or the persons found liable , (2) to the *partie civile* confined exclusively to his civil interest ; (3) to the Forest Administration ; (4) to the Public Prosecutor ; and (5) to the Public Prosecutor of the Court of Appeals. Article 216 confers on the *partie civile*, the accused, the Public Prosecutor and the persons made civilly responsible, the right to appeal in *cassation* against an order It is clear that when the *partie civile* under Article 216 appeals for relief by way of *cassation*, it must be read with Article 202 and therefore the appeal must be confined exclusively to his civil interest This restriction, however, has an exception. If the party who moves the Court of Cassation in appeal is the Public Prosecutor, the entire decision can be at large and the *partie civile* may also agitate his rights within the forum of such an appeal. But, if there is no appeal by the Public Prosecutor the provisions in Article 202 (2) restricting his right exclusively to his civil interest will apply. The *partie civile* cannot seek for reversal of the finding of acquittal, if the Public Prosecutor had not appealed.

The relationship of the Receiver though appointed by Court, is governed by contract, and his liability would be a civil one. In a case decided as a correctional matter, the acquittal of the accused will leave open to the *parte civile* a right to pursue his civil remedy in independent civil proceedings, unlike in the case of an acquittal by the Court of Assises of an accused, charged for a major crime

S M Amjad Nainar, for Appellant

J. Stanislas for *A Bala Pajanor*, *V R Venkatraman* and *J Stanislas*, for Accused.

Public Prosecutor, for Pondicherry

V S

Appeal dismissed

Venkatadri, J
12*th September*, 1966

M/s. Panneerdas & Co *v.*
Corporation of Madras.
W.P No 1097 of 1963.

Madras City Municipal Corporation Act (*IV of* 1919), *section* 349, *clause* (28)—*Bye-law under—Notification prohibiting advertisements on certain places—Validity*

The notification issued by the Corporation prohibiting advertisements on side walls, embankments and railing of viaducts, overbridges, culverts and approaches thereto is valid It is for the Corporation to regulate, restrict or prevent the exhibition of advertisements, if they are exhibited in such places and in such manner, and by such means as to affect injuriously the life and face of the City Such a restriction may cause nuisance to some and annoyance to some others But it cannot, for that reason, be held that such a by-law is unreasonable or uncertain.

S K. L Ratan, for Petitioner

T Chengalvarayan, for 1st Respondent

M. M. Ismail, Standing Counsel, for 2nd Respondent

V.S.

Petition dismissed.

Ramamurthi, J
11*th October*, 1966

Madhi Alagan, *In re*
Crl R C No 1190 of 1966.
Crl R P No 1167 of 1966.

Probation of Offenders Act (*XX of* 1959), *sections* 4 *and* 6—*Person under the age of* 21 *years—Sentence of imprisonment—Incumbent on Court to record reasons for sentencing to imprisonment—Incumbent on Court to get a report from the Probation Officer—Applicability of the Act—Court to be satisfied on such report*

Section 6 (1) of the Act makes it incumbent on the Court finding a person under 21 years of age guilty of offences punishable with imprisonment not to sentence such person convicted of such an offence to imprisonment unless it records its reason for coming to the conclusion that a sentence of imprisonment is called for. It is also incumbent on the Court to get a report from the Probation Officer and consider it in order to satisfy itself as to the manner in which the provisions of the Act should be applied to the individual offenders.

While confirming the conviction the High Court directed that the petitioner be released on his entering into a bond with two sureties, to keep the peace and be of good behaviour for a period of two years.

S. Bhaskaran, for Petitioner.

S R. Srinivasan, for Public Prosecutor

V.S.

Orders accordingly.

Veeraswami and
Natesan, JJ.
28*th September*, 1966

K Visalam *v.* Additional Authorised Officer (Land Reforms), Nagapattinam.
W.P. No. 884 of 1966.

Madras Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961), *sections* 5, 17, 62 *and* 72—*Cultivating tenant in possession of lands as tenant-Excess over the tenant's ceiling area—Reverter to landlord —Authorised Officer—Notice to take possession of such surplus land and for distribution for landless persons—Validity—Writ under the Constitution.*

The petitioner-landlord owned 5 acres and 87 cents. The total holding of the tenant as tenant was 5 acres and 94 cents in standard acres. The Authorised Officer took proceedings under section 62 of the Act to take over the excess holding in the hands of the tenant and for distribution to landless persons for cultivation under the Act. The petitioner claiming the right of reverter of such excess over the tenant's ceiling area under section 17 of the Act, applied under Article 226 of the Constitution to quash the proceedings of the Authorised Officer

Held, the writ will issue quashing the proceedings of the Authorised Officer. Under section 17 there will be a reverter to the landlord of the excess of the holding in the hands of the tenant.

A tenant is defined by the Act to include a cultivating tenant. When section 17 (1) speaks of 'any person as a tenant' it has to be taken that the word 'tenant' there means a cultivating tenant, in the present context, and he will be governed by Chapter VIII and for purposes of section 5, he will not come within its ambit so as to enable him to hold 30 standard acres A separate ceiling is fixed for a tenant under section 60 Therefore under section 17 (1) where a tenant or cultivating tenant's holding is in excess of the 5 standard acres, the excess can be taken over, but if the excess is less than the ceiling area allowed to a landowner, to the limit of the difference to make up 30 standard acres, the land in excess of the permissible holding in the hands of the cultivating tenant will revert to such landholder.

V. Balasubrahmanyan and *V. Kunchithapatham*, for Petitioner.

Government Pleader, for Respondent.

V.S. ——— *Petition allowed.*

Krishnaswamy Reddy, J
13*th October*, 1966

A. Kanniah, *In re.*
Crl R Nos 931, 1023, 1149 and 1151 of 1965
Crl R P Nos 919, 1008, 1129 and 1131 of 1965

Criminal Procedure Code (V of 1898), *sections* 4 (h), 190 (1) (a), 249—*Report of a police officer in a non-congnisable offence without investigation—Complaint—Cognisance can be taken of an offence, by Magistrate—Stay of proceedings as the accused were absconding—Order stopping proceedings illegal and without jurisdiction and void—Continuance of the proceedings originally instituted—Valid—Memo, by Public Prosecutor of filing a fresh charge sheet—May amount to implied withdrawal*

It is well established that a report of a police officer in a non-cognisable offence without investigation as required under section 155 of the Code will be complaint as defined under section 4 (*h*) of the Code If the Magistrate took cognisance of an offence upon such a complaint, section 249 of the Code excludes stopping proceedings in cases instituted Any order passed by the Magistrate stopping such proceedings would be illegal and would be without jurisdiction and therefore void. As the stopping of the proceedings itself would be void, the question of revival does not arise. The original trial started on the complaint filed by the police continues as there was no valid order preventing the course of the original trial

Any memo. filed by the Public Prosecutor that he would file a fresh charge-sheet would show that he was not pressing the case instituted on the original complaint. That will certainly amount to an implied withdrawal

P. R. Gokulakrishnan, S. A. Seshadri, for Petitioners.

Public Prosecutor on behalf of State.

V.S ——— *Petition dismissed.*

[SUPREME COURT].

K N. Wanchoo, J C Shah and *R S Bachawat, JJ*
11*th August*, 1966

Girijanandini Devi *v.* Bijendra Narain Choudhary.
C A No 756 of 1964.

Hindu undivided family—Mitakshara Law—Partition—Interest of minor members—Duty of the Appellate Court to reappraise evidence

Civil Procedure Code (*V of* 1908), *section* 66—*Benami transaction*

In a Hindu undivided family governed by the Mitakshara law, no individual member of that family, while it remains undivided, can predicate that he has a certain definite share in the property of the family. The rights of the coparceners are defined when there is a partition Partition consists in defining the shares of the coparceners in the joint property; actual division of the property by metes and bounds is not necessary to constitute partition ; once the shares are defined, whether by agreement between the parties or otherwise, partition is complete. The parties may thereafter choose to divide the property by metes and bounds or may continue to live together and enjoy the property in common as before If they live together, the mode of enjoyment alone remains joint, but not the tenure of the property

The trial Court, as we have already observed, on a consideration of the entire evidence and the subsequent conduct of the parties came to the conclusion that there was no severance of Bijendra Narain from his uncle Bidya Narain and with that view the High Court agreed It is true that the High Court did not enter upon a reappraisal of the evidence, but it generally approved of the reasons adduced by the trial Court in support of its conclusion. We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial Court Expression of general agreement with reasons given by the Court the decision of which is under appeal would ordinarily suffice.

Distinguishing its decision in the case of *Addanki Venkatasubbaiah* v *Chilakamarthi Kotaiah*, C.A. No 220 of 1964 decided on 12th August, 1965, the Court held :—

This Court pointed out that on the facts proved, there was no doubt that the auction purchaser had acted as agent of the plaintiff and had taken advantage of the fact that the plaintiff's mother placed confidence in him and had entrusted to him, management of the plaintiff's estate and the suit could not be dismissed under section 66 (1), for it was expressly covered by the terms of section 66 (2) which provides that nothing in sub-section (1) shall bar a suit to obtain a declaration that the name of any purchaser certified as mentioned in clause (1) was inserted in the certificate fraudulently or without the consent of the real purchaser. The contention raised by the appellants must therefore fail.

Sarjoo Prasad, Senior Advocate, (*D P. Singh, R K. Garg, S. C Agarwal* and *M. K. Ramamurthi*, Advocates of *M/s. Ramamurthi & Co.*, with him), for Appellants.

D. Goburdhun, Advocate, for Respondent.

G.R. ——— *Appeal dismissed.*

(SUPREME COURT]

K N. Wanchoo.
J C Shah and
R. S. Bachawat, JJ.
19*th August*, 1966.

Firm Madanlal Roshanlal Mahajan *v.* The Hukumchand Mills Ltd.
C.A. No. 878 of 1964.

Arbitration—Jurisdiction of arbitrator to award pendente lite *interest—Section* 34, *Civil Procedure Code.*

Distinguishing the case of *Seth Thawardas Phenumal* v. *The Union of India*, (1955) 2 S.C.R. 48, 65: (1955) 2 M.L.J. (S.C.) 23: (1955) S.C.J. 445 : A.I.R. 1955 S.C.

468, the Court held· But in later cases, this Court has pointed out that the observations in *Seth Thawardas's case* were not intended to lay down such a broad and unqualified proposition, see *Nachiappa Chettiar* v *Subramaniam Chettiar*, (1960) 2 S C R 209, 238 (1960) 1 An.W R (S C) 101, (1960) 1 M L J (S C) 101 · (1960) S C J 416 A I R 1960 S C. 307, *Satinder Singh* v *Amrao Singh*, (1962) 3 S.C R. 676, 695. The relevant facts regarding the claim for interest in *Seth Thawardas's case* will be found at pages 64 to 66 of the Report and in paragraphs 2, 17 and 24 of the judgment of the Patna High Court reported in *Union of India* v. *Premchand Satram Das*, A I R. 1951 Pat. 201, 204-205.

In the present case, all the disputes in the suit were referred to the arbitrator for his decision One of the disputes in the suit was whether the respondent was entitled to *pendente lite* interest. The arbitrator could decide the dispute and he could award *pendente lite* interest just as a Court could do so under section 34 of the Code of Civil Procedure. Though, in terms, section 34 of the Code of Civil Procedure does not apply to arbitrations, it was an implied term of the reference in the suit that the arbitrator would decide the dispute according to law and would give such relief with regard to *pendente lite* interest as the Court could give if it decided the dispute ·This power of the arbitrator was not fettered either by the arbitration agreement or by the Arbitration Act, 1940 The contention that in an arbitration in a suit the arbitrator had no power to award *pendente lite* interest must be rejected

K L Gosain, Senior Advocate (*S. K Mehta* and *K. L. Mehta*, Advocates, with him), for Appellant

S T. Desai, Senior Advocate, (*S. N Prasad*, Advocate, and *J B Dadachanji*, *O C Mathur* and *Ravinder Narain*, Advocates of *M/s J. B Dadachanji & Co* with him), for Respondents.

G R. *Appeal dismissed.*

[Supreme Court].

K Subba Rao, *C J* and *J. M. Shelat*, *J*
22*nd August*, 1966.

Khub Chand *v.*
The State of Rajasthan
C.A. No. 85 of 1964.

Rajasthan Land Acquisition Act (*XXI Vof* 1953)—*Central Act I of* 1894 (*Land Acquisition Act*).

Referring to *Babu Barkya Thakur* v. *The State of Bombay*, (1961) 1 S C R 128, 140 (1961) 2 S C J 392 A.I R 1960 S C 1203 and *Smt Somawanti* v *The State of Punjab*, (1963) 2 An W R (S C) 18 : (1963) 2 M L J (S C) 18 . (1963) 2 S C J. 35 : (1963) 2 S C R 774, 823, 822 ; A I R. 1963 S C. 151, the Court observed: In the present case, the High Court, as we have expressed earlier, rightly held that the provision for public notice was mandatory, but disallowed the objection on the ground that it was rather belated We find it difficult to appreciate the said reasoning This is not a case where a party, who submitted himself to the jurisdiction of a tribunal, raised the plea of want of jurisdiction when the decision went against him; but this is a case where the appellants questioned the jurisdiction of the tribunal from the outset and refused to take part in the proceedings Though the notification under section 4 was published in the Rajasthan Gazette on 14th February, 1947 Award No 1 was made on 11th December, 1959 and Award No. 2 on 27th June, 1960 The appellants say that they came to know that the awards were made only on 15th September, 1960, and they filed the petition on 26th October, 1960 It cannot, therefore, be said that there was such an inordinate delay as to preclude the appellants from invoking the jurisdiction of the High Court under Article 226 of the Constitution.

Sarjoo Prasad, Senior Advocate (*A. G. Ratnaparkhi*, Advocate, with him), for Appellants.

G C Kaslıwal, Advocate-General for the State of Rajasthan, (*B. P. Maheswari* and *R N Sachthey*, Advocates, with him), for Respondents.

G R. *Appeal allowed.*

[Supreme Court]

K. Subba Rao, *C J* and *J M Shelat*, *J*, 22*nd August*, 1966.

The State of Mysore *v.* S. V Narayanappa. C A No 1420 of 1966.

Mysore Government Order No GAD. 46-*SRR dated* 22*nd September*, 1961—*Rule* 8 (27-A) *of the Mysore Civil Service Rules*, 1958 *definition of "a local candidate"*—*Rule* 1 (A) *of the Mysore Government Servants (Seniority) Rules*, 1957

It is manifest that unless the local service was continuous such service could not be taken into account for the purposes, in particular of pension and increments. How would increments, for example, be granted unless the service prior to such increments was continuous ? The same consideration would also apply in the case of pension It had therefore to be provided as has been done in sub-clause (iv) that a break in service would not be condoned for a period howsoever short Continuity of service is thus a condition for both sub-clauses (2) and (3). The High Court was therefore in error when it said that sub-clause (iv) did not relate to considerations under sub-clause (ii) or that it had reference only to a break in service before 31st December, 1959. The High Court was also in error when it construed sub-clause (ii) to mean that the only thing it required was that the candidate had to be appointed initially prior to 31st December, 1959 and that he had to be appointed initially prior to 31st December, 1959 and that he had to be in service on the two dates, *viz* , 1st January, 1960 and 22nd September, 1961 and that the service during the interval need not be continuous If that construction were to be upheld it would result in injustice, for local candidates not recruited regularly and not in continuous service provided they were in service on the two relevant dates, *viz* , 1st January, 1960 and 22nd September, 1961, would get seniority over candidates regularly appointed after 31st December, 1959 and whose service is continuous. Such a result would manifestly be both unjust and improper and could hardly have been contemplated Therefore the proper interpretation would be that in order that the regularisation order may apply to a particular case the local candidate must be initially appointed prior to 31st December, 1959, he must be in service on 1st January, 1960 and continued to be in service without any break till the date of the said order If his service is regularised, his service from the date of such regularisation would be counted for seniority as against others who were recruited properly under the Rules of Recruitment Under sub-clause (iii) however if the service is continuous from 1st January, 1960 to 22nd September, 1961, such service is to be taken into account for purposes of leave, pension and increments but not for purposes of seniority The construction which we are inclined to adopt thus harmonises all the provisions of the Order and besides results in fairness to all the local candidates appointed by direct recruitment whether regularly or otherwise. For the reasons aforesaid the construction placed by the High Court cannot be sustained.

S T Desai, and *B R L. Iyengar*, Senior Advocates, (*B. R G K Achar*, Advocate with them), for Appellants.

R. B. Datar, *Anil Kumar Sablok* and *B. P. Singh*, Advocates, for Respondents.

G R. *Appeal dismissed.*

[SUPREME COURT]
V. Ramaswami,
V. Bhargava and
Raghubar Dayal, *JJ.*
23*rd August*, 1966.

Shivanarayan Kabra *v.*
The State of Madras.
Cr A. No. 20 of 1964.

Penal Code (*XLV of* 1860), *section* 21 (*d*) *and* (*e*), 420—*Forward Contracts* (*Regulation*) *Act*, 1952, *sections* 15, 17—*Criminal Procedure Code* (*V of* 1898), *sections* 239, 537, 361.

The Forward Contracts (Regulation) Act was passed in order to put a stop to undesirable forms of speculation in forward trading and to correct the abuses of certain forms of forward trading in the wide interests of the community and, in particular, the interests of the consumers for whom adequate safeguards were essential. In our opinion, speculative contracts of the type covered in the present case are included within the purview of the Act One of the contracts in the present case is Exhibit P-42 in which P W. 2 placed an order for supply of 100 bales of cotton Jarila to be delivered in August, 1958 at Rs 654 per candy We think that a contract of this description falls within the definition of "forward contract" within the meaning of this Act and the provisions of that Act are therefore applicable to this case. We consider that Mr. Naunit Lal has been unable to make good his submissions on this aspect of the case.

The legal position has been explained by the Bombay High Court in *Bhagwandas Narotamdas* v *Kanji Deoji*, (1906) I.L R. 30 Bom 205, and affirmed by the Judicial Committee in *Bhagwandas Parasram* v *Burjorji Ruttonji Bomanji*, (1918) L R. 45 I A. 29 . 34 M L J. 305. In the present case, therefore, the appellant was acting as principal to principal, so far as P W. 2 was concerned and the contracts are hit by the provisions of section 15 of the Act.

Even if it is assumed that the appellant did not know English or Tamil the violation of section 361 (1), Criminal Procedure Code was merely an irregularity and it is not shown in this case that there is any prejudice caused to the appellant on this account. In our opinion, the irregularity has not resulted in any injustice and the provisions of section 537, Criminal Procedure Code, are applicable to cure the defect.

Naunit Lal, Advocate, for Appellant.

A. V. Rangam, Advocate, for Respondent.

G R . ——— *Appeal dismissed.*

[SUPREME COURT].
K N Wanchoo,
J C Shah and
R S Bachawat, *JJ*
24*th August*, 1966

M. P. Shreevastava. *v.*
Mrs Veena.
C.A. No 609 of 1966.

Special Marriages Act (*XLIII of* 1954), *section* 47, *Order* 21, *rule* (1) *or* (2), *Civil Procedure Code* (*V of* 1908).

It is not necessary to multiply cases—and they are many—in which applications by judgment-debtors raising questions relating to execution, discharge or satisfaction not falling within Order 21, rule 2 were held maintainable, and absence of a proceeding by the decree-holders to execute the decree was held not to be a bar to the maintainability of the applications In our view, the High Court of Madras was right in its interpretation of section 244 of the Code of Civil Procedure, 1882, when they observed in *Erusappa Mudaliar* v *Commercial and Land Mortgage Bank Ltd* , (1900) 10 M L J 91 I L R. (1900) 23 Mad 377, 380

"We are unable to hold that the dictum of the Punjab High Court in *Mst. Bhagwani* v *Lakhmi Ram and another*, A I R. (1960) Punj. 437, 438, that 'as no execution proceedings (at the instance of the decree-holder) were pending, the Court (which was called upon to determine whether there was an adjustment of a decree by an executory contract) could not be regarded as one which was executing the

decree'" is correct. There is, in our judgment, no antithesis between section 47 and Order 21, rule 2, the former deals with the power of the Court and the latter with the procedure to be followed in respect of a limited class of cases relating to discharge or satisfaction of decrees.

H. R. Gokhale, Senior Advocate (*Miss Rajini Mathur*, Advocate, and *O. C. Mathur*, Advocate of *M/s. J. B. Dadachanji & Co*, with him), for Appellant.

Bishan Narain, Senior Advocate (*Miss Lily Thomas*, Advocate, with him), for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT].

K. Subba Rao, C.J. and *J. M. Shelat, J.*

Gandi Ramamurthy *v.* The State of Andhra Pradesh.

26*th August*, 1966.

C.A. No. 501 of 1964.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)—*Regulation XXV of* 1802, *section* 4—*Meaning of "Manyam" and "Vantarlu"*.

The legal position may therefore be put thus: Under section 4 of Regulation XXV of 1802 the Government was empowered to exclude income from lakhiraj lands, *i.e.*, lands exempt from payment of public revenue and of all lands paying only favourable quit rents, from the assets of the zamindari at the time of the permanent settlement. If the lands fall squarely within the said two categories, there is a presumption that they were excluded from the assets of the zamindari. But if the grant of land was subject to performance of personal services to the zamindar or subject to the payment of favourable rents and also performance of personal service to the zamindar, there is no such presumption. Indeed, the presumption is that in such a case the income from the land was excluded from the assets of the zamindari. The reason for the rule is that in one case the personal services are equated with the full assessment and in the other the favourable rent together with the personal services is equated with full assessment. If the zamindar in one shape or another was getting the full assessment on the lands there was no reason why the Government would have foregone its revenue by excluding such lands from the assets of the zamindari.

The expression "manyam" does not, therefore, necessarily mean a grant for public services. It is also used in a loose sense to indicate an inam. That apart, the word "manyam" is only found in a Kaifiat of 1818 and in no other document it finds a place. Be that as it may, such an ambiguous expression in a solitary document which came into existence in 1818 cannot outweigh the other evidence which we have considered in detail. Nor does the expression "Vantarlu" indicate public servants. It means "foot-servants"; it may also be used to denote a sepoy, whatever may be its meaning, the name is not decisive of the nature of the service. A foot-servant or a sepoy could certainly do personal service to a zamindar; he might look after his safety.

We therefore, agree, with the Division Bench of the High Court holding that the Vantari Muttah of the appellants was part of the Jaggampeta estate and was, therefore, covered by the notification issued by the Government under the Estates Abolition Act, 1948.

R. Ganapathy Iyer, Advocate, for Appellants.

P. Ram Reddy, Senior Advocate (*T. V. R. Tatachari*, Advocate, with him), for Respondent No. 1.

G.R. *Appeal dismissed.*

[SUPREME COURT].

V Ramaswami, V. Bhargava, and *Raghubar Dayal, JJ.* — P. Arulswami *v.* The State of Madras. — 29*th August*, 1966. — Cr As Nos 130 and 131 of 1964.

Madras Village Panchayats Act (*Madras Act X of* 1950), *sections* 106 *and* 127—*Sections* 120-*B and* 409, *Penal Code* (*XLV of* 1860), *section* 197, *Criminal Procedure Code* (1898)—*Government of India Act, section* 270

Section 106 of the Madras Act is similar in language to section 197 of the Criminal Procedure Code and for the reasons already expressed we are of the opinion that the sanction of the State Government was not necessary for prosecution of the appellant under section 409, Indian Penal Code. We accordingly reject the argument of learned Counsel for the appellant on this aspect of the case and dismiss this appeal.

R Ganapathy Iyer, Advocate for Appellant (in both the Appeals).

A V Rangam, Advocate, for Respondent (in both the Appeals)

G R. ——— *Appeals dismissed*

[SUPREME COURT].

V. Ramaswami, V Bhargava, and *Raghubar Dayal, JJ.* — Jagarnath Singh *v.* H Krishna Murthy. — 31*st August*, 1966 — Crl A. No 178 of 1964.

Electricity Act (*X of* 1910), *section* 39—*Section* 44 *and Rule* 138 *of the Act and Rules respectively*

Applying its two earlier cases A I R 1966 S C 849, 852 and in *Ram Chandra Prasad Sharma* v *The State of Bihar*, (Criminal Appeals Nos. 48-51 of 1963 decided on 11th October, 1966) the Court held : The two circumstances in the present case are not sufficient in our opinion, to establish that the appellant did abstract electrical energy by tampering with the meter. The installation of the meter in a dark corner does not show any guilty conscience of the appellant In fact, when the meter was installed by the electric company it could have chosen a better lighted place. The presence of the obstruction in the passage is not sufficient to show that the servants of the company could not have reached the meter for the purpose of inspection and checking whenever they chose to do so There appears to be no statement on the record to the effect that at any time such servants were thwarted in their attempt to check the meter by the appellant or his representatives, or on account of the alleged obstruction in the passage.

It is clear therefore that the appellant's conviction for the offence under section 39 of the Act is bad in law.

We therefore allow the appeal partially and set aside the conviction and sentence of the appellant for the offence under section 39 of the Act. The appeal with regard to the other contentions will stand dismissed.

Akbar Imam and *D Goburdhun*, Advocates, for Appellant

Awadesh Nandan Sahay and *S P. Varma*, Advocates, for Respondent No 1.

G R. ——— *Order accordingly.*

[SUPREME COURT]

V. Ramaswami, V. Bhargava, and *Raghubar Dayal, JJ.* — Lachhi Ram *v.* The State of Punjab. — 2*nd September*, 1966. — Crl A. No. 177 of 1964.

Criminal trial—Evidence—Approver's evidence—Appraisal.

It was held by this Court in *Sarwan Singh* v. *The State of Punjab*, (1957) S C R. 953 : (1957) S.C J. 699 : (1957) M L J. (Crl.) 672, that an approver's evidence

to be accepted must satisfy two tests The first test to be applied is that his evidence must show that he is a reliable witness, and that is a test which is common to all witnesses The test obviously means that the Court should find that there is nothing inherent or improbable in the evidence given by the approver, and that there is no finding that the approver has given false evidence. The second test which thereafter still remains to be applied in the case of an approver, and which is not always necessary when judging the evidence of other witnesses, is that his evidence must receive sufficient corroboration In the present case, as we have pointed out above, the High Court has held that the evidence of the approver was reliable and was corroborated on material particulars by good prosecution witnesses who have been believed by the Court We are, therefore, unable to find any error in the judgment of the High Court in upholding the conviction of the appellant.

B. K Banerjee and *N N Keswani*, Advocates, for Appellant.

B K. Khanna and *R. N. Sachthey*, Advocates, for Respondent.

G R. *Appeal dismissed.*

[Supreme Court].

V Ramaswami, V Bhargava, and *Raghubar Dayal, JJ.*
2nd September, 1966

The State of Gujarat *v* Vinaya Chandra Chhota Lal Pathi.
Crl. A. No. 43 of 1964.

Penal Code (XLV of 1860), *section* 408—*Section* 342, *Criminal Procedure Code (V of* 1898)—*Extra judicial confession—Admissibility.*

The learned Judge is not right in observing that it was not safe to base a conviction on an extra-judicial confession. The conviction in this case was not based merely on the extra-judicial confession There was the evidence of the complainant against the respondent. The extra-judicial confession strongly corroborated that statement. This document too, therefore, was admissible in evidence and had been wrongly ignored by the learned Judge

The other two documents were considered irrelevant and therefore inadmissible in evidence One of them is the statement of the respondent made under section 342, Criminal Procedure Code, on 3rd September, 1960, in a criminal case against him.

We are of opinion that the documents handed over by the respondent to the complainant on 14th December, 1959, and the statement of the respondent dated 3rd September, 1960 provide strong corroboration to the statement of the complainant.

A. S. R Chari, Senior Advocate (*M. V Goswami* and *B. R. G. K. Achar* Advocates, with him), for Appellant.

V. S. Nayyar and *H. M. Chenoy*, Advocates, for Respondent.

G.R. *Appeal allowed*

[Supreme Court].

K Subba Rao, C J. and *J M Shelat, J*
5th Septembe, 1966.

Tilak Ram *v.* Nathu.
C A. No. 36 of 1965.

Limitation Act (IX of 1908), *section* 19—*Redemption of mortgaged property under the Punjab Redemption of Mortgages Act (II of* 1913)—*Test of acknowledgment.*

It is not however necesary to go into the details of these decisions or to decide which of the two views is correct as this Court in *Khan Bahadur Shahpur Fredoom*

Mazda v. *Durga Prasad*, (1962) 1 S C R. 140 . (1963) 1 S.C J 332 : A I R. 1961 S.C. 1236, has examined the contents and the scope of section 19 After first stating the ingredients of the section, this Court stated that an acknowledgment may be sufficient by reason of *Explanation* 1 even if it omits to specify the exact nature of the right. Nevertheless, the statement on which a plea of acknowledgment is based must relate to a subsisting liability. The words used in the acknowledgment must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting that jural relationship. Such an intention, no doubt, can be inferred by implication from the nature of the admission and need not be in express words.

The right of redemption no doubt is of the essence of and inherent in a transaction of mortgage But the statement in question must relate to the subsisting liability or the right claimed. Where the statement is relied on as expressing jural relationship it must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. It follows that where a statement setting out jural relationship is made clearly without intending to admit its existence an intention to admit cannot be imposed on its maker by an involved or a far-fetched process of reasoning.

B C. Misra, Senior Advocate, (*M. V. Goswami*, Advocate, with him), for Appellants.

V. K. Krishna Menon, Senior Advocate, (*Vidya Sagar Nayyar*, Advocate, with him), for Respondent No. 3.

Madan Bhatia and *D. Goburdhun*, Advocates, for Respondents Nos. 1 to 4.

V. K. Krishna Menon, Senior Advocate, (*Madan Bhatia, D P. Singh, S.C. Agarwala*), for Respondens No. 5 (a) and 6 to 10.

G R. *Appeal dismissed.*

[SUPREME COURT.]

V. Ramaswami, V. Bhargava, and *Raghubar Dayal, JJ*
14*th September,* 1966.

The Union of India *v.* Bungo Steel Furniture (P) Ltd
C A. Nos. 373 & 543 of 1965

Arbitration—Arbitration Clause in Agreements—Claim for interest within the jurisdiction of the Arbitrator—Interest Act of 1839—*Civil Procedure Code* (*V of* 1908), *section* 34

Applying the principle decided by the Judicial Committee in *Champsey Bhara and Company* v. *Jivraj Balloo Spinning and Weaving Company, Ltd*, L R (1923) 50 I.A 324 : 44 M L J. 706 (P.C) to the present case, "it is manifest that there is no error of law on the face of the award and the argument of the appellant on this aspect of the case must fail."

In *Bhowanidas Ramgobind* v. *Harasukhdas Balkishendas*, A I R 1924 Cal. 524, the Division Bench of the Calcutta High Court consisting of Rankin and Mookerjee, JJ., held that the arbitrators had authority to make a decree for interest after the date of the award and expressly approved the decision of the English cases—*Edwards* v *Great Western Railway*, (1851) 11 C B. 588, *Sherry* v. *Oke*, (1835) 3 Dow 349 1 H &.W 119, and *Beahan* v *Wolfe* (1832) 1 Al. & Na. 233. The same view has been expressed by this Court in a recent judgment in *Firm Madanlal Roshanlal Mahajan* v *The Hukumchand Mills, Ltd, Indore*, C A No. 878 of 1961, decided on 19th August, 1966. We are accordingly of the opinion that the arbitrator had authority to grant interest from the date of the award to the date of the decree of Mallick, J, and Mr Bindra is unable to make good his argument on this aspect of the case.

N. S. Bindra, Senior Advocate (*R. N Sachthey*, Advocate, with him), for Appellant.

A. K Sen, Senior Advocate (*Miss. Uma Mehta*, and *P. K. Chatterjee* and *P K Bose*, Advocates, with him), for Respondent.

G R ——— *Appeals dismissed.*

[SUPREME COURT.]

K N Wanchoo, J M Shelat, and *G K. Mitter, JJ*
15*th September,* 1966.

Ammathayi *alias* Perumalakkal *v* Kumaresan *alias* Balakrishnan
C A. No 618 of 1964

Hindu Law—Gift to daughter-in-law out of ancestral immovable property—Can it be Stridhan Property—Evidence Act (1 of 1872), *section* 112.

Hindu law on the question of gifts of ancestral property is well settled So far as movable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits A gift for example of the whole or almost the whole of the ancestral movable property cannot be upheld as a gift through affection. (*See* Mulla's Hindu Law, 13th Edition, page 252, para. 225). But so far as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of movable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for 'pious purposes." (*See* Mulla's Hindu Law, 13th Edition, para 226, page 252). Now what is generally understood by "pious purposes" is gift for charitable and/or religious purposes But this Court has extended the meaning of "pious purposes" to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfilment of an antinuptial promise made on the occasion of the settlement of the terms of her marriage and the same can also be done by the mother in case the father is dead. (*See Kamala Devi* v *Bachu Lal Gupta*, (1957) 1 M L J (S C) 66. (1957) 1 An.W.R. (S.C.) 66. (1957) S C J. 321 (1957) S C R. 452 : A.I.R. 1957 S.C. 434.

We have therefore no difficulty in holding that there is no warrant in Hindu law in support of the proposition that a father-in-law can make a gift of ancestral immovable property to a daughter-in-law at the time of her marriage. If that is so, we

cannot see how what the father-in-law himself could not do could be made into a pious obligation on the son as is claimed in this case, for that would be permitting indirectly what is not permitted under Hindu law directly. Further in any case gifts of ancestral immovable property can only be for pious purposes, and we doubt whether carrying out the directions of the father-in-law and making a gift in consequence can be said to be a gift for a pious purpose, specially when the father-in-law himself could not make such a gift. We are therefore of opinion that this gift cannot be upheld on the ground that Rangaswami Chettiar had merely carried out the wishes of his father indicated on the occasion of the marriage of Ammathayee.

Sarjoo Prasad, Senior Advocate (*M. S. Narasimhan*, Advocate, with him), for Appellants

S. V. Gupte, Solicitor-General of India (*A. G. Rathaparkhi*, Advocate, with him), for Respondents Nos. 1 and 2

R. Ganapathy Iyer, Advocate, for Respondent No. 3.

G.R. *Appeal dismissed.*

[Supreme Court.]

K.N. Wanchoo, J.M. Shelat, and *G. K. Mitter, JJ.*
30*th November*, 1966.

Subhas Chandra Das Mushib *v.* Ganga Prosad Das Mushib
C.A. No. 617 of 1964

Contract Act (*IX of* 1872), *section* 16 (1) *to* (3)—*Undue influence—Civil Procedure Code* (*V of* 1908), *Order* 6, *rule* 4.

The law in India as to undue influence as embodied in section 16 of the Contract Act is based on the English Common Law as noted in the judgment of this Court in *Ladli Prasad Jaiswal* v *Karnal Distillery Co., Ltd. and others*, (1964) 2 S.C.J. 12 : (1964) 1 S.C.R. 270 at 300. According to Halsbury's Laws of England, Third Edition, Volume 17, page 673, Article 1298, "Where there is no relationship shown to exist from which undue influence is presumed, that influence must be proved". Article 1299, page 674 of the same volume shows that "there is no presumption of imposition or fraud merely because a donor is old or of weak character". The nature of relations from the existence of which undue influence is presumed is considered at pages 678 to 681 of the same volume. The learned author notes at page 679 that "there is no presumption of undue influence in the case of a gift to a son, grandson, or son-in-law, although made during the donor's illness and a few days before his death". Generally speaking the relation of solicitor and client, trustee and *cestui que trust*, spiritual adviser and devotee, medical attendant and patient, parent and child are those in which such a presumption arises. Section 16 (2) of the Contract Act shows that such a situation can arise wherever the donee stands in a fiduciary relationship to the donor or holds a real or apparent authority over him.

Before however a Court is called upon to examine whether undue influence was exercised or not, it must scrutinise the pleadings to find out that such a case has been made out and that full particulars of undue influence have been given as in the case of fraud. See Order 6, Rule 4 of the Civil Procedure Code.

It will be noted at once that even the expression 'undue influence" was not used in the issue. There was no issue as to whether the grandfather was a person of unsound mind and whether he was under the domination of the second defendant.

Once we come to the conclusion that the presumptions made by the learned Judges of the High Court were not warranted by law and that they did not take a view of the evidence adduced at the trial different from that of the Subordinate Judge on the facts of this case we must hold that the whole approach of the learned Judges of the High Court was wrong and as such their decision cannot be upheld.

Niren De, Additional Solicitor-General of India (*Sukumar Ghose*, Advocate, with him), for Appellant.

P. K. Chatterjee, Advocate, for Respondent No. 1.

G.R. *Appeal allowed.*

[SUPREME COURT]

K. Subba Rao, C J, M Hidayatullah, S M Sikri, V Ramaswami and J M Shelat, JJ.
16th September, 1966

State of Uttar Pradesh *v.* Raja Anand Brahma Shah.
C As Nos 653-655 of 1964

U P. Zamindari Abolition and Land Reforms Act, 1950—*Amendment of the word "Estate" by U.P. Zamindari Abolition and Land Reforms Amendment Act*, 1963 —*Article* 31-*A* (2) *of the Constitution—U P Land Revenue Act*, 1901.

If the State desires to invoke Article 31-A and rely on the definition contained in the first part of clause (*a*) it must show that the area sought to be acquired is an 'estate' within the definition contained in a law relating to land tenures passed before the commencement of the Constitution The relevant definition for our purposes is contained in section 4 (4) of the U P Land Revenue Act, 1901 It is not necessary to decide whether Pargana Agori falls within the definition of 'Mahal' as we have come to the conclusion that Pargana Agori is a Jagir of Inam or a grant of a similar nature within clause (*a*) (i) of Article 31-A (2). But before giving our reasons for this conclusion we will dispose of the contention of the learned Counsel that Pargana Agori is an estate within clause (*a*) (ii) of that Article

In our opinion the word 'including' is intended to clarify or explain the concept of land held or let for purposes ancillary to agriculture The idea seems to be remove any doubts on the point whether waste land or forest land could be held to be capable of being held or let for purposes ancillary to agriculture

We must, therefore, hold that forest land or waste land in the area in dispute cannot be deemed to be an estate within clause (*a*) (iii) unless it was held or let for purposes ancillary to agriculture There is no dispute that the cultivated portion of Pargana Agori would fall within clause (*a*) (iii).

It seems to us that on the facts of the case the grant was in the nature of a grant similar to a Jagir or inam. The fact that Balwant Singh and Chet Singh held possession of this Pargana for 40 years cannot be ignored This shows that to all intents and purposes Adil Shah had lost the Pargana and it was in effect a fresh grant in the nature of Jagir or inam for services rendered to the British Adil Shah's assertion to title had not been verified. Although it may be one of the reasons for the grant, it is clear that if it had not been for the grant and its enforcement by the British Troops Adil Shah would not have been able to recover the possession of the Pargana. His title to the Pargana would rest on the grant and not the alleged previous title

If it is held, as we do hold, that the area in dispute is a grant in the nature of Jagir or inam and consequently an estate within Article 31-A (2), the impugned Act can claim the protection of Article 31-A The notifications dated 30th June, 1953 and July, 1953, must therefore be upheld

In this view it is not necessary to decide whether the area in dispute is a Mahal or covered by a 3 (8) of the Reforms Act as it existed in 1958 or earlier or any other question which was raised before us

In the result the appeals filed by the State are accepted, the appeal filed by the petitioner Raja is dismissed and the petition under Article 226 filed by the petitioner Raja is dismissed. In the circumstances of the case there will be no order as to costs

C K Daphtary, Attorney-General for India and *Shanti Bhushan*, Additional Advocate-General for the State of U P (*O P Rana*, Advocate, with them), for Appellants (in C.As. Nos. 653 and 654 of 1964) and Respondents (in C A No 655 of 1964).

A K Sen and *B R L Iyengar*, Senior Advocates (*V P Misra, S K Mehta* and *K. L Mehta*, Advocates, with them), for Respondent (In C.As. Nos 653 and 654 of 1964) and the Appellant (In C A. No. 655 of 1964)

G.R.

Appeals by State accepted

[SUPREME COURT.]

K Subba Rao, C J,
M Hidayatullah, S M Sikri,
V Ramaswami and
J M Shelat, JJ
16*th September*, 1966.

Raja Anand Brahma Shah *v.*
State of Uttar Pradesh.
C A No. 656 of 1964

Land Acquisition Act (*I of* 1894), *sections* 4, 5-*A*, 6, 7, 17, 18—*Public purpose* —*Meaning of* '*waste land*'.

It is not necessary for us to express any concluded opinion as to whether the production of cement as a commercial enterprise is a public purpose within the meaning of the Act for we consider that the principle of the decision of this Court in *Smt. Somavanti* v *The State of Punjab*, (1963) 2 S C R 774 · (1963) 2 An W R (S C) 18 (1963) 2 M L J (S C) 18 : (1963) 2 S C J. 35 . A.I R 1963 S C 151, applies to this case and the argument of the appellant must be rejected because he has not been able to show that the action of the Government in issuing the notification under section 6 of the Act is a colourable exercise of power

It follows therefore that section 17 (1) of the Act is not attracted to the present case and the State Government had therefore no authority to give a direction to the Collector to take possession of the lands under section 17 (1) of the Act In our opinion, the condition imposed by section 17 (1) is a condition upon which the jurisdiction of the State Government depends and it is obvious that by wrongly deciding the question as to the character of the land the State Government cannot give itself jurisdiction to give a direction to the Collector to take possession of the land under section 17 (1) of the Act. It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding of writ of *certiorari* to determine upon its independent judgment, whether or not that finding of fact is correct (See *R* v. *Shoreditch Assessment Committee*, L R (1910) 2 K B. 859 and *White and Collins* v. *Minister of Health*, L R. (1939) 2 K B. 838.

We are accordingly of the opinion that the direction of the State Government under section 17 (1) and the action of the Collector in taking possession of the land under that sub-section is *ultra vires*.

If therefore in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of section 17 are applicable, the Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue It follows therefore that the notification of the State Government under section 17 (4) of the Act directing that the provision of section 5-A shall not apply to the land is *ultra vires*. The view that we have expressed is borne out by the decision of the Judicial Committee in *Estate and Trust Agencies* (1927), *Ltd* v. *Singapore Improvement Trust*, L R (1937) A.C. 898.

We accordingly hold that the appellant has made good his submission on this aspect of the case and the notification of the State Government under section 6 of the Act dated 12th December, 1950 is *ultra vires* and therefore all the proceedings taken by the Land Acquisition Officer subsequent to the issue of the notification under section 6 must be held to be illegal and without jurisdiction

For the reasons already expressed we hold that the State Government has no jurisdiction to apply the provisions of section 17 (1) and (4) of the Act to the land in dispute and to order that the provisions of section 5-A of the Act will not apply to the land We are further of the opinion that the State Government had no jurisdiction to order the Collector of Mirzapur to take over possession of the land under section 17 (1) of the Act Tne notification dated 4th October, 1950 is therefore illegal. For the same reasons the notification of the State Government under section 6 of the Act, dated 12th December, 1950 is *ultra vires*.

We accordingly hold that a writ in the nature of *certiorari* should be granted quashing the notification of the State Government dated 4th October, 1950 by which the Governor has applied section 17 (1) and (4) to the land in dispute and directed that the provisions of section-5-A of the Act should not apply to the land We further order that the notification of the State Government dated 12th December, 1950 under section 6 of the Act and also further proceedings taken in the land acquisition case after the issue of the notification should be quashed including the award dated 7th January, 1952 and the reference made to civil Court under section 18 of the Act.

B R L Iyengar, Senior Advocate (*V. P. Misra*, *S. K. Mehta* and *K. L. Mehta*, Advocates, with him), for Appellant.

C. K. Daphtary, Attorney-General for India and *Shanti Bhushan*, Additional Advocate-General for the State of U.P. (*O. P. Rana*, Advocate, with them), for Respondents Nos. 1 and 2.

G R. ———. *Appeal partly allowed*

[SUPREME COURT.]

K. Subba Rao, C J., M Hidayatullah, S. M. Sikri, J M Shelat and G K Mitter, JJ

20th September, 1966

Meghraj Kothari *v* The Delimitation Commission. C A. No. 843 of 1966

Delimitation Commission Act, (*LXI of* 1962), *section* 10 (1)—*Articles* 82, 327 *and* 329 *of the Constitution—Representation of People Act*, 1951.

In our view, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under sections 8 and 9 were published in the Gazette of India and in the official gazettes of the States concerned, these matters could no longer be reagitated in a Court of law. There seems to be very good reason behind such a provision. If the orders made under sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court. Section 10 (2) of the Act clearly demonstrates the intention of the Legislature that the orders under sections 8 and 9 published under section 10 (1) were to be treated as law which was not to be questioned in any Court

In this case it must be held that the orders under sections 8 and 9 published under section 10 (1) of the Delimitation Commission Act were to make a complete set of rules which would govern the readjustment of number of seats and the delimitation of constituencies.

In this case the powers given by the Delimitation Commission Act and the work of the Commission would be wholly nugatory unless the Commission as a result of its deliberations and public sittings were in a position to readjust the number of seats in the House of the People or the total number of seats to be assigned to the Legislative Assembly with reservation for the Scheduled Castes and Scheduled Tribes and the delimitation of constituencies It was the will of Parliament that the Commission could by order publish its proposals which were to be given effect to in the subsequent election and as such its order as published in the notification of the Gazette of India or the Gazette of the State was to be treated as law on the subject.

In the instant case the provision of section 10 (2) of the Act puts orders under sections 8 and 9 as published under section 10 (1) in the same status as a law made by Parliament itself which, as we have already said, could only be done under Article 327, and consequently the objection that the notification was not to be treated as law cannot be given effect to.

G. N. Dikshit, K. L. More and *R. N Dixit*, Advocates, for Appellant

Niren De, Additional Solicitor-General of India (*R Ganapathy Iyer*, *R. H Dhebar* and *B. R G K. Achar*, Advocates, with him), for Respondents Nos. 1 to 4 and 14.

S. S. Shukla, Advocate, for Respondent No. 5.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT]

K Subba Rao, C J,
M. Hidayatullah,
S M. Sikri, J M Shelat and
G K Mitter, JJ
21*st September*, 1966

The State of Assam *v.*
Rana Muhammad
C.As Nos. 1367-1368 of 1966.

Constitution of India (1950), *Articles* 233 *and* 235—*Interpretation—Power to transfer District Judges lies with the Government or with the High Court*

As the High Court is the authority to make transfers, there was no question of a consultation on this account The State Government was not the authority to order the transfers There was, however, need for consultation before D. N Deka was promoted and posted as a District Judge That such a consultation is mandatory has been laid down quite definitely in the recent decision of this Court in *Chandra Mohan* v *State of U P.*, A.I R. 1966 S C 1987. On this part of the case it is sufficient to say that there was no consultation

Purshottam Trikumdas and *A. K Sen*, Senior Advocates (*Naunit Lal* and *Vineet Kumar*, Advocates, with them), for Appellant

Sarjoo Prasad, Senior Advocate (*Vinoo Bhagat* and *S. N. Prasad*, Advocates, with him), for Respondent No 4.

G R. ——— *Appeals dismissed.*

[SUPREME COURT.]

K Subba Rao, C J , M Hidayatullah,
S. M. Sikri, J M Shelat and
G K Mitter, JJ
21*st September*, 1966

P. L. Lakhanpal *v.*
The Union of India.
W.P No. 137 of 1966.

Defence of India Rules, rule 30 (1) (*b*) ultra vires *section* 3 (2) (15) (*i*) *of the Defence of India Act*, 1962—*Defence of India* (*Delhi Detenues*) *Rules*, 1964, *rule* 23—Mala fide *order—Right of Representation under section* 44 *of the Act—Meaning of word* '*decide*'—*Preventive Detention Act.*

The question is : what precisely does the word "decide" in rule 30-A mean ? It is no doubt a popular and not a technical word According to its dictionary meaning "to decide" means "settle (question, issue, dispute) by giving victory to one side , give judgment (between, for, in favour of, against), bring, come, to a resolution" and "decision" means "settlement, (of question *etc.*), conclusion, formal, judgment, making up once mind, resolve, resoluteness, decided character" As Fazl Ali, J , observed in *Province of Bombay* v. *Advani*, (1950) S.C. R. 621 at 642 . (1950) 2 M L J 703 (1950) S C J. 451 A I.R 1950 S C 222·

The scheme of rules 30 (1) and 30-A is totally different from that of the Preventive Detention Act Where an order is made under rule 30 (1) (*b*) its review is at intervals of periods of not more than six months The object of the review is to decide whether there is a necessity to continue the detention order or not in the light of the facts and circumstances including any development that has taken place in the meantime If the reviewing authority finds that such a development has taken place in the sense that the reasons which led to the passing of the original order no longer subsist or that some of them do not subsist, that is not to say that those reasons did not exist at the time of passing the original order and therefore the satisfaction was on grounds which did not then exist It is easy to visualise a case where the

authority is satisfied that an order of detention is necessary to prevent a detenu from acting in a manner prejudicial to all the objects set out in rule 30 (1) At the end of six months the reviewing authority on the materials before it may come to a decision that the detention is still necessary as the detenu is likely to act in a manner prejudicial to some but not all the matters. Provided such decision is arrived at within the scope of rule 30-A the decision to continue the detention order would be sustainable. There is thus no analogy between the provisions of review in the two Acts and therefore decisions on the Preventive Detention Act cannot be availed of by the petitioner.

As regards the contention as to *mala fides* it will be observed that the original order was passed by the Union Home Minister while the order under rule 30-A was passed by the Minister of State of Home Affairs The first part of the contention has already been rejected by this Court in the petitioner's earlier Writ Petition and therefore cannot be reagitated

Petitioner in Person.

S. V. Gupte, Solicitor-General of India (*R. H. Dhebar* and *B R. G K. Achar*, Advocates, with him), for Respondents

G R. ——— *Petition dismissed*

[SUPREME COURT.]

K N Wanchoo, J. M. Shelat and G K Mitter, JJ.
23rd September, 1966.

State of Assam *v.* Kripanath Sarma
C As Nos 950-957, 1141-1143 and 1703-1712 of 1966

Assam Primary Education Act (*XIII of* 1947) *repealed by Assam Basic Education Act* (*XXVI of* 1954) (*hereinafter referred to as* 1954 *Act*) *also repealed by Assam Elementary Education Act, XXX of* 1962 (*hereinafter referred to as the Act*)—*Article* 311 (2) *of the Constitution—General Clauses Act* (*X of* 1897)—*Assam General Clauses Act II of* 1915

We are in agreement with the High Court though for slightly different reasons, that the services of the respondent-teachers could not be terminated by the Assistant Secretary of the State Board under section 14 (3) (iii) of the Act read with section 18 of the 1915 Act.

This brings us to the alternative argument, namely, whether the respondents have been dismissed by the State Board. . . . .

The question that arises therefore is whether the said resolution can be said to have terminated the services of anyone at all. It certainly begins by saying that "all teachers who are not matriculates or who have not passed the Teachers Test but who are working as teachers in schools shall be discharged with effect from 31st March, 1963". It is not in dispute that at the time when this resolution was passed there was no list of teachers who were not matriculates or who had not passed the Teachers' Test before the State Advisory Board. So the resolution in our opinion cannot be read as amounting to terminating anyone's service and must only be read as laying down principles which would have to be applied for dispensing with the services of certain teachers from 31st March, 1963 if conditions mentioned in the resolution are satisfied. Legally, a resolution like this cannot be read as an order dismissing persons whose names were not even known to the authority passing it. If this resolution really amounted to an order of discharge of particular persons, it should have been communicated to them, for without such communication it would be of no use for the purpose of terminating the services of anybody (see *Bachittar Singh* v. *The State of Punjab*, (1962) 3 Suppl S C R. 713 . A.I R. 1963 S C 395). It is not in dispute that this resolution was not communicated to any teacher as such and obviously it could not be communicated to any teacher who might even be governed by its terms for the State Advisory Board did not know to which particular teachers it might or might not apply. It must therefore be read not as an order terminating the services of anybody but as an indication of policy to be pursued for discharge of teachers as from 31st March, 1963.

Therefore the orders issued in the present case terminating the services of the respondent-teachers were invalid, for they were not orders of the State Board terminating the services of the respondents, they must be held to be orders of the Assistant Secretary who had no power to terminate the services of the respondents.

S. V. Gupte, Solicitor-General of India (*Naunit Lal*, Advocate, with him), for Appellant (In C.As. Nos 950-957 of 1966)

Naunit Lal, Advocate, for Appellants (In C As. Nos 1141-1143 and 1703-1712 of 1966).

Hareshwar Goswami, *K Rajendra Chaudhury* and *K. R Chaudhury*, Advocates, for Respondent No 1 (In C A No 950 of 1966)

K. Chaudhury, Advocate (*K. Rajendra Chaudhury*, Advocate with him), for Respondent No. 1 (In C.As. Nos. 952 and 953 of 1966)

D. N. Mukherjee, Advocate, for Respondent No. 1 (In C A No. 1142 of 1966) and Respondents 2 to 9, 10, 11, 13 to 18, 20 to 22, 24, 26 and 27 in C A. No 1143 of 1966

Vineet Kumar, Advocate, for Respondent No 2 (In C.As. Nos. 950-957 of 1966).

G.R. ——— *Appeals dismissed.*

[SUPREME COURT]

M. Hidayatullah, *S. M Sikri*, *R. S. Bachawat* and *Raghubar Dayal*, *JJ.*
23rd September, 1966.

The State of Assam *v.* Horizon Union
C A. No. 1565 of 1966

Industrial Disputes Act (*XIV of* 1947), *Amendment by Act* (*XXXVI of* 1956)—*Assam Act VIII of* 1962—*Industrial Disputes Amendment Act* (*XXXVI of* 1964)—*Assam Judicial Service* (*Senior*) *Rules*, 1952.

We are satisfied that during the period from 8th March, 1957 upto 24th April, 1958, Shri Dutta, while officiating as a Registrar of the High Court, continued to hold the office of an Additional District Judge. Consequently, during this period he had been an Additional District Judge as required by section 7-A (3) (*aa*) To satisfy the requirement of section 7-A (3) (*aa*) it was not necessary that he must have actually worked as an Additional District Judge for this period The High Court was in error in thinking that in order to satisfy the conditions of section 7-A (3) (*aa*), Shri Dutta should have actually worked as an Additional District Judge for a period of not less than three years

The appointment of Shri Dutta as the Presiding Officer of the Industrial Tribunal was made without consultation with the High Court. Respondent No I submitted that, consequently, there was no compliance with the proviso to section 7-A (3) (*aa*) inserted by Assam Act VIII of 1962. This contention has no force In respect of the subject-matter of the appointment of a person who has for a period of not less than three years been a District Judge or an Additional District Judge, clause (*aa*) inserted by Central Act XXXVI of 1964 impliedly repealed clause (*aa*) inserted by the Assam Act Clause (*aa*) inserted by the Central Act is intended to be an exhaustive code in respect of this subject-matter The Central Act now occupies this field. The provisions of clause (*aa*) inserted by the Assam Act on this subject are repugnant to clause (*aa*) inserted by the Central Act and by Article 254 of the Constitution to the extent of this repugnancy, is void Clause (*aa*) of section 7-A (3) inserted by the Central Act does not require any consultation with the High Court.

M C. Setalvad, Senior Advocate (*Naunit Lal*, Advocate, with him), for Appellant.

D. Gobundhan, Advocate, for Respondent No 2

G.R. ——— *Appeal allowed.*

[SUPREME COURT]

K Subba Rao, C J.
M Hidayatullah,
S M. Sikri, R. S. Bachawat and *Raghubar Dayal, JJ*
26th September, 1966

M/s. Shinde Brothers *v.*
The Deputy Commissioner, Raichur.
C As. Nos 1580-1586,1588 and 1590-1600 of 1966.

Mysore Health Cess Act (*Mysore Act XXVIII of* 1962)—*Mysore Excise Act* (*V of* 1901)—*Hyderabad Abkari Act* (*I of* 1316 *Fasli*)—*Madras Abkari Act,* 1886 (*Madras Act I of* 1886)—*Meaning of word "excise duty" "Countervailing duty", "Abkari Revenue", "Sale" or "Selling", "Manufacture", "Excisable Article", "Arrack"—Entry* 51, *List II of the Constitution*

By Majority—The health cess sought to be levied under the impugned Act on shop rent does not fall within item 1 of Schedule A of the Impugned Act or Entry 51, List II of the Constitution.

No notification or notifications issued under section 3 were placed before us. We are, therefore, unable to say whether the levy of the Health Cess under the Act of 1951 stands on the same basis. Further no particulars are given in the petitions as to the dates of payments and no reason is given why the levy of Health Cess under the Act of 1951 was not challenged earlier. In the circumstances we decline to adjudge on the validity of the Health Cess Act, 1951, and the notifications issued under it. The petitioners will, however, be at liberty to file suits, if so advised, to recover the amounts alleged to have been paid by them under the Health Cess Act, 1951.

In the result the appeals are allowed and it is declared that the State of Mysore had no authority to levy and collect health cess under the Mysore Health Cess Act, 1962, on shop rent, and an order or direction in the nature of writ of *mandamus* be issued restraining the respondents from enforcing the demand for payment of health cess under the impugned Act, and further an order be issued directing the respondents to refund the health cess illegally collected under the Health Cess Act, 1962. There would be no order as to costs

D R. Venkatesa Iyer, Advocate and *O. C Mathur, J. B. Dadachanji* and *Ravinder Narain*, Advocates of *M/s J B Dadachanji & Co.*, for Appellants (In C As. Nos 1580 to 1586 and 1588 of 1966

M. K. Nambyar, Senior Advocate (*D. R. Venkatesa Iyer*, Advocate and *O C. Mathur, J. B Dadachanji* and *Ravinder Narain*, Advocates of *M/s. J B. Dadachanji & Co*, with him), for Appellants (In C As Nos 1590-1594, 1596 and 1599-1600 of 1966).

M. C. Setalvad, Senior Advocate (*D R. Venkatesa Iyer*, Advocate and *O. C Mathur, J. B Dadachanji* and *Ravinder Narain*, Advocates, of *M/s J B. Dadachanji & Co*, with him), for Appellants (In C As. Nos. 1597 and 1598 of 1966).

K. R. Chaudhury, S. P Satyanarayana Rao and *K. Rajendra Chaudhuri*, Advocates, for Appellant (In C A No 1595 of 1966)

R H. Dhebar, Advocate, for Respondents (In C As. Nos. 1580 to 1586, 1588 and 1595 of 1966).

H R Gokhale and *B R L. Iyengar*, Senior Advocates (*R H Dhebar*, Advocate, with them), for Respondent (In C As Nos 1590 to 1600 of 1966)

G R

Appeal allowed.

[SUPREME COURT]

K. Subba Rao, C J, M Hidayatullah, S M. Sikri, V Ramaswami and *J M Shelat, JJ*
27th September, 1966

Gulabbhai Vallabbhai Desai *v.* The Union of India.
W P Nos 148, 149, 233 and 238 of 1962, and 216 of 1963.

Constitution (Twelfth Amendment) Act, 1962—*First Schedule to the Constitution Amendment of Entry 7, Article* 240 *of the Constitution—Goa, Daman and Diu (Administration) Ordinance*, 1962—*Articles* 14, 19 *and* 31 *and* 31-*A of the Constitution—Legislative Enactment No* 1785 *of* 1896 *amended by Legislative Enactment No* 1791 *of* 1958—*The Protuguese Civil Code*

The difficulty in the present case is that all the constitutional amendments have come with retrospective effect The Seventeenth Amendment replaces Article 31-A with modifications retrospectively from 26th January, 1950 It is not, therefore, possible to read Article 31-A in any manner other than that indicated by the Seventeenth Amendment • It is also not possible to say that the President in the 13th year of the Republic of India anticipated what Parliament would introduce retrospectively into the Constitution in the 15th year of the Republic The President cannot, therefore, be said to have been cognizant of the limits of his own power in 1962 when he made the Regulation and to have made it accord with the definition of 'estate' in Article 31-A In this connection it is not possible to compare the definition of 'land' in the Regulation with the definition of 'estate' as given in the earlier versions of Article 31-A because by the force of the Seventeenth Amendment the earlier version of the article completely disappears and may be said to have never existed at all. The result, therefore, is that the definition of 'land' in the Regulation being at variance with the definition of 'estate' cannot stand with it. But as it is severable it does not affect the operation of the Regulation which will operate but the protection of Article 31-A will not be available in respect of land not strictly within the definition of Article 31-A In other words, 'land' would include not every class or category of land but only lands held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pastures or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans Land which does not answer this description is not protected from an attack under Articles 14, 19 and 31 and it is from this point of view that the cases of the petitioners before us must be examined where categories of land other than those stated in Article 31-A (2) (*a*) (iii) are mentioned

A. K Sen, Senior Advocate (*R J Joshi, B. Dutta* and *Dalip M Desai*, Advocates, and *J B. Dadachanji, O C Mathur* and *Ravinder Narain*, Advocates of *M/s J.B. Dadachanji & Co.* with him), for Petitioner (In W P. No 148 of 1962)

Purshottam Trikumdas, Senior Advocate (*R J Joshi, B Dutta* and *Dalip, M. Desai*, Advocates, and *J B Dadachanji, O C Mathur* and *Ravinder Narain*, Advocates of *M/s. J. B Dadachanji & Co*, with him), for Petitioner (In W P. No. 149 of 1962)

R. J Joshi and *B Dutta*, Advocates, and *J B Dadachanji, O C Mathur* and *Ravinder Narain*, Advocates of *M/s J B Dadachanji & Co*, for Petitioners (In W P Nos. 233 and 238 of 1962).

Purshottam Trikumdas, Senior Advocate (*B. Dutta*, Advocate, and *J B. Dadachanji, O. C Mathur* and *Ravinder Narain*, Advocates of *M/s J B Dadachanji & Co*, with him), for Petitioners (In W.P No 216 of 1963)

C K Daphtary, Attorney-General for India and *N S Bindra*, Senior Advocate, (*R H Dhebar* and *B R G K Achar*, Advocates, with them), for Respondent No 1 (In all the Petitions).

G R. ——— *Order accordingly.*

[SUPREME COURT]

K. Subba Rao, C J,
M. Hidayatullah,
S M Sikri,
R S. Bachawat and
Raghubar Dayal, JJ
30th September, 1966

Samyukta Socialist Party *v.*
Election Commission of India
C A No 1653 of 1966.
Madhu Limaye *v.*
Election Commission of India
W P No 193 of 1966.

Election Symbol 'Hut' and 'Tree'—Conduct of Elections Rules, 1961, *rule* 5.

The question is whether the Election Commission acted capriciously or without jurisdiction We think the facts support the action of the Election Commission and also that it was within its jurisdiction If the Praja Socialist Party. after the break-up, was a new party or had a new leadership then the symbol, which originally belonged to the defunct Praja Socialist Party, could not be claimed by the new Praja Socialist Party as a matter of right, but if it was the same party with the same leaders which contested the earlier elections with the symbol of 'Hut' there was complete justification in restoring the party to its original position so that the advantage of a symbol identified with a party should not be lost to it Although we are clear that a change of symbol by the Election Commission arbitrarily would be outside its competency, because the Rules framed by the Central Government and supplemented by the Election Commission in its Notification do not contemplate a discretion in the Election Commission, there is some jurisdiction in the Election Commission to regulate or restrict the choice of symbols in circumstances such as this Although no power is given to the Election Commission to impose its own wishes on parties or candidates, it can, in a suitable case, restore the lost advantage to a party before the symbol can be said to be finally assigned to another party. Can we, therefore, say, in this case, that the Election Commission imposed its will arbitrarily or capriciously on the Samyukta Socialist Party when it took away the symbol of 'Hut' from it? On a careful consideration of the correspondence between the Election Commission on the one hand, and the Praja Socialist Party on the other, and taking into consideration all available facts, we are satisfied that the action of the Election Commission was within its jurisdiction when it recognized the choice of the symbol by the Praja Socialist Party and cannot be described as an interference with the choice of the Samyukta Socialist Party.

To begin with the action is *bona fide*, for no malice or any other improper motive has even been suggested.

It is clear, therefore, that the Election Commission proceeded along the right lines and reached the right conclusion both legally and in the light of the facts ascertained by it from impartial sources We see no force in the appeal and it will be dismissed but we make no order as to costs

H R. Gokhale, Senior Advocate (*J P Goyal,* Advocate, with him), for Appellant and Petitioner

N. S Bindra, Senior Advocate (*R H Dhebar,* Advocate, with him), for Respondent No 1 (In C.A No. 1653 of 1966) and Respondents Nos 1 and 3 (In W.P. No. 193 of 1966)

Purshottam Trikumdas, Senior Advocate (*T. R Bhasin, S C. Malik, S K. Mehta* and *K L Mehta,* Advocates, with him), for Respondent No 2 (In C A. No. 1653 of 1966 and W P No 193 of 1966)

G.R. *Appeal and Petition dismissed.*

[SUPREME COURT]

V. Ramaswami,
V Bhargava and
Raghubar Dayal, JJ.
30th September, 1966.

Bungo Steel Furniture (P); Ltd. *v.*
.The Union of India.
C As. Nos 754 and 755 of 1964.

Contract Act (IX of 1872), *section* 73—*Sale of Goods Act (III of* 1930), *section* 55—*Award of Arbitrator*

By majority —The H gh Court, in setting aside the award, was of the view that in dealing with compensation payable by the Government to the appellant the learned Umpire had acted contrary to the principles recognised in law for assessing compensation In our view, considering the principles which apply to the exercise of the power of a Court to set aside an award of an arbitrator, this order by the High Court was not justified

It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the Court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself

In the circumstances, it has to be held that the Umpire, in fixing the amount of compensation, had not proceeded to follow any principles, the validity of which could be tested on the basis of laws applicable to breaches of contract He awarded the compensation to the extent that he considered right in his discretion without indicating his reasons. Such a decision by an Umpire or an Arbitrator cannot be held to be erroneous on the face of the record We, therefore, allow the appeals with costs, set aside the appellate order of the High Court, and restore that of the learned Single Judge

A. K. Sen, Senior Advocate (*Uma Mehta*, [*P. K Chatterjee* and *P. K. Bose*, Advocates, with him), for Appellant

N S. Bindra, Senior Advocate (*R N Sachthey*, Advocate, with him), for Respondent

G.R ——— *Appeals allowed.*

[SUPREME COURT]

K Subba Rao, C J.,
M. Hidayatullah, S M Sikri,
R S Bachawat and
Raghubar Dayal, JJ
3rd October, 1966

State of Assam *v*
Kanak Chandra Dutta.
C A. No. 254 of 1964

Constitution of India (1950), *Article* 311 (2)—*Whether a Mauzadar in the Assam Valley holds a civil post.*

In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post Article 310 (2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post A post under the State means a post under the administrative control of the State The

State may create or abolish the post and may regulate the conditions of service of persons appointed to the post

Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary There is a relationship of master and servant between the State and him He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments He is a responsible officer exercising delegated powers of Government Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers Originally, a Mauzadar may have been a revenue farmer and an independent contractor But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

S V Gupta, Solicitor-General of India (*Naunit Lal*, Advocate, with him), for Appellant.

K R Chaudhuri, Advocate, for Respondent

G R

Appeal dismissed

[Supreme Court]

K N Wanchoo,
J M Shelat and
G K Mitter, JJ
5th October, 1966.

Shyam Sunder *v*
Satya Ketu
C A. No. 204 of 1966

Representation of People Act (*XLIII of* 1951) *sections* 98 *and* 116-*A—Conduct of Election Rules*, 1961, *rule* 73—*Maintainability of the appeal before the High Court—Code of Civil Procedure*

We are of opinion that in view of the provisions of the Act it is unnecessary to prepare a decree after the conclusion of the trial of an election petition, section 90 (1) would not make those provisions of the Code of Civil Procedure which require the preparation of a decree applicable to the trial of an election petition, for the Code of Civil Procedure has to be applied to such trial as nearly as may be and subject to the provisions of the Act. Further we have no doubt that preparation of a decree is not necessary after the conclusion of the trial of an election petition.

Let us then turn to section 116-A of the Act to see if there is anything in that section which requires the filing of a decree along with copy of the judgment of the tribunal Section 116-A *inter alia* provides for appeals against orders made by a tribunal, under section 98 We have already referred to the fact that section 98 does not speak of a decree. Section 116-A provides for an appeal not from a decree of the tribunal but from an order passed by it *inter alia* under section 98. It is true same procedure with respect to such an appeal as if the appeal were an appeal from an original decree passed by a civil Court. But that in our opinion does not mean that a copy of decree is necessary before an appeal under section 116-A is maintainable, for the simple reason that the scheme of the Act shows that no decree is necessary to be prepared by the tribunal at all and the appeal under section 116-A (1) is also from an order and not from a decree In this connection we may refer to section 96 of the Code of Civil Procedure which provides for an appeal from an original decree That section *inter alia* provides that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court. It will be seen that section 96 of the Code of Civil Procedure provides for appeal from a decree in a suit, and that is why it is necessary to prepare a decree, the same is also provided in section 33 of the Code of Civil Procedure which in terms lays down that "the

Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow". We have no corresponding words in sections 98 and 116-A of the Act, and that shows that it is not necessary to prepare a decree at the conclusion of the trial of an election petition and in consequence no copy of decree is necessary to be filed when an appeal is filed under section 116-A of the Act

G. N Dikshit, Advocate, for Appellant

R. K Garg and *S C Agarwal*, Advocates of *M/s Ramamurthi & Co*, for Respondent No 1

G.R. ——— *Appeal dismissed*

Anantanarayanan, C J
2nd September 1966

A R Lakshmanan Chettiar *v*
Vadivelu Ambalam
C R P. No. 1844 of 1964

Civil Procedure Code (V of 1908), Order 16, rule 19 and Order 26, rule 4—Witness residing beyond the limits fixed under Order 16, rule 19—Commission for examination of witness—Discretion—Suit on assigned promissory note—Defendant disputing consideration and factum of assignment for payment—Commission to examine assignor residing beyond the limit fixed under Order 16, rule 19—Commission to be issued.

Where a witness is not under the control of the party asking for the commission and he resides beyond the limits fixed under Order 16, rule 19 of the Code, it would be a proper exercise of judicial discretion to issue the commission, if the evidence of that witness is essential for the party seeking to have him examined

Where the witness is the assignor of the negotiable instrument and it seems reasonable for the defendant to contend that his evidence is essential as the defendant disputes the consideration under the document and the factum of assignment for payment made by the holder, the Commission can be issued to examine the assignor

Jagannatha v *Sarathambal*, A I R 1923 Mad 321, referred

K. Chandramouli, for Petitioner

Respondent not appearing in person or by Advocate

V.S ——— *Petition allowed.*

M. Anantanarayanan, C J
29th September, 1966

Kuppuswamy Goundar *v.*
Pichaikara Goundar.
C R P No 2447 of 1965

Madras Panchayats Act (XXXV of 1958)—Election Tribunal—Bare inspection and recount of votes rejected by the Returning Officer—Not matters of mere routine—Election petition to contain sufficient materials—Satisfaction of the Election Tribunal about necessity for inspection to do justice to controversy—Essential grounds

The respondent challenged the election of certain members to the Panchayat on the ground that 22 votes had been refused or rejected by the Returning Officer and that this was 'improper, invalid and illegal.' The District Munsif as the Election Tribunal, sent for these 22 votes, made an inspection and recount, accepted some votes and rejected others. He went into the propriety of other votes also, some of which he rejected In the result he altered the results by declaring that the petitioner herein has lost the election On a revision filed at the instance of the petitioner,

Held, the proceedings of the Election Tribunal are vitiated by error and are without jurisdiction

Even a bare inspection and recoun of votes rejected by the Returning Officer are not matters of mere routine An order for inspection was not a matter of course and that having regard to the secrecy of the ballot, the Court would be justified in granting the order for inspection only on two conditions being fulfilled, namely,

(1) that the petition itself contained an adequate statement of material facts relied on by the petitioner in support of his case and (2) that the Tribunal was *prima facie* satisfied that in order to satisfactorily do justice to the controversy, inspection of the ballot papers was essential

The mere statement that the rejection of 22 votes was 'improper, invalid and illegal' is not at all sufficient compliance with the requirement

T R Ramachandran, for Petitioner

K Venkataswami, amicus curiae

V S. *Orders accordingly.*

Ramamurthi, J
14th November, 1966

Divisional Inspector of Schools, Coimbatore *v.* Ramachandran.
S.A. No. 309 of 1965.

Practice—Correction of age entered in service register—Remedy by way of suit—If available.

Plaintiff, Headmaster of a School, filed a suit for declaring his correct age, and for injunction against the Educational Authority, not to retire or compel his retirement before his superannuation, according to the correct age.

Trial Court dismissed the suit holding that the plaintiff had made efforts to correct his date of birth in 1941 against the Educational authority and as he knew the mistake long ago, he could not rectify the same on the eve of his retirement.

Appellate Court reversed the decree, holding that neither Article 96 nor Article 120 was a bar and gave the declaration and injunction.

Held, on appeal, (*a*) age entered in the Service Register on the entry of service was only tentative, (*b*) that plaintiff's right to have his age corrected was only in a civil Court, (*c*) that the suit was not barred by limitation; and (*d*) that the plaintiff was entitled to declaration as to his age and that he must be considered to have continued in service until his superannuation and would be entitled to claim salary and emoluments

Judgments of the Supreme Court in C.A. No. 265 of 1964 dated 26th April, 1966 and C A. No 304 of 1962 dated 1st December, 1965, I.L R (1937) All. 434; A.I.R 1961 All. 502 ; (1959) S.C.R. 1236 · (1959) S.C.J. 78 ; (1961) 1 M.L.J. 273 : I.L.R (1961) Mad. 747, referred to

G. Ramanujam and *K. Gopalaswami*, for Appellant.

V. Tyagarajan, T R Ramachandran and *K Sridharan*, for Respondent.

R.M *Appeal dismissed*

Krishnaswami Reddy, J.
9th December, 1966

Hajee Abdul Hatheef *v.* Sri Sarguna Srava Samarasa Sangam.
C R P. No 2370 of 1964

Contract—Illegal performance—If affects validity of contract and bars recovery of amount due under it—Illegality in making contract and illegal performance—Distinction—Contract for carriage of passengers for hire—Vehicle having no licence to ply—Suit by owner of vehicle to recover hire charges—If barred—Contract Act (IX of 1872), section 23—Applicability.

Merely because the performance of a contract is done illegally, the person who has performed the contract is not debarred from suing for recovery of the amount due to him in respect of the performance of his part of contract A contract is illegal and void if the consideration for it is illegal ; but where the contract being legal and valid, the contract is performed illegally, it does not affect the right of the person performing his part to recover the amount due to him for performing it

A lorry was engaged for hire to carry passengers for specified charges, and the lorry owner duly carried out his part by carrying the passengers according to his undertaking. Not having been paid, he sued the party who engaged him to recover the charges for the carriage of the passengers It was pleaded in defence that the lorry had no licence to ply and the owner having plied it without licence was guilty of an offence in plying and hence he was disentitled from suing for the hire charges.

Held, the illegality in the performance of the contract was no bar to the suit for recovery of the hire charges Though the plying of the lorry was an offence and the undertaking was done illegally, the owner was not debarred from recovering the charges for the hire.

Section 23 applies only to a contract which is itself void as being for an illegal consideration, but it does not apply to a contract which is validly made, though it is illegally performed.

(1956) 3 All E R. 683, followed.

A. K. Sriraman, for Petitioner.

P. S. Balakrishna Iyer and *P. S. Ramachandran*, for Respondents.

K.S. *Revision allowed in part.*

Venkataraman, J
24th August, 1966

M N Subramania Mudaliar *v.* Shanmugam Chettiar.
C M P No. 8793 of 1966 in S A No. 557 of 1960

Compromise decree—Time essence of the contract—Extension of time—No jurisdiction on the Court.

Under the terms of the compromise decree the defendants were given four years' time for delivering possession of the property to the plaintiff After the period of four years was over the defendants applied for extension of time.

Held. In a compromise decree where time is the essence of the decree for delivering possession of the property, the Court has no jurisdiction to extend the time.

T. K Subramania Pillai, for Petitioner.

D. Ramaswami Iyengar, for Respondent

V.S.

Petition dismissed.

Kailasam, J
1*st September*, 1966

Gangadhar Narasingdas Agarwal *v.* Union of India.
W P Nos 3948 of 1965, 1592, 1593, 1594 and 1601 of 1966.

Foreign Exchange Regulation Act (*VII of* 1947), *sections* 12 (1) *and* 12 (2)—*Declaration under section* 12 (1)—*Requirements—Section* 12 (2) *when attracted.*

Interpretation of Statutes—Resort to rules framed under a statute to interpret a section of the statute—Permissibility

Foreign Exchange Regulation Act (*VII of* 1947), *section* 12 (1)—*Notification, dated 4th August*, 1947, *issued by the Central Government under—Validity*

Words and Phrases—"Any"

Foreign Exchange Regulation Rules (1952), *rule* 3—*Validity.*

General Caluses Act (*X of* 1897), *section* 6 (e)—*Scope and effect.*

The argument that section 12 (1) of the Foreign Exchange Regulation Act (1947) does not make it incumbent on the exporter to furnish the true export value of the goods and that all that he is called upon to do is to undertake that the amount as noted in the invoice would be paid in the prescribed manner, is untenable. What is required of the exporter is a declaration that the amount given in the invoice is the full export value of the goods and that the value of the goods has been or will be paid in the prescribed manner.

To hold otherwise would result in defeating the very object of the section. If the correct value is not given and the undertaking is restricted to realisation of the undervalued amount, the full price of the exported goods will not be available to the country.

Section 12 (1) does not admit of any ambiguity in this regard. But even if it is taken that the words of the section are not very clear, the Court may refer to the rules made under the Act, namely, the Foreign Exchange Regulation Rules (1952) which are directed by the statute to be read as part of the Act, for as stated by Craies on Statute Law (6th Edition, page 157) where the language of an Act is ambiguous the Court may refer to the rules made under the Act especially where such rules are directed to be read as part of the Act

Thus a reference to rules 3 and 5 of the Foreign Exchange Regulation Rules (1952) read with the undertaking required to be given in Form G R. 1, makes it clear that the declaration to be given under section 12 (1) of the Foreign Exchange Regulation Act is not only that the value of the goods will be paid in the prescribed manner but also that the full export value of the goods given in the declaration is the correct value.

Hamad Sultan v. *Abrol*, Mis. Appln. No 376 of 1957 (Bombay High Court) dissented from.

When the full export value given is correct subject to variation of the particulars due to change in quantity or quality or fluctuation in the market rate, the full export value given cannot be said to be not true. But when the actual export value is deliberately not given or a low value is given for the purpose of secreting the balance of foreign exchange, it cannot be said that the declaration regarding the full export value of the goods is given as required in section 12 (1) The mere fact that the authorities at that time did not know the correct export value of the goods or were induced to accept the figure given by the exporter and allowed the goods to be exported would not have the effect of removing the goods from the category of prohibited goods In such a case a contravention of section 12 (1) of the Foreign Exchange Regulation Act would be made out and the offence would be punishable under section 167 (8) of the Sea Customs Act, 1878

Section 12 (2) of the Foreign Exchange Regulation Act is applicable only to goods where the sale has not been completed That means that the section is applicable to consignors of goods, that is persons entitled to sell or procure the sale of the goods, that is to a stage before the actual sale

The contention that the notification of the Central Government, dated 4th August, 1947, issued under section 12 (1) of the Foreign Exchange Regulation Act prohibiting the export of " all " goods is contrary to the powers vested in the Government on the ground that what section 12 (1) empowered was to prohibit the export of " any " goods or class of goods and not " all " goods as done by the notification, is without force. The word " any " is a word which excludes limitation or qualifications.

Rule 3 of the Foreign Exchange Regulation Rules (1952) is not *ultra vires* the power conferred on the Government.

Where there is a repeal of an enactment the consequences laid down in section 6 of the General Clauses Act will follow, unless a different intention appears It cannot therefore be contended that after the amendment of the Foreign Exchange Regulation Act (1947) by Act LV of 1964 and after the repeal of the Sea Customs Act (1878) no further proceeding can be taken for contravention of section 12 (1) of the Foreign Exchange Regulation Act before the amendments were introduced.

R J Joshi for *K C Jacob*, *S K L Ratan* and *R Vedantam*, for Petitioners

The Advocate-General for *G Ramanujam*, for Respondents

V K. *Petitions dismissed*

[SUPREME COURT]

K. Subba Rao, C J., R. S. Bachawat and J. M. Shelat, JJ.
25th October, 1966.

Gurbax Singh *v.* The State of Punjab.
C.A. No. 708 of 1964.

Punjab Security of Lands Tenures Act (X of 1953) as amended by Act XLVI of 1957 hereinafter called the Act—Section 5-B—Rules made under the Act—Scope and purpose of the Act—Meaning of words "Reservation and Selection".

The expressions "reservation" and "selection" involve the same process and indeed, to some extent, they are convertible, for one can reserve land by selection and another can select land by reservation. The argument based on section 9 is also without force. It is true that under section 9 (1) (1) a tenant of the area reserved under the Act can be evicted and there is no other clause enabling the land-owner to evict a tenant from the selected area. It is said that "reserved area" is defined and that "selected area" does not fall under that definition and that, therefore, the effect of section 9 is that a tenant in the selected area cannot be evicted. But, it may be noticed that under section 9 (1) (1) the expression "reserved area" is not used, but instead the expression "the area reserved under the Act" is mentioned. As we have said earlier, the land selected by the land-owner out of the permissible area can legitimately be described as the area reserved under the Act. If that be the interpretation of section 5 (1), section 5-B and section 9 (1), it follows that under section 18 the tenants cannot claim to purchase the land from the land-owner under section 18, for it is included in the reserved area of the land-owner

It may be that one of the objects of the amendment was to enlarge the discretion of the land-owner in the matter of reservation or it may be that in the matter of selection the land-owner has to conform to the provisions of section 5 (1). We leave open that question for future decision.

Bhawani Lal and *Mohan Lal Aggarwal*, Advocates, for Appellant.

Gopal Singh, Advocate, for Respondent No. 3.

G.R. *Appeal dismissed.*

[SUPREME COURT]

K. Subba Rao, C.J., M. Hidayatullah, S.M. Sikri, R S. Bachawat and J.M. Shelat, JJ.
27th October, 1966.

Sri Krishna Coconut Co. *v.* The East Godavari Coconut and Tobacco Market Committee.
C.As Nos. 858-861 of 1964.

Madras Commercial Crops Market Act (XX of 1933)—Interpretation of section 11 (1) and rule 28—Andhra Pradesh Act of 1953 and Adaptation of Laws Order—The competence of the Market Committee to levy fee.

The question from the very inception was whether the Committee was competent to levy the fee in question under section 11 (1) To answer that question the Court necessarily had to enquire on which transactions could the said fee be levied under section 11 (1) and whether it was rightly levied by the Committee. The High Court answered these questions by holding that it was levied on the transaction effected by the appellants with those from whom they bought the said goods, that section 11 (1) dealt with those transactions and was not therefore concerned with the subsequent sales entered into by the appellants with their customers outside the notified area. Since according to the High Court, those transactions were admittedly effected within the notified area the levy was valid and warranted under section 11 (1). In our view the High Court approached the question from a correct angle and therefore there was no question of its having allowed the Committee to change its case or to make out a new case.

The incidence of the fee under section 11 (1) is on the goods thus "bought and sold". This last interpretation was favoured by the High Court of Madras in *Louis Dreyfus & Co.* v. *South Arcot Groundnut Market Committee*, I.L.R. (1946) Mad. 127. (1945) 1 M.L.J. 414. A.I.R. 1945 Mad. 383, which has been accepted by the High Court in the present case.

In our view the construction placed by the High Court on section 11 (1) was a correct construction and therefore the respondent Committee had rightly charged the appellant with the said fee.

C. B. Agarwala, Senior Advocate (*T. V. R. Tatachari*, Advocate, with him), for Appellants (In all the appeals).

P. Ram Reddy, Senior Advocates (*K. R. Sharma*, Advocate, with him), for Respondent (In all the appeals).

G.R. ——— *Appeal dismissed.*

[SUPREME COURT]

K. Subba Rao, C.J., R. S. Bachawat and J. M. Shelat, JJ.
28*th October*, 1966.

Hari Chand Sarda *v.* Mizo District Council. C.A. No. 648 of 1964.

Lushai Hills District (Trading by Non-Tribals) Regulation (II of 1953)—*Article* 19 (1) (*e*) *and* (*g*) *of the Constitution—Sixth Schedule of the Constitution—Reasonable restrictions imposed in the interest of General Public under Article* 19 (6) *of the Constitution.*

By Majority —Relying upon its earlier decisions reported in (1952) S.C.R. 597, (1954) S.C.R. 982, (1955) S.C.R. 636; (1955) 1 S.C.R. 686; (1960) 2 S.C.R. 609 and (1961) 3 S.C.R. 135, the Court held.

These authorities clearly demonstrate that the fundamental rights of a citizen to carry on trade can be restricted only by making a law imposing in the interest of the general public reasonable restrictions on the exercise of such a right, that such restrictions should not be arbitrary or excessive or beyond what is required in the interest of the general public and that an uncontrolled and uncanalized power conferred on the authority would be an unreasonable restriction on such right. Though a legislative policy may be expressed in a statute, it must provide a suitable machinery for implementing that policy in such a manner that such implementation does not result in undue or excessive hardship and arbitrariness. The question whether a restriction is reasonable or not is clearly a justiciable concept and it is for the Court to come to one conclusion or the other having regard to the considerations laid down in *The State of Madras* v. *V. G. Row*. It is also well established that where a provision restricts any one of the fundamental rights it is for the State to establish the reasonableness of such restriction and for the Court to decide in the light of the circumstances in each case, the policy and the object of the impugned legislation and the mischief it seeks to prevent.

The Regulation contains no provisions on the basis of which an applicant would know what he has to satisfy in order to entitle him to a licence. The power to grant or not to grant is thus entirely unrestrained and unguided. The Regulation leaves a trader not only at the mercy of the Committee but also without any remedy. Therefore even if the Sixth Schedule can be said to contain a policy and the Regulation may be said to have been enacted in pursuance of such a policy the analysis of the Regulation shows that that is not sufficient. Even if a statute lays down a policy it is conceivable that its implementation may be left in such an arbitrary manner that the statute providing for such implementation would amount to an unreasonable restriction. A provision which leaves an unbridled power to an authority cannot in any sense be characterised as reasonable. Section 3 of the Regulation is one such provision and is therefore liable to be struck down as violative of Article 19 (1) (*g*).

For the reasons aforesaid, we would declare that section 3 of the Regulation is an unreasonable restriction on the fundamental right guaranteed under Article 19 (1) (*g*) and therefore void. The said order dated 11th July, 1960 having been

made under such a void provision is illegal and void. We would therefore set aside the said order as having been made under an illegal provision of law and allow the appeal with costs.

Sukumar Ghose, Advocate, for Appellant.

G.R. ——— *Appeal allowed.*

[SUPREME COURT]

K. Subba Rao, C.J., M Hidayatullah, S. M. Sikri, R. S. Bachawat and *J. M. Shelat, JJ* — Lala Ram *v.* The Supreme Court of India. R P. No. 8 of 1966.

1*st November*, 1966.

Supreme Court Rules, 1966—*Constitutional validity of Order* 40, *rule* 2 (2).

Order 40, rule 2 (2) of the Supreme Court Rules, 1966, reads —

"No application for review in a civil proceeding shall be entertained unless the party seeking review furnished to the Registrar of this Court at the time of filing the petition for review cash security to the extent of two thousand rupees for the costs of the opposite party."

It is true that in some cases and under certain circumstances the pre-condition to furnish security may be highly prejudicial to the interest of a petitioner who has a real grievance. Such a result is inevitable in the application of any rule. But that in itself cannot invalidate a rule which admittedly this Court has power to make under Article 145 of the Constitution. In appropriate cases this Court has the residuary power under Order 47, rule 1 of the Rules, for sufficient reasons shown to excuse the parties from compliance with any of the requirements of the Rules and it may also give such directions in matters of practice and procedure as it may consider just and expedient.

It is then contended that the enforcement of Order 40, rule 2 (2) of the Rules will lead to unjustified discrimination between parties and, therefore, it offends Article 14 of the Constitution. The discrimination alleged lies in the fact that while security need not be given as a pre-condition for the filing of any proceeding in this Court, it has to be given only in the case of a review petition There is certainly a reasonable nexus between such a condition and the differences between parties taking different proceedings in this Court. The main distinction which makes all the difference is that in the case of a review petition this Court is asked to reopen a matter which has been closed after hearing the parties This is a sufficient reason to sustain the distinction and it affords a reasonable nexus to the objects sought to be achieved by the imposition of the pre-condition.

But, having regard to the circumstances of the case, in exercise of our discretionary power, we reduce the amount of cash security from Rs. 2,000 to Rs 250 only. The said amount will be paid within two weeks from to-day.

Hiralal Jain, Advocate, for Petitioner.

Narain De, Additional Solicitor-General of India (*R. H. Dhebar*, Advocate with him), for Attorney-General for India (on notice by the Court).

G.R. *Order accordingly.*

[SUPREME COURT]

K. Subba Rao, C.J., M. Hidayatullah, S. M. Sikri, R. S. Bachawat and *J. M. Shelat, JJ.*

Govind Dattatray Kelkar *v.* The Chief Controller of Imports and Exports.

1st November, 1966.

W.P. No. 40 of 1965.

Constitution of India (1950), *Articles* 14, 16 *and* 309—*Appointments made on* ad hoc *basis as Assistant Controller of Import and Export without consulting Union Public Service Commission—Their Constitutional Validity—Principle of "carry forward".*

The relevant law on the subject is well settled and does not require further elucidation Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources. and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and in that event a Court may hold that there is no reasonable nexus between the differences and the recruitment. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State makes a classification between two sources of recruitment, unless the classification is unjust on the face of it the onus lies upon the party attacking the classification to show by placing the necessary material before the Court that the said classification is unreasonable and violative of Article 16 of the Constitution see *Banarsidas* v. *The State of Uttar Pradesh*, (1956) S.C R. 357; *All India Station Masters'* and *Assistant Station Masters' Association* v. *General Manager, Central Railways*, (1960) S C J 344 · (1960) 2 S.C R. 311 ; and *The General Manager, Southern Railway* v. *Rangachari*, (1961) 2 M.L J (S.C.) 71 : (1961) 2 An W.R (S C.) 71 : (1961) 2 S.C J. 424 · (1962) 2 S C.R. 586.

It was then suggested that the ratio of 75 per cent for direct recruits and 25 per cent. for promotion from departmental candidates was discriminatory. This point directly arose for consideration in *Mervyn Coutinho* v. *The Collector of Customs, Bombay*, Writ Petition No. 97 of 1964 Therein, this Court accepted the validity of rotational system where the recruitment to a cadre was from two sources and held that such a system did not violate the principle of equal opportunity enshrined in Article 16 (1) of the Constitution.

H. R. Gokhale, Senior Advocate (*G. L. Sanghi*, Advocate and *B. R. Agarwala*, Advocate of *M/s. Gagrat & Co.*, with him), for Petitioners.

Niren De, Additional Solicitor-General of India (*R. Ganapathy Iyer* and *R. N. Sachthey*, Advocates, with him), for Respondents Nos. 1 to 3.

N. S. Bindra, Senior Advocate (*K. Baldev Mehta*, Advocate, with him), for Respondents Nos. 11, 14 and 27.

G.R.

Petition dismissed.

[SUPREME COURT]

K. N. Wanchoo, J. M. Shelat and *G. K. Mitter, JJ.*

1st November, 1966.

Samarendra Nath Sinha *v.* Krishna Kumar Nag.

C A No 797 of 1964.

Civil Procedure Code (*V of* 1908)—*Order* 34, *rule* 4 (1)—*Preliminary objections —Certificate under Article* 133 (1) (*a*) (*d*) *not valid*

On merits, two questions were raised (1) whether the trial Court was competent to pass a final decree for foreclosure though the preliminary decree was for sale and (2) whether the respondent had the right to contend that he was entitled to redeem the said mortgage in view of the fact that he was the execution purchaser of part of the equity of redemption *pendente lite*.

The judgment of the High Court is unfortunately laconic and one wishes that the learned Judges had taken us a little more into confidence by giving some reasons at least. Nonetheless, it is clear that they decided both the questions by holding that the respondent had still sufficient interest in the matter and therefore had *locus standi* and by setting aside the final decree and directing the trial Court to decide the question as to whether it could correct the said preliminary decree in accordance with the directions given by them they held that the respondent was entitled to participate in those proceedings and plead that the final decree should be one for sale and consequently he was entitled to redeem the said mortgage. There can be no question that the two questions raised in the appeal before the High Court were disposed of finally inasmuch as the said final decree was set aside as not being valid and binding on the respondent and the question of redemption by him which was extinguished by that final decree was re-opened entitling the respondent to contend that he had the right to redeem and to hold the said property. In these circumstances, the preliminary objection raised by Mr Chatterjee cannot be sustained and the certificate must be held to be competent

It is true that section 52 strictly speaking does not apply to involuntary alienations such as Court sales but it is well established that the principle of *lis pendens* applies to such alienations It follows that the respondent having purchased from the said Hazra while the appeal by the said Hazra against the said preliminary decree was pending in the High Court, the doctrine of *lis pendens* must apply to his purchase and as aforesaid he was bound by the result of that suit In the view we have taken that the final foreclosure decree was competently passed by the trial Court, his right to equity of redemption was extinguished by that decree and he had therefore no longer any right to redeem the said mortgage. His appeal against the said final decree was misconceived and the High Court was in error in allowing it and in passing the said order of remand directing the trial Court to re-open the question of redemption and to allow the respondent to participate in proceedings to amend the said preliminary decree.

In the result, we allow the appeal, set aside the judgment and decree passed by the High Court and restore the judgment and decree passed by the trial Court. The respondent will pay the appellant's costs all throughout

Niren De, Additional Solicitor-General of India (*N. R. Basu* and *E. Udayaratnam*, Advocates, with him), for Appellants.

P. K. Chatterjee, B. C. Mitra and *P. K. Bose*, Advocates, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT]

K. N. Wanchoo, G. K. Mitter and *C. A. Vaidialingam, JJ.*

7th November, 1966.

Raj Kishore Prasad Narayan Singh *alias* Shri Krishna Vallabh Narayan Singh *v.* Ram Pratap Panday.

C.A No. 759 of 1964.

Bihar Land Reforms Act, 1950 (*XXX of* 1950) *hereinafter referred to as the Act—Sections* 3, 18 (1) (*a*)—*Order* 23, *Civil Procedure Code.*

The scheme of the Act has been considered by this Court in two decisions: *Raja Sailendra Narayan Bhanj Deo* v. *Kumar Jagat Kishore Prasad Narayan Singh*, (1962) 2 S.C.R. (Supp.) 119 and *Krishan Prasad* v. *Gauri Kumari Devi*, (1962) 3 S.C.R. (Supp.) 564.

From the principles laid down by this Court in the above two decisions, it follows that where the whole of the property mortgaged is an estate, there can be no doubt that the procedure prescribed by Chapter IV has to be followed, in order that the amount due to the creditor should be determined by the Claims Officer and the decision of the Claims Officer or the Board has been made final by the Act.

What then is the position, when a mortgage comprises, not only properties which have vested in the State under the Act but also takes in other items of properties which are outside the purview of the Act? Under those circumstances, is the mortgagee still bound to apply to the Claims Officer and follow the procedure indicated by the Act? This raises the question left undecided in *Krishan Prasad's case*, (1962) 3 S.C.R. (Supp) 564.

Therefore under those circumstances, we are not inclined to agree with the observations of the Patna High Court in the decisions referred to above that in cases where a mortgaged property consists of both vested and non-vested items, it is open to the creditor to make an election as to the choice of his remedies and that election is to be made by a creditor giving up his right of filing a claim under section 14 with respect to the items vested in the State or prosecuting a suit or execution proceeding in a civil Court, in respect of items which have not so vested in the State. The Act, so far as we can see, gives jurisdiction to the authorities concerned only in respect of properties, which have vested in the State; and the claims that are filed and adjudications made by the authorities concerned, under the Act, can only be with reference to estates that have vested in the State. In our opinion, the prohibition contained in sections 4 (*d*) and 35 of the Act must also relate only to matters which can form properly the subject of a claim or an adjudication under the Act.

We accordingly grant the request of the appellant to withdraw Claim Case No. 14 of 1956 filed by him before the Claims Officer, Gaya, in terms of the appellant's application dated 9th November, 1959, and made to the Board But, as and when the appellant seeks any remedy, to enforce his mortgage, as against the properties which have not vested under the Act, that Tribunal or Court may have to apply the principle of marshalling.

In the result, the appeal is allowed and the claim petition is permitted to be withdrawn, as indicated above. We make it very clear that, we have not expressed any opinion on the various findings recorded, either by the Claims Officer, or by the learned Judge.

N. C. Chatterjee, Senior Advocate (*D. Goburdhun*, Advocate, with him), for Appellants.

B. P. Jha, Advocate, for Respondents.

G.R.

Appeal allowed.

[SUPREME COURT]
K. N. Wanchoo and *G. K. Mitter, JJ.*
8th November, 1966.

Janak Raj *v.* Gurdial Singh.
C A. No. 1322 of 1966.

Civil Procedure Code (*V of* 1908), *Order* 21, *rules* 82 *to* 103—*Whether a sale of immovable property in execution of a money decree ought to be confirmed when it is found that the* ex parte *decree which was put into execution has been set aside subsequently.*

For the reasons already given and the decisions noticed, it must be held that the appellant-auction purchaser was entitled to a confirmation of the sale notwithstanding the fact that after the holding of the sale the decree had been set aside. The policy of the Legislature seems to be that unless a stranger auction-purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified. The Code of Civil Procedure of 1908 makes ample provision for the protection of the interest of the judgment-debtor who feels that the decree ought not to have been passed against him. On the facts of this case it is difficult to see why the judgment-debtor did not take resort to the provisions of Order 21, rule 89. The decree was for a small amount and he could have easily deposited the decretal amount besides 5 per cent. of the purchase money and thus have the sale set aside. For reasons which are not known to us he did not do so.

In our opinion, on the facts of this case, the sale must be confirmed.

Appellant in person.

D. D. Sharma and *M. C. Bhattia*, Advocates, for Respondent No 1.

G.R. ——— *Appeal allowed.*

[SUPREME COURT]
K. Subba Rao, C.J., J. C. Shah, S. M. Sikri, V. Ramaswami and *C. A. Vaidialingam, JJ.*
17th November, 1966.

Mangal Singh *v.* Union of India.
C.A. No. 2314 of 1966.

Punjab Reorganisation Act, 1966—*Articles* 270 (1) *and* 371-*A* (2) (*h*) *of the Constitution.*

Power with which the Parliament is invested by Articles 2 and 3, is power to admit, establish. or form new States which conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission. establishment or formation of a State as contemplated by the Constitution and is not power to override the constitutional scheme. No State can therefore be formed, admitted or set up by law under Article 4 by the Parliament which has not effective legislative executive and judicial organs.

Power to reduce the total number of members of the Legislative Assembly below the minimum prescribed by Article 170 (1) is, in our judgment, implicit in the authority to make laws under Article 4. Such a provision is undoubtedly an amendment of the Constitution, but by the express provision contained in clause (2) of Article 4, no such law which amends the First and the Fourth Schedule or which makes supplemental, incidental and consequential provisions is to be deemed an amendment of the Constitution for the purpose of Article 368.

On the reorganisation of the old State of Punjab, adjustments had to be made in the membership of the Legislative Council. No such adjustment as would strictly conform to the requirements of Article 171 (3) could however be made without fresh elections. The Parliament therefore adopted an *ad hoc* test, and

unseated members who were residents in the Territory of Haryana and Himachal Pradesh

The new State of Haryana is uni-cameral. It is not claimed, and cannot be claimed, that a resident of the State of Haryana is, merely because of that character, entitled to sit in the Punjab Legislative Council By allowing the members from the Chandigarh area to continue to remain members of the Legislative Council of the new State of Punjab, no right of the residents of Haryana is therefore violated.

M C Setalvad, Senior Advocate (*Ravinder Narain* and *J B Dadachanji*, Advocates, of *Messrs J B Dadachanji & Co*, with him), for Appellants

S V Gupte, Solicitor-General of India (*R Ganapathy Iyer*, *R N. Sachthey* and *R. H. Dhebar*, Advocates, with him), for Respondent

G R. *Appeal dismissed*

[Supreme Court]

R S Bachawat and *J M Shelat, JJ*

13*th December*, 1966.

Lallan Prasad *v.* Rahmat Ali.

C A. No. 776 of 1964.

Contract Act (*IX of* 1872), *sections* 172 *to* 176—*Pledge of movables—Debt evidenced by promissory note—Suit on—Pledgee denying pledge—Not in a position to return the goods pledged—If entitled to decree against the promissory note*

The two ingredients of a pledge are (1) it is essential that the property pledged should be actually or constructively delivered to the pledgee, and (2) the pledgee has a special property in the pledged goods but the general property therein remains in the pledgor and wholly reverts to him on discharge of the debt. A pledge is therefore a security for a debt

The pledgor has an absolute right to redeem the property pledged on tender of the amount of the debt and the pledgee has the right to sell the goods pledged and when he sells the same following the procedure prescribed he has to give credit to the amount realised by such sale and the right to redeem is extinguished as regards the property so sold.

The pledgee has also a right of action for his debt, notwithstanding the possession of pledged goods, but if the pledgee is unable, by his default, to return the goods against payment of the debt that is a good defence to the action

Where therefore, as in the instant case, the pledgee instituted the suit, for recovery of the debt evidenced by a promissory note, alleging that he was not given possession of the pledged goods (*i e*) he is not in a position to restore possession to the pledgor of the movables he will not be entitled to a decree if it is found by the Court that he had been put in possession of the property under the contract of pledge.

O. P. Rana, Advocate, for Appellant.

J. B Goyal, Advocate, for Respondent No 1.

K.G.S. *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, J M. Shelat and *G. K Mitter, JJ.*
14th September, 1966.

Har Swarup *v.* Brij Bhushan Saran.
C.A. No. 1141 of 1965.

Representation of the People Act (XLIII of 1951), *section* 123(2) *read with proviso* (a)(i) *—Corrupt practice by a candidate—Section* 90 (3) *and* 82 (*b*) *and* 37, 79 (*b*)*—Meaning of candidate—Effect of withdrawal—A I R* 1959, *Patna* 250, *overruled.*

Purity of elections is a matter of great importance, and it is for the purpose of maintaining this purity that we have the provisions contained in section 123 of the Act. There is also no doubt that if a covering candidate (like Raturi Vaid) is not treated as a candidate till the date of his withdrawal, he would be free to commit all kinds of corrupt practices defined in section 123 of the Act on behalf of the candidate whom he covers with impunity This could not be the intention of the Act and that is why learned Counsel for the appellants had to concede that if the alleged corrupt practice had been committed before the date of withdrawal, it would be necessary to join Raturi Vaid as a respondent under section 82 (*b*). But the argument is that as the alleged corrupt practice was committed after the date of his withdrawal he would not be a candidate within the meaning of section 82 (*b*). We are of opinion that if the effect of withdrawal is said to be that a person nominated can no longer be considered to be a candidate only after his withdrawal, the date of withdrawal cannot be a dividing line as to the time upto which he can be treated as a candidate and the time after which he cannot be treated as a candidate. If purity of elections has to be maintained a person who is a candidate as defined in section 79 (*b*) of the Act will remain a candidate even after he withdraws till the election is over, and if he commits a corrupt practice whether before or after his withdrawal he would be a necessary party under section 82 (*b*) of the Act. We are therefore of opinion that the view taken by the Patna High Court in A.I.R. 1959 Pat 250 on which reliance has been placed on behalf of the appellants is not correct and the decision of the High Court under appeal is correct.

Naunit Lal, Advocate, for Appellants.

Veda Vyasa, Senior Advocate, (*K. K Jain*, Advocate, with him), for Respondent No 1.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT]

V Ramaswami, V Bhargava and *Raghubar Dayal, JJ.*
22nd September, 1966

Jamuna Singh *v.* State of Bihar.
Cr.A. No 238 of 1964.

Penal Code (XLV of 1860), *sections* 115, 333 *and* 436 *read with section* 109.

It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence. The case of *Faguna Kanta Nath,* (1959) Supp 2 S C R 1, 5, lays this down The observations of this Court in that case, at page 7, bring out clearly the distinction in the case of persons instigating another or engaging in conspiracy with another on the one hand and that of a person aiding the person in committing a certain offence.

In the present case, there is no finding of the Court below and it cannot be said that the fire was set by any person who was participating in the incident along with Jamuna Singh and at his instigation Three alleged co-accused have been acquitted and therefore cannot be said to have taken part in the incident Jodha Singh and Jamuna Singh took part in the incident according to the findings of the Court below and Jodha Singh did not set fire to the hut. It follows that it cannot

be held that Baishaki's hut was set fire to by any one at the instigation of Januna Singh.

The result is that Jamuna Singh's conviction under section 436 read with section 109, Indian Penal Code, is not correct in law.

D P Singh, Advocate of *M/s Ramamurthi & Co*, for Appellant

G R. *Appeal partly allowed.*

[SUPREME COURT]

K N Wanchoo,
J M Shelat and
G K Mitter, *JJ*
23*rd September*, 1966.

Raghubans Narain Singh *v.*
The Uttar Pradesh Government.
C A No. 82 of 1964.

Land Acquisition Act (I of 1894), *section* 4—*Payment of Market Value under section* 23—*Method of calculating valuation*

Market value on the basis of which compensation is payable under section 23 of the Land Acquisition Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired As observed in *South Eastern Rail Co* v. *L C C* (1915) 2 Ch 252

"Such a method of valuation is not adequate at least for two reasons (1) that the owner may not have so far put his property to its best use or in the most lucrative manner and (2) in a case like the present the grove had not yet started giving the maximum yield" Such a method of valuation by ascertaining the annual value of the produce can and should be resorted to only when no other alternative method is available We are of the view that the District Judge was right in accepting the evidence of Zaidi and in treating his offer as one of a willing prospective purchaser. The valuation made by the District Judge on that evidence rested on a better footing in the circumstances of the case and ought to have been accepted by the High Court.

With regard to the payment of interest the Court held —The contention, so put forward resolves itself into two questions (1) whether in the absence of a specific objection as to interest in the appellant's cross-objections the High Court ought to have gone into that question and (2) whether on a proper interpretation of section 28 the Court has a discretion to grant interest at a rate less than 6 per cent The first point would not create any difficulty in the way of the appellant because the High Court did in fact go into the question of interest even though it was not specifically taken in the cross-objections and decided the question on interpretation of section 28 Besides, the question is purely one of law.

B C Misra, Senior Advocate, (*M V Goswami*, Advocate, with him), for Appellant

N D Karkhanis, Senior Advocate (*O P Rana*, Advocate, with him), for Respondent

G R. *Appeal allowed.*

[SUPREME COURT]

V Ramaswami,
V Bhargava and
Raghubar Dayal, *JJ*
26*th September*, 1966.

Krishnamurthy *alias* Tailor Krishnan *v.*
Public Prosecutor, Madras.
Cr. A No 251 of 1964.

Suppression of Immoral Traffic in Women and Girls Act (*CIV of* 1956), *section* 3 (1)—'*Kept as a brothel*' *meaning of*

It has been urged, however, that a solitary instance of the house of the appellant being used for the purpose of prostitution will not suffice for establishing that the house was being 'kept as a brothel' It may be true that a place used once for the purpose of prostitution may not be a brothel, but it is a question of fact as to what conclusion should be drawn about the use of a place about which information had been received that it was being used as a brothel, to which a person goes and freely asks for girls, where the person is shown girls to select from and where he does engage a girl for the purpose of prostitution The conclusion to be derived from these circumstances about the place and the person 'keeping it' can be nothing else than that the place was being used as a brothel and the person in charge was so keeping it It is not necessary that there should be evidence of repeated visits by persons to the place for the purpose of prostitution A single instance coupled with the surrounding circumstances is sufficient to establish both that the place was being used as a brothel and that the person alleged was so keeping it.

We are of opinion that the facts found in the present case justify the conclusion that the appellant was keeping a brothel at his house The appellant's conviction under section 3 (1) of the Act is therefore correct.

R. Thiagarajan and *A V V Nair*, Advocates, for Appellant.

Bishan Narain, Senior Advocate (*A. V. Rangam*, Advocate, with him), for Respondent.

G. R. ——— *Appeal dismissed.*

[SUPREME COURT]

V. Ramaswami,
V. Bhargava and
Raghubar Dayal, *JJ*
27*th September*, 1966

Srichand K. Khetwani *v*
State of Maharashtra.
Cr A. No 184 of 1964.

Penal Code (*XLV of* 1860), *section* 120-*B read with section* 109, *and section* 5 (2) *read with section* 5 (1) (*d*) *of the Prevention of Corruption Act—Section* 342, *Criminal Procedure Code*, *section* 114, *Evidence Act.*

The finding that the various firms to whom licences were issued were fictitious is not questioned The conspiracy was a general conspiracy to keep on issuing licences in the names of fictitious firms and to share the benefits arising out of those licences when no real independent person was the licensee. The various members of the conspiracy other than the two public servants must have joined with the full knowledge of the *modus operandi* of the conspiracy and with the intention and object of sharing the profits arising out of the acts of the conspirators We do not therefore see that the mere fact that licences were issued in the names of eight different companies make out the case against the appellant and the other conspirators to be a case of eight different conspiracies each with respect to the licences issued to one particular fictitious company.

Further, an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. When no such evidence has been obtained, it cannot be said what that evidence would have been and therefore no question of presuming that that evidence

would have been against the prosecution, under section 114, *Illustration* (*g*) of the Evidence Act, can arise.

R. Jethmalani and *P Kapila Hingorani*, Advocates, for Appellant.

O P. Rana and *B R. G. K Achar*, Advocates, for Respondent

G R. ——— *Appeal dismissed*

[SUPREME COURT.]

M Hidayatullah and *V Bhargava, JJ*
23rd November, 1966

Municipal Corporation of Delhi *v* Ghisa Ram.
Cr A No 194 of 1966

Prevention of Food Adulteration Act (*XXXVII of* 1954), *sections* 7, 13 (2) *and* 16—*Scope.*

It appears to us that when a valuable right is conferred by section 13 (2) of the Prevention of Food Adulteration Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct, of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.

This is therefore, clearly a case where the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution In such a case, we think that the respondent is entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaranteed by the Act, as a result of the conduct of the prosecution.

The reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself solely due to the deliberate acts of the prosecution.

H R Gokhale, Senior Advocate (*K. K. Ravzada* and *A G Ratnaparkhi*, Advocates, with him), for Appellant.

Frank Anthony, Ghanshyam Dass, Jitendra Sharma and *V P Chaudhury*, Advocates, for Respondent.

G R. ——— *Appeal dismissed*

[SUPREME COURT]

K.N. Wanchoo, R S Bachawat and *J M Shelat, JJ.*
29th November, 1966

Kumara Nand *v.* Brijmohan Lal Sharma.
C A No 2135 of 1966.

Representation of the People Act (*XLIII of* 1951), *section* 123 (4)—*Onus of proof—Meaning of words "Statement of fact".*

It is however urged on behalf of the appellant that there are no details as to the time when the respondent committed thefts or the place where he committed them, and therefore a mere bald statement that the respondent was a thief or the greatest of all thieves could be an expression of opinion only and not a statement of fact. We are unable to accept this. Section 123 (4) in our opinion does not require that when a statement of fact is made as to the personal character or conduct of a

candidate details which one generally finds (for example) in a charge in a criminal case, must also be there and that in the absence of such details a statement to the effect that a person is (for example) a thief or murderer is a mere expression of opinion. To say that a person is a thief or murderer is a statement of fact and the mere absence of details as to time and place would not turn a statement of fact of this nature into a mere expression of opinion.

The burden of proving that the candidate publishing the statement believed it to be false or did not believe it to be true though on the complaining candidate is very light and would be discharged by the complaining candidate swearing to that effect. Thereafter it would be for the candidate publishing the statement to prove otherwise The question whether the statement was reasonably calculated to prejudice the prospects of the election of the candidate against whom it was made would generally be a matter of inference So the main onus on an election petitioner under section 123 (4) is to show that a statement of fact was published by a candidate or his agent or by any other person with the consent of the candidate or his election agent and also to show that that statement was false and related to his personal character or conduct. Once that is proved and the complaining candidate has sworn as above indicated, the burden shifts to the candidate making the false statement of fact to show what his belief was. The further question as to prejudice to the prospects of election is generally a matter of inference to be arrived at by the tribunal on the facts and circumstances of each case

In the present case the main onus that lay on the respondent has been discharged. He has proved that there was a publication of the nature envisaged under section 123 (4) of the Act He has also proved that the statement of fact was made with respect to him He has further proved that that statement was false and related to his personal character or conduct There can be no doubt that a statement of this nature calling one candidate a thief or the greatest of all thieves is reasonably calculated to prejudice the prospects of his election He further swore that the statement was false to the knowledge of the appellant and the latter did not believe it to be true It was then for the appellant to show what his belief was. The burden having thus shifted we are of opinion that it was for the appellant to show either that the statement was true or that he believed it to be true. That the appellant has failed to do. The High Court therefore rightly held that the respondent had discharged the burden which lay on him.

R K. Garg, D P Singh and *S C Agarwala*, Advocates of *M/s Ramamurthy & Co.*, for Appellant.

B D. Sharma and *L. D. Sharma*, Advocates, for Respondent.

G R. *Appeal dismissed.*

[SUPREME COURT]

K. Subba Rao, C J
M Hidayatullah,
S M Sikri,
R S Bachawat and
J M Shelat, JJ
2nd December, 1966.

Ajit Singh *v.*
State of Punjab.
C A. No. 1018 of 1966 and
Bhagat Ram *v.*
State of Punjab.
W P. No. 125 of 1966.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) *sections* 14 (1) *and* (2), 19, 20 *of the Act—Articles* 31-*A*, 12 *of the Constitution.*

By Majority

It seems to us that there is this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on

the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. For example, suppose the State is the landlord of an estate and there is a lease of that property and law provides for the extinguishment of leases held in an estate. In one sense it would be an extinguishment of the rights of a lessee, but it would properly fall under the category of acquisition by the State because the beneficiary of the extinguishment would be the State

Coming now to the second proviso to Article 31-A, it would be noticed that only one category is mentioned in the proviso, the category being "acquisition by the State of an estate" It means that the law must make a provision for the acquisition by the State of an estate But what is the true meaning of the expression "acquisition by the State of an estate"? In the context of Article 31-A, the expression "acquisition by the State of an estate" in the second proviso to Article 31-A (1) must have the same meaning as it has in clause (1) (*a*) to Article 31-A.

Let us now see whether the other part of the second proviso throws any light on this question It would be noticed that it refers to ceiling limits It is well-known that under various laws dealing with land reforms, no person apart from certain exceptions can hold land beyond a ceiling fixed under the law Secondly, the proviso says that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seems to be that a person who is cultivating, land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31-A unless at least compensation at the market rate is given. In various States most of the persons have already been deprived of land beyond the ceiling limit on compensation which was less than the market value. It seems to us that in the light of all the considerations mentioned above the words "acquisition by the State" in the second proviso do not have a technical meaning, as contended by the learned Counsel for the respondent. If the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

In the context of the second proviso, which is trying to preserve the rights of a person holding land under his personal cultivation, it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash.

Here it seems to us that the beneficiary is the Panchayat which falls within the definition of the word "State" under Article 12 of the Constitution. The income derived by the Panchayat is in no way different from its any other income.

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly.

In the result we hold that the scheme is hit by the second proviso to Article 31-A in so far as it reserves 100 kanals 2 marlas for the income of the Panchayat. We direct the State to modify the scheme to bring it into accord with the second proviso as interpreted by us, and proceed according to law

B. R L Iyengar, Senior Advocate (*S K. Mehta* and *K L Mehta*, Advocates, with him), for Appellant in C.A. No. 1018 of 1966

Hardev Singh and *S. S Khanduja*, Advocates, for Petitioner in W P No. 125 of 1966.

K L Gossain, Senior Advocate, (*O P Malhotra* and *R. N. Sachthey*, Advocates, with him), for Respondents in C A. No 1018 of 1966 and W P. No 125 of 1966.

G.R. ——— *Appeal and Petition dismissed.*

Ramakrishnan, J
29*th June*, 1966

Subramaniam, *In re*· Crl R C. No 723 and 1952 to 1964 of 1964. Crl.R P. No 1094 and 1916 to 1928 of 1964.

Madras Public Trusts (*Regulation of Administration of Agricultural Lands*) *Act* (*LVII of* 1961), *sections* 27 (2), 27 (5) *and* 49—*Sharing of produce between public trust and its tenant—Absence of lease deed providing for manner of division—No fair rent determined by Court—Direction under section* 27 (5) *to effect division—Effect—Disregard of such direction by tenant—If an offence under section* 49.

Section 27 of the Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act (LVII of 1961) deals with a situation where there are clear data available to an Authorised Officer to make a division of the produce between a public trust and its cultivating tenant, whether under the terms of a lease deed or under the terms of a prior determination of fair rent by a Court or Tribunal. A direction under section 27 (5) by the Authorised Officer to another person, in the absence of the above requirements, for making a division of the produce, would be premature besides being without jurisdiction and a removal of the produce by the tenant from the threshing floor in contravention of such a direction would be no offence under section 49 read with sections 27 (2) and 27 (5) of the Act It is entirely unrealistic to assume that once a direction under section 27 (5) is issued by the Authorised Officer the tenant has to leave his produce on the threshing floor to the mercy of the elements, pests, etc awaiting the contingency of a future determination of fair rent by a Court or Tribunal

Further, a direction under section 27 (5) to divide the produce under rule 33 (3) of the Rules framed under the Act (as in the instant case) would wholly be ineffective in the absence of a lease deed between the parties as that rule provides for the division of the produce in accordance with the terms of the lease deed.

K. Narayanaswamy Mudaliar, for Petitioner.

S Bhaskaran, for P.W. 1 in Crl. R.C Nos. 1952 to 1956 of 1964.

S R. Srinivasan, for Public Prosecutor on behalf of State.

V.K ——— *Petitions allowed.*

Veeraswami, J.
19*th August*, 1966.

Official Trustee of Madras *v.* M/s. Gopalji, Champshi & Co. C.R P. No. 113 of 1961.

Madras Buildings (*Lease and Rent Control*) *Act* (*XVIII of* 1960), *section* 10 (3) (*b*)—*Deed of settlement of properties—Official Trustee administering properties under—Accumulations—Purchase of house—House in the possession of the tenants—Intention of settlor to use building as a Kalyana Mantapam—Application by Official Trustee requiring the house* bona fide *for use—Not sustainable under section* 10 (3) (*b*).

The petitioner, Official Trustee, acting under the terms of a deed in administering the properties purchased a house property with the sanction of the High Court As the respondents were in possession of the house, the Official Trustee applied under section 10 (3) (*b*) the Act for eviction of the tenants on the ground

that he required the premises *bona fide* for using the same as a choultry as per the wishes of the settlor,

Held, section 10 (3) (*b*) of the Act is not attracted to the case

In order that section 10 (3) (*b*) may apply, the landlord itself must be a religious, charitable, educational or other public institution Further it is also necessary that the institution required the building for its own purpose. It follows that the provision will have no application unless an institution of the type contemplated by the provision is in existence.

The fact that the intention of the settlor is to make use of the premises as a Kalyana Mantapam and therefore required the same from the tenants will not attract the provisions of section 10 (3) (*b*).

S. Amudhachari and *A V. Raghavan*, for Petitioner.

K. G. Manickavasagam and *S. C. Shah*, for Respondent.

V.S. ——— *Petition dismissed.*

Alagiriswami, J.
9*th September*, 1966.

Rajammal *v.* V. T. Swami.
C R P No 1717 of 1963.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 10 (3) (*a*) *and* (*c*)—*Owner's occupation*—Bona fides—*Test—Landlord keeping two rooms in a building locked—If amounts to landlord occupying a portion of a building*

A person's financial status may not always be the same and if he chooses to live in a building of his own, although he might have been accustomed to live in bungalows with compounds, it cannot be said that his requirement is not *bona fide*. There is no reason why, if a landlord wants to occupy his own building and is prepared to put up with the inconvenience of not having a tap; or flush-out latrine, it should be said that his asking for possession of the building is not *bona fide* especially when he is paying a rent of Rs. 120 per mensem while he gets only Rs ·50 from his own building.

In the case of residential buildings occupation can only mean living in it The fact that two rooms in a house are kept locked by the landlord will not make it that he is in occupation of a part of a building within the meaning of section 10 (3) (*c*) of the Act.

K Rajah, for Petitioner.

R. Mathrubootham, for Respondent.

R M ——— *Petition allowed.*

Alagiriswami, J
9*th September*, 1966.

N Sriraman *v.*
Sri Ganesa Engineering Works, Madras.
C R P. No 1795 of 1963.

Payment of Wages Act (IV of 1936), *section* 17—*Appeal to the Chief Judge of the Court of Small Causes*—Ex-parte *order of dismissal for default—Power to set aside order.*

The Chief Judge of the Court of Small Causes sitting in appeal under section 17 of the Payment of Wages Act has the power to set aside an *ex-parte* order of dismissal of the appeal for default. When the power is given to the Court of Small Causes in the City and the District Judges in the mofussil, these Courts are functioning as ordinary Civil Courts at least as far as proceedings in those Courts are concerned.

S. Ramaswami, for Petitioners

Vittal V. Souli, for Respondent.

V.S. ——— *Petition allowed.*

Srinivasan and
Sadasivan, JJ
16*th September*, 1966.

Gowrammal *v* Lingappa Gouder.
A A A O No. 162 of 1963

Civil Procedure Code (*V of* 1908), *sections* 37, 38, 47 *and Order* 21—*Money Decree passed by District Munsif of* K—*Subsequent carving out of territorial jurisdiction of Court of* K *and constitution of separate Court of District Munsif at* H—*Application for execution filed in the Court of* H *without any order of transfer whether entertainable*

Where the Court which passed the decree continued to exist an order transferring the decree should be obtained from that Court before it could be put into execution in a Court which might subsequently come to have jurisdiction over the properties in suit, that is to say, the subject-matter

J Gundappa Rao, for Appellant
R Desikan, for Respondent

V S

Remanded.

Venkatadri, J
4*th October*, 1966

R. Govindaraju Naidu *v.*
Entertainment Officer, Madurai-7.
W P. No. 513 of 1963.

Madras Entertainment Tax Act (*X of* 1938), *section* 7-*A—Weekly returns submitted, accepted, tax levied and collected—Materials found on a surprise inspection—Best judgment assessment on the basis for the period—No power—No provision also in the Act for assessing escaped income.*

In a case where the petitioner submitted weekly returns as per the rules and his returns were accepted, tax levied and collected, the Department cannot, even on the basis of materials obtained on a surprise inspection, assess him on the best judgment basis for the relevant period. If the Department is not satisfied with the returns submitted, on the ground that they are incorrect or incomplete, the Department should make an enquiry under section 4 or 4-A of the Act to the best of judgment

The Act does not contain a provision for assessment of escapement. The well-known principle that the assessee can avoid tax and not evade tax will be applicable.

K. Srinivasan for *P. Ananthakrishnan Nair* and *T. S. Sankaran*, for Petitioner

The Assistant Government Pleader, for Respondent.

V.S.

Petition allowed.

M. Anantanarayanan, C J
and
Ramakrishnan, J.
4*th November*, 1966

Ramathal *v.*
Nagaratnammal.
A.A O. No 370 of 1963 and
A.A O. No 207 of 1964.

Civil Procedure Code (*V of* 1908), *Order* 21, *rule* 90, 92 *and Order* 34, *rule* 5 *—Mortgage decree—Final decree for sale—Purchase by auction purchaser—Application for setting aside sale under Order* 21, *rule* 90*—Dismissal—Confirmation of sale and taking possession by auction purchaser—High Court in appeal, restoring application under Order* 21, *rule* 90*—Pending appeal in High Court, sale by auction purchaser and putting purchaser in possession—Subsequent application by mortgagor to deposit amounts due under mortgage—Restoration of application under Order* 21, *rule* 90*—Vacates order confirming sale—Relief against purchaser from auction purchaser*—Lis pendens.

In pursuance of a final decree under a mortgage action, the hypotheca was sold. An application filed under Order 21, rule 90 of the Civil Procedure Code for setting aside the sale was, on account of alleged default on the part of the applicant, dismissed and the sale confirmed on the same date, and the auction purchaser put in possession. But in appeal the High Court set aside the dismissal of the application and directed the trial Court to dispose of that application in

accordance with law. During the pendency of the appeal in the High Court, the auction purchaser sold the property to another who was also a party in the subsequent proceedings After the restoration of the application under Order 21, rule 90, Civil Procedure Code, an application under Order 34, rule 5, Civil Procedure Code, for, leave to deposit the mortgage money and other statutory charges and for treating the mortgage as discharged and for obtaining possession of the property from the auction purchaser and his purchaser, was allowed by the trial Court. Hence the appeal.

Held, The restoration of the application under Order 21, rule 90, Civil Procedure Code, automatically operated to vacate or render ineffective, the earlier order confirming the sale held in pursuance of a final decree in a mortgage action.

The reversal of the decree of the trial Court in appeal or the setting aside of the *ex-parte* decree does not *per se* render the Court sale in execution of the former decree void; but they only give rise to certain equities which can be granted in proper cases. But the restoration of a petition under Order 21, rule 90 of the Code after the earlier confirmation of the Court sale results in an entirely different situation. It renders the Court sale itself void and ineffective and that is the reason why in proceedings under Order 34, rule 5 of the Code the position of the auction purchaser and the purchaser from him is entirely different.

Having regard to the provisions of section 47, *Explanation* and section 146 of the Code, every remedy which Order 34, rule 5 has provided against the auction purchaser can also be claimed against the purchaser from the auction purchaser In proceedings under Order 34, rule 5 the purchaser from the auction purchaser may be directed to deliver possession.

In the case of a mortgage decree, the *lis* will continue till the proceedings under Order 34, rule 5 of the Code come to an end and the mortgage security is finally discharged. The doctrine of *lis pendens* will apply to the private sale by the auction purchaser in the mortgage action. Such a sale cannot be relied upon by the vendee to defeat the rights which the statute has granted to the mortgagor against the auction purchaser. Case law discussed.

S V Venugopalachari, for Appellant.

T. R. Srinivasan, for Respondent.

V.S. *Appeal dismissed*

Srinivasan, J
16*th September*, 1966.

Subbulakshmi Ammal *v*
Muthukaruppan Pillai
S A No. 1889 of 1962

Transfer of Property Act (*IV of* 1882), *section* 58—*Mortgage by deposit of title deeds—Requisites—Mere possession of title deeds without an intention to create a security—Not sufficient to create a mortgage—Proof of creation of a valid mortgage—Onus*

In mortgages by the deposit of title deeds the parties must have agreed at the time of the transaction to treat the documents as security for the repayment of the loan advanced. It is the intention that creates the mortgage and not the mere possession of documents by the creditor

In a case where the evidence showed that the loan and deposit of title deeds were not contemporaneous and that there was no intention at the time of the execution of the promissory note to create a mortgage by the deposit of title deeds, the debtor is entitled to rely upon these features to show that there could not be a valid mortgage by depsoit of title deeds In all cases of this kind, the onus generally shifts and when one party is able to throw sufficient doubt upon the validity by reason of certain facts, the other party has necessarily to rebut the evidence suitably

R Kesava Iyengar, for Appellant

M V. Krishnan, for Respondent.

V S.

Appeal dismissed.

Kailasam, J
5*th October*, 1966

G P Sankaranavana Pillai *v.*
Inspector General of Registration.
W P No 200 of 1965

States Reorganization Act (*XXXVII of* 1956), *section* 115(7)—*Registration department—Recruitment as Sub-Registrars—Proportion of* 3:1 *for graduates and non graduates—Transfer of territory to Madras State—Right to the same proportion—Conditions of service—Writ.*

Practice—Writ petition—Normally entertainable within six months of date of order impugned

In the former Travancore State, recruitment of Sub-Registrars in the Registration department was made only by promotion and not by direct recruitment As a general rule, seniority was the criterion, but a graduate was preferred because of his higher qualification. The proportion of the graduates and non graduates was fixed as 3 1. After transfer to the Madras State, the petitioner made representations for maintaining the same proportion

Held, sub-section (7) to section 115 and the proviso thereto should be read harmoniously and the only way in which it could be done is that the petitioner is entitled to the conditions of service applicable to him on the appointed day and those conditions can only be varied to his disadvantage with the previous approval of the Central Government. But after the appointed day, when the petitioner joined service in the Madras State, the right of the State Government to regulate and determine the conditions of his service under Chapter I of Part XIV of the Constitution is secured

Normally writ petitions will not be entertained unless filed within six months from the date of impugned order unless the delay is satisfactorily explained.

V V. Raghavan and *P Ananthakrishna Nair*, for Petitioner.

T. Selvaraj, for the Government Pleader, for Respondent

V.S.

Petition dismissed.

M. Anantanarayanan, C J
8th October, 1966

Dhanalakshmi Ammal *v.*
Collector of Madras.
C.R.P No 1685 of 1963.

Land Acquisition Act (I of 1894), *section* 18—*Joint owners of property under acquisition—Reference asked for by only some of the Joint owners—Enhancement for entire extent—Benefit to those who have sought reference—Proportionate to their title*

Practice—Land Acquisition Act—Reference by some only of the joint owners—Enhance compensation in respect of entire interest deposited—Petition to review to be filed

Where some only of the joint owners of a property make a reference under section 18 of the Act for enhanced compensation and the reference is finally decided by enhancing the compensation for the entire area, the parties who have made the reference are entitled only to a proportionate share of the enhancement attributable to their title The other owners who have accepted the lower compensation will not be entiled to the benefit

In case where the enhanced compensation for the entire extent is deposited, the true remedy is for the Government to file a petition for review of the judgment and decree in the reference under section 18

Prag Narain v *Collector of Agra*, L.R. 59 I A 155: 62 M.L.J. 682: I L R 54 All 286 (P.C) referred.

T V. Srinivasachari, for Petitioner

Additional Government Pleader, for Respondent.

V.S

Petition dismissed

Veeraswami, and
Natesan JJ.
8th October, 1966

Kannappa Mudaliar *v.*
State of Madras.
W P.No 711 of 1964.

Madras Agricultural Produce Markets Act (XXIII of 1959)—*Constitution of India* (1950), *Articles* 301 *and* 304 (*b*)—*Act, if invalid in the absence of previous sanction of President—Freedom of trade, commerce and intercourse—If infringed—Distinction between a restriction and regulation—Constitution of Market committee under the Madras Commercial Crops Act—Deemed continuance under the Act—If invalid*

The Madras Agricultural Produce Markets Act (XXIII of 1959) is regulatory in substance and character and does not violate Article 301 of the Constitution. There is, therefore, no need to resort to Article 304 (*b*) to save the Act (requiring the sanction of the President).

Regulatory provisions which do not directly or immediately impede or burden the free movement of trade, commerce, and intercourse but provide or intend to provide facilities for trade, commerce and intercourse are not restrictions within the meaning of Part XIII and are compatible with the freedom of trade declared by Article 301 of the Constitution

The distinction between a restriction and a regulation is fine, but real, though the dividing line is not capable in the nature of things of a comprehensive and satisfactory definition The test, broadly speaking, is whether the impugned provisions lay a direct and immediate burden on the movement of trade, commerce and intercourse or are intrinsically beneficial to and provide, in the ultimate analysis, facilities for better conduct of trade, commerce and intercourse

The market committee constituted under the Madras Commercial Crops Act and deemed to continue under section 38 (2) of the Act repealing the other Act is effectively and properly constituted for the purposes of the 1959 Act

Vedantachari, for Petitioner

Advocate-General and Assistant Government Pleader, for Respondent.

V S.

Petition dismissed.

Natesan, J
5th September, 1966.

Ammani Ammal *v* Amma Ponnammal
S.A No. 1664 of 1962.

Succession Act (*XXXIX of* 1925), *section* 83—*General words used in a will—Restricted meaning or wider meaning—Intention of the testator—Residuary bequest in the will—Outstandings due to the testator and his other properties*—"Niluvai"—"Sothu"—*Balance in the current deposit account—Nomination—Effect of*

Words and Phrases—Niluvai (நிலுவை)—Sothu (சொத்து)

Where the language of the residuary bequest is wide and in the absence of any indication of the testator's intention to exclude any property from the operation of the will, under the residuary bequest one may presume that the will comprises all the property possessed by the testator at his death and not the subject of specific bequests.

Niluvai just means etymologically what is outstanding The balance in current account certainly is an outstanding Ordinarily no doubt in popular language particularly in the case of the trader, his use of the word '*niluvai*' must be related to his monies with others in the trade or monies lent out. Whether the word has been used in this narrow sense or in the etymological sense is a matter to be inferred by reading the will as a whole.

The effect of a word in a particular document must inevitably depend upon the context in which the word has been used and would always be conditioned by the tenor of the document The word 'Property' (சொத்து) is a generic word and includes all kinds of properties movable and immovable and whether it is used in a generic sense or to denote a particular type of property has to be inferred by its setting and the context of its user The nomination does not give any title to the nominee If the word should be taken as a mandate, the mandate has to be revoked with the death of the testator. Held on facts, the balance in the current account also fell within the meaning of 'other properties' under the residuary bequest

A Sundaram Ayyar, for Appellant

R Ramamurthi Ayyar and *R Srinivasan*, for Respondent.

V S

Appeal dismissed

Natesan, J
20th September, 1966

Amer Bibi *v* Chinnammal.
S A No 1650 of 1962

Adverse possession—Co-owners—Ouster—Question of law—Second appeal—Tenant-in-common, in long possession, executing a simple mortgage—Solitary act—Insufficient to constitute ouster

Transfer of Property Act (*IV of* 1882), *section* 3, Explanation 1—*Registration—Notice—Notice only to transferees subsequent to registration—Not notice to prior transferees—Simple mortgage by one co-tenant—Effect of—Registration on other co-tenants*

The question whether on facts found there is ouster or not is a question of law on which a Second Appeal could lie.

The acts that might constitute acts of adverse possession as between strangers do not necessarily have such effect as between tenants-in-common, as their acts of assertion of ownership may be capable of being explained as consistent with the joint title The tenant in occupation must make his possession visibly hostile, notoriously and ostensibly exclusive and adverse to impute knowledge of the hostile possession to the co-tenants sought to be ousted.

A long possession coupled with the solitary act of execution of simple mortgage by the co-tenant in possession cannot amount to adverse possession and hostile enjoyment.

The doctrine of constructive notice under *Explanation* 1 to section 3 of the Transfer of Property Act cannot be imported into the provisions of the Limitation Act.

Even under *Explanation* 1 to section 3 of the Transfer of Property Act registration is made notice only to transferees subsequent to the registration. Registration of a subsequent transaction is not notice of the transaction to prior transferees.

To make mere registration of any transaction by tenant-in-common itself notice to the other tenants-in-common of the transaction is to impose a duty on the tenants-in-common to be on the watch and make frequent search of registration records, lest their rights get barred by covert acts and deeds of one of themselves.

N. K. Ramaswamy and *S. Sundaram Ayyar*, for Appellant.

K. Sarvabhuman and *T. R. Mani*, for Respondent.

V.S. ——— *Appeal allowed.*

Veeraswami J
2nd December, 1966

Natarajan *v* Kaliappa Goundar
C R.P. No. 285 of 1965.

Madras Court-Fees and Suits Valuation Act (*XIV of* 1955), *section* 40 (1)—*Suit for cancellation of compromise decree—On payment of a certain sum to plaintiff property to stand decreed to defendants—Value of the subject-matter—Sum representing the value of property or market value on the date of plaint.*

The suit was to set aside a compromise decree under which if the plaintiff was paid Rs. 4,000 by a specified date, two items of properties should stand decreed in favour of defendants 1 and 2. On the question of value for the purposes of Court-fee under section 40, of the Madras Court-fees Act.

Held the Court-fee has to be calculated on the sum of Rs 4,000 which is the value given for the two items of properties and not the market value of the two items as on the date of filing of the plaint The decree itself specified the value of the property. The case falls within the language in section 40 (1), the amount or value of the property for which the decree was passed.

V. Shyamalam, for Petitioner.

T. R Mani, for Respondent 1 to 3

K Venkataswami, for Government Pleader.

V.S. ——— *Petition partly allowed*

Ramaprasada Rao, J.
6th January, 1967.

Kalyanasundaram *v.* Natarajan
C.R.P. No. 2542 of 1965.

Madras Buildings (*Lease and Rent Control*) *Act* (*XVIII of* 1960)—*Petition for eviction —Whether termination of tenancy by notice should precede eviction petition.*

After referring to (1966) 2 M.L.J. 33 (F.B.), (1966), 2 M.L.J. N.R.C. 33 (S.C.)* C.R.P. No. 1992 of 1965 (Veeraswami, J.) and C.R.P. No. 1858 of 1965 (Anantanarayanan, C.J.) and noting the difference of opinion on this question, the learned Judge observed that the position has to be resolved by a reference of this question to a Division Bench of the High Court, and referred the following question for decision by a Bench :—

"Whether a notice of determination of tenancy as required under the common law and, in particular, under section 106 of the Transfer of Property Act, is to precede any proceedings for eviction by landlords against tenant under the Madras Buildings (Lease and Rent Control) Act, XVIII of 1960)?"

T. R. Venkataraman, for Appellant.

P. S. Sarangapani Ayyangar, for Respondent.

K.S. ——— *Referred to Bench.*

* Since reported fully in (1967) 1 M.L.J (S C) 61.

[SUPREME COURT]

K. Subba Rao, C J, J C Shah, S.M. Sikri, V. Ramaswami and *C A Vaidialingam, JJ.*
16th January, 1967.

The State of Mysore *v.* H. Sanjeeviah.
C.A. No. 1010 of 1965.

Mysore Forest Act (*XI of* 1900), *section* 37—*Rules regarding transit of Timber, Fire wood Charcoal and Bamboos from all lands, rule* 2—*If restrictive or, regulatory—Articles* 301, 305, 306 *of the Constitution—Scope*

Whether or not these are good grounds for imposing restrictions on transport of forest produce is not a matter of concern in dealing with the power of the State by Rules to restrict the right to transport forest produce. The power conferred upon the State Government is merely " to regulate the transit " of forest produce and not to restrict it. If the provisos are in truth restrictive of the right to transport the forest produce, however good the grounds apparently may be for restricting the transport of forest produce, they cannot on that account transform the power conferred by the provisos into a power merely regulatory. The High Court was, therefore, in our view, right in holding that the two provisos to rule 2 are not regulatory in character, but are restrictive.

Article 304 which is an exception to Article 301 has no application to this case, because that Article saves certain laws from the operation of Article 301 if the law is passed by the Legislature of a State.

Article 301 in terms prohibits the imposition of any restriction on trade, commerce and intercourse throughout the territory of India, and by the enactment of the two provisos clearly a restriction is imposed upon the freedom of trade. The provisos to the rule enacted by the State Government must therefore be deemed to be invalid as infringing the guarantee under Article 301 on the freedom of trade, commerce and intercourse.

S. V. Gupte, Solicitor-General of India (*R Ganapathy Iyer* and *R. H Dhebar*, Advocates, with him), for Appellant.

G. R. Ethirajulu Naidu, K. Rajinder Chaudhuri and *K. R. Chaudhuri*, Advocates, for Respondent.

G.R

Appeal dismissed.

[SUPREME COURT]

K. Subba Rao, C J., J C Shah, S. M Sikri, V. Ramaswami and *C A. Vaidialingam, JJ.*
17th January, 1967.

Ramekbal Tiwary *v.* Madan Mohan Tiwary.
Cr. A. No. 213 of 1964.

Penal Code (*XLV of* 1860), *section* 307 *read with sections* 148, 149, 326, 338 *and* 477—*Criminal Procedure Code* (*V of* 1898), *sections* 251-*A*, 437, 207, 207-*A*, 173, 435, 209, 439 *and* 403.

It is to prevent inferior Courts from exercising a jurisdiction which they do not possess that the provisions of section 437, Criminal Procedure Code, have been enacted. To say that the provision can be availed of only where an express order of discharge is made by a Magistrate would be to render those provisions ineffective and inapplicable to the very class of cases for which they were intended The language used in section 437, Criminal Procedure Code, is wide and there is nothing in that section from which it could be gathered that the power can be exercised only when the Magistrate has made an express order of discharge. The Additional Sessions Judge had jurisdiction to set aside the order of the Magistrate dated 19th March, 1960, and to direct the commitment of the appellant to Sessions Court on a charge under section 307, Indian Penal Code.

The view taken by the Madras High Court in *Kirshna Reddi* v *Subbamma*, I.L.R. 24 Mad. 136, and In re *Nalla Balgadu and others*, (1953) 2 M L J. 1 : A I.R. 1953 Mad. 801, as to the interpretation and effect of sections 209 and 437, Criminal Procedure Code, is correct.

In our opinion the High Court must be deemed to have itself set aside the order of acquittal under this section (section 439, Criminal Procedure Code), and we therefore reject the argument advanced by the appellant on this aspect of the case.

Distinguishing the principles laid down in the cases A I.R. 1956 S C 415 and L R. 1950 A C. 458, 479, the Court held. "In our opinion, the principle does not apply to the present case because the order of acquittal of the appellant by the Magistrate must be deemd to have been validly set aside by the High Court for the reasons we have already given. We accordingly reject the argument of the appellant on this point.

For these reasons we are satisfied that the order of the High Court dated 8th May, 1964, is not defective in law But in the circumstances of this case we think that it is not expedient that the appellant should be tried after this lapse of time before a Sessions Court for an offence committed as long back as 30th September, 1958. We accordingly set aside the order of the Additional Sessions Judge, Arrah dated 20th December, 1960, ordering the commitment of the appellant and also the judgment of the Patna High Court dated 8th May, 1964, which affirms the order of the Additional Sessions Judge The appeal is accordingly allowed."

Nur-ud-din Ahmed and *R. C. Prasad*, Advocates, for Appellant.

U. P. Singh, Advocate, for Respondent No. 1.

B. P. Jha, Advocate, for Respondent No. 2.

G. R. ——— *Appeal allowed.*

[SUPREME COURT.]

M. Hidayatullah, V. Bhargava and *G K. Mitter, JJ*
17*th January*, 1967.

M/s. National Iron & Steel Co., Ltd. *v.* The State of West Bengal.
C A. No 497 of 1965.

Industrial Disputes Act (*XIV of* 1947), *sections* 10, 18, 25 *and* 33—*Gratuity—Sickness benefit—Leave Rules—Abolition of contract labour*

On the materials on record the scheme of gratuity as framed is quite a reasonable one on the facts and figures presented by the National Iron and Steel Co., Ltd. We have no material to hold that the scheme would work hardship on the other companies and the findings of the Tribunal cannot therefore be disturbed.

That industrial adjudication should not encourage the employment of contract labour is a principle which was laid down by this Court as far back as 1960 in *Standard Vacuum Refining Co of India, Ltd.* v. *Its Workmen*, (1960) 3 S.C R. 466 at 473: A.I.R. 1960 S.C 948.

Niren De, Additional Solicitor-General of India (*Arun Bahadur* and *Sardar Bahadur*, Advocates, with him), for Appellants

Janardan Sharma and *P. K. Ghosh*, Advocates, for Respondent No. 2

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

R. S. Bachawat and *J M Shelat, JJ*
17*th January*, 1967.

Niranjan Shankar Golikari *v.* The Century Spinning & Manufacturing Co , Ltd.
C. A. No. 2103 of 1966

Contract—Agreement in restraint of trade—When opposed to public policy—Covenant reasonable in space and time and to the extent necessary to protect the employer's right of property—Valid and enforceable—Injunction to enforce a negative stipulation—Grant of—When proper—Only to safeguard the trade secrets of the employer.

Considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the

employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided as in the case of *W. H Milsted & Son Ltd* v *Hamp*, (1927) W.N. 288. Both the Trial Court and the High Court have found, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent company was reasonable and necessary for the protection of the company's interests and not such as the Court would refuse to enforce. There is therefore no validity in the contention that the negative covenant contained in clause 17 amounted to a restraint of trade and therefore against public policy.

A. K. Sen, Senior Advocate (*RameshwarDial* and *A D. Mathur*, Advocates, with him), for Appellant.

S. V. Gupte, Solicitor-General of India (*R P. Khatt*, *R A Gagrat* and *G.L. Sanghi*, Advocates, and *B. R. Agarwala*, Advocate, of *M/s. Gagrat & Co.*, with him), for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT]

K. Subba Rao, C J,
J. C. Shah, S M. Sikri,
V Ramaswami and
C A Vaidialingam, JJ.
18*th January*, 1967.

M/s Bijoya Lakshmi Cotton Mills, Ltd. *v.*
The State of W Bengal.
C.As. Nos. 216 and 217 of 1964.

West Bengal Land Development and Planning Act (*XXI of* 1948), *section* 4—*Rules under the Act—Land Acquisition Act—Articles* 154 (1) *and* 166 *of the Constitution—Standing Orders under the Rules*

The views expressed by the High Court is correct in that the Governor's personal satisfaction was not necessary in this case, as, this is not an item of business, with respect to which, the Governor is, by or under the Constitution, required to act in his discretion. Although the executive Government of a State is vested in the Governor, actually it is carried on by Ministers and, in this particular case, under rules 4 and 5 of the Rules of Business, the business of Government is to be transacted in the various departments specified in the First Schedule thereof. Item 5 therein is the Department of Land and Land Revenue and the Governor has allotted the business of that Department to a Minister. The High Court rightly held that the said Minister-in-charge, has got power to make Standing Orders regarding the disposal of cases, in his Department, under the Rules of Business issued by the Governor, on 25th August, 1951, under Article 166 (3) of the Constitution In this case, there is no controversy that the Minister-in-charge, of the Department of Land and Land Revenue, has made Standing Orders on 29th November, 1951, by virtue of powers given to him under rules 19 and 20 of the Rules of Business.

According to the appellant, the entire proceedings connected with the acquisition under the Act, in this case, will come under either item 18, 28 or 29 of Standing Order No 2 and, in consequence, they require to be dealt with by the Minister before orders are issued. Inasmuch as the validity of the notification, under section 4, issued under the Act, alone arises for consideration, in these appeals, the only question is as to whether it was necessary for that matter also to be placed before the Minister-in-charge, either under item 18, 28 or 29 of Standing Order No 2

On a reading of the provisions of the Act as well as the Rules framed thereunder, the Land Planning Committee which is the prescribed authority, under section 3

of the Act, comes into the picture only when the State Government takes action, under section 5, regarding the preparation of a development scheme, and at subsequent stages The Land Planning Committee set up under the Act, does not come into the picture, at the stage when the Government issues a notification, under section 4 of the Act The expression 'notified area,' under section 2 (*c*) of the Act, means an area declared, under sub-section (1) of section 4, to be a notified area. There is no provision, either under the Act or the Rules framed thereunder, making it obligatory on the part of the State Government, to consult the Land Planning Committee at this stage. There is no duty imposed, or function assigned, to the Land Planning Committee, either under the Act or the Rules, to participate at this stage.

The Act and the Rules clearly show that from the stage of section 5, when the prescribed authority, *viz*, the Land Planning Committee, is directed to prepare a development scheme by the State Government, the said Committee is discharging its statutory functions, under the Act.

Bishan Narain, Senior Advocate (*B. P. Maheswari*, Advocate, with him), for Appellant (In both the Appeals)

B. Sen, Senior Advocate (*D N Mukerjee* and *P. K Bose*, Advocates, with him), for Respondents Nos 1, 2 and 4 (In both the Appeals)

S. K. Roy Chaudhury, Advocate, and *Rameshwar Nath*, *Mohinder Narain* and *P. L. Vohra*, Advocates, of *M/s. Rajinder Narain & Co.*, for Respondent No. 3 (In both the appeals).

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

M. Hidayatullah,
V. Bhargava and
G K Mitter, *JJ.*

The Ahmedabad Mill Owners' Association *v.* I. G Thakore.
C A. No. 490 of 1965.

20th January, 1967.

Bombay Industrial Relations Act (*XI of* 1947)—*Standing Orders under the Act*—*Bombay Industrial Disputes Act*, 1938—*Constitution of India*, (1950), *Article* 14—*Industrial Court Regulations*; 1947—*Industrial Disputes Act*, 1947

Under sub-section 3 (2) of section 66, Bombay Act XI of 1947, the employer can straightaway offer that the dispute be referred to the arbitration of the Industrial Court, and thereupon, the Union would be debarred from refusing to agree to that submission In any case, even if the Union were to refuse to agree to it, the State Government will determine under section 71 of the Act whether the dispute should be referred to the arbitration of the Labour Court or the Industrial Court and refer it to that body The mere fact that the Union may not agree to the offer of the employer to submit the dispute for arbitration to the Industrial Court whereupon the State Government can direct that the arbitration be made by a Labour Court or the Industrial Court does not place the employer in any disadvantageous position

When the Bombay Industrial Relations Act, 1946 came into force on 29th September, 1947, the Bombay Act of 1938 was applicable to these industries, and consequently, under sub-section (3) of section 2 of the Act, the Act became applicable to the industry of the appellants and did not require a notification under sub-section (4) of section 2 to make it applicable This point was also, therefore, rightly decided against the appellants, and the judgment of the High Court must be upheld. The appeal is, therefore, dismissed with costs.

S. T Desai and *P B Patwari*, Senior Advocates (*O. C. Mathur*, Advocate, of *M/s. J. B. Dadachanji & Co*, with them), for Appellants

Respondent No 2 in person.

H R. Gokhale, Senior Advocate (*S P Nayyar*, Advocate, for *R. H Dhebar*, Advocate, with him), for Respondent No. 3

G R. ——— *Appeal dismissed.*

[SUPREME COURT]

K Subba Rao, C J,
J C Shah, J M Shelat,
V. Bhargava and *G K Mitter, JJ*
23rd January, 1967

The State of M P. *v.*
Thakur Bharat Singh.
C A No 1066 of 1965

Madhya Pradesh Public Security Act (*XXV of* 1959), *sections* 3 *and* 6—*Constitution of India*, (1950), *Articles* 13 (2), 358, 352, 162 *and* 19 (1) (a) *&* (e)

It is true that the dispute arose before the Constitution (Seventh Amendment) Act, 1956, amending, *inter alia*, Article 298 was enacted, and there was no legislation authorising the State Government to enter the field of business of printing, publishing and selling text-books It was contended in support of the petition that in *Rai Sahib Ram Jawaya Kapur* v. *The State of Punjab*, (1955) S C J 504 (1955) 2 M.L J (S.C) 59 (1955) 2 S C R. 225 , that without legislative authority the Government of the State could not enter the business of printing, publishing and selling text-books. The Court held that by the action of the Government no right of the petitioners were infringed, since a mere chance or prospect of having particular customers cannot be said to be a right to property or to any interest or undertaking It is clear that the State of Punjab had done no act which infringed a right of any citizen, the State had merely entered upon a trading venture By entering into competition with the citizens, it did not infringe their rights Viewed in the light of these facts the observations relied upon do not support the contention that the State or its officers may in exercise of executive authority infringe the rights of the citizens merely because the Legislature of the State has the power to legislate in regard to the subject on which the executive order is issued.

The order made by the State in exercise of the authority conferred by section 3 (1) (*b*) of the Madhya Pradesh Public Security Act XXV of 1959 was invalid and for the acts done to the prejudice of the respondent after the declaration of emergency under Article 352 no immunity from the process of the Court could be claimed under Article 358 of the Constitution, since the order was not supported by any valid legislation.

B Sen, Senior Advocate (*I N. Shroff*, Advocate, with him), for Appellants.

G R.

Appeal dismissed.

[SUPREME COURT]

K N. Wanchoo,
R S Bachawat and
J M Shelat, JJ
23rd January, 1967.

Valliammal Achi *v*
Nagappa Chettiar.
C A. No 806 of 1964.

Hindu Succession Act (*XXX of* 1956)—*Indian Succession Act* (*XXXIX of* 1925), *section* 180—*Joint family property—Father's right to will it away under Mitakshara Law.*

A father cannot turn joint family property into absolute property of his son by merely making a will, thus depriving sons of the sons who might be born thereafter of their right in the joint family property. It is well settled that the share which a co-sharer obtains on partition of ancestral property is ancestral property as regards his male issues They take an interest in it by birth whether they are in existence at the time of partition or are born subsequently. If that is so and the character of the ancestral property does not change so far as sons are concerned even after partition, we fail to see how that character can change merely because the father makes a will by which he gives the residue of the joint family property (after making certain bequests) to the son A father in a Mitakshara family has a very limited right to make a will and Pallaniappa's father could not make the will disposing of the entire joint family property, though he gave the residue to his son We are therefore of opinion that merely because Pallaniappa's father made the will and Pallaniappa probably as a dutiful son took out probate and carried out the wishes of his father, the nature of the property could not change and it will be joint family property in the hands of Pallaniappa so far as his male issues are concerned.

Further it is equally well settled that "under the Mitakshara law each son upon his birth takes an interest equal to that of his father in ancestral property,

whether it be movable or immovable. It is very important to note that the right which the son takes at his birth in the ancestral property is wholly independent of his father. He does not claim through the father....." It follows therefore that the character of the property did not change in this case because of the will of Pallaniappa's father and it would still be joint family property in the hands of Pallaniappa so far as his male issue was concerned. Further as soon as the respondent was adopted he acquired interest in the joint family property in the hands of Pallaniappa and this interest of his was independent of his father Pallaniappa, and could not be defeated even if Pallaniappa could be said to have made an election.

In this view of the matter, it is unnecessary to consider the question whether Pallaniappa, after the respondent's adoption, threw the property into the family hotch-pot.

C B Agarwala, Senior Advocate (*B Dutta*, *T S. Krishnaswamy Iyengar* and *P. L Meyyappan*, Advocates, and *J B Dadachanji*, Advocate, of *M/s J B Dadachanji & Co*, with him), for Appellant

A K Sen, Senior Advocate (*R Ganapathy Iyer*, Advocate, with him), for Respondent No. 1.

K. R Chaudhuri and *K. Rajinder Chaudhury*, Advocates, for Respondent No 2.

G R. *Appeal dismissed.*

[SUPREME COURT]

M Hidayatullah, *S M Sikri* and *C. A Vaidialingam*, *JJ.*
24*th January*, 1967.

The Kamani Metals & Alloys, L'd *v.* The Workmen.
C.A. No. 634 of 1965.

Industrial Disputes Act (*XIV of* 1947), *section* 10 (1) (d)—*Dearness allowance of workers.*

The submission is that there is no change of circumstances justifying a revision of wages and pay scales or dearness allowance. It can hardly be maintained that wages fixed far back do not need revision, when, as everyone knows, commodity prices have soared high, the general level of wages has gone up and in some industries there have been two or three revisions already and in some others Wage Boards have been appointed to revise or fix wages We can take judicial notice of these facts In this Company no revision has taken place and the demand is, therefore, not unjustified.

It is contended that linking the dearness allowance, after the consumer price index 321 to wages has made a departure from the fixation of dearness allowance fixed in the Kamani Engineering Corporation in which, under the same circumstances, the percentage after the consumer price index of 321 is that of the dearness allowance and not of the basic salary On the other side, we were shown a number of awards in which dearness allowance has been fixed in the same manner as by this Award. It appears that the case of Kamani Engineering was treated as a special case because the incentive bonus there was yielding a third of the total earnings of the workmen and it was considered that if the dearness allowance was also raised then a very great burden would be thrown upon the employer by reason of the incentive bonus We cannot, therefore, use the precedent of the award in the Kamani Engineering Coporation because of these special facts We are satisfied that in many other companies dearness allowance has been ordered to be calculated in the same manner as has been done by this Award and we see no reason, therefore, to interfere.

H R Gokhale, Senior Advocate (*I N. Shroff*, Advocate, with him), for Appellant.

K. K. Singhvi and *R S Kulkarni*, Advocates, and *S C Agarwala* and *D. P. Singh*, Advocates, of *M/s. Ramamurthi & Co.*, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]
K. N Wanchoo and *V Ramaswami, JJ*
27th January, 1967

D Sanjeevayya *v.* The Election Tribunal, A.P.
C.A. No. 1 of 1967.

Representation of the People Act (*XLIII of* 1951), *sections* 81 *and* 150—*Constitution of India* (1950), *Articles* 190 (3) (b) *and* 324

The Election Commission is not bound immediately to call upon the Assembly Constituency to elect a person for the purpose of filling the vacancy caused by the resignation of the appellant It is open to the Election Commission to await the result of the election petition and thereafter decide whether a bye-election should be held or not If the election petition is ultimately dismissed or if the election is set aside but no further relief is given, a bye-election would follow. If, however, respondent No 2 who filed the election petition or any other candidate is declared elected the provisions of section 150 of the Act cannot operate at all because there is no vacancy to be filled In the present case, therefore, the Election Commission is not bound under section 150 of the Act to hold a bye-election forthwith but may suspend taking action under that section till the result of the election petition filed by respondent No. 2 is known

This view as to the scope and effect of section 150 of the Act is borne out from May's Parliamentary Practice, 17th Edition, pages 176-177

The High Court was right in holding that no case was made out for the issue of a writ of *mandamus* to the Election Commission.

B Sen, Senior Advocate (*T Lakshmaiah, M M Kshatriya, K Venkataramiah* and *G. S. Chatterjee*, Advocates, with him), for Appellant.

M K Ramamurthi, Shyamala Pappu and *Vineet Kumar*, Advocates, for Respondent No. 2.

R. H. Dhebar and *S. S. Javali*, Advocates, for Respondent No. 3.

G R. *Appeal dismissed.*

[SUPREME COURT]
V. Bhargava and *G K Mitter, JJ.*
27th January, 1967.

The Management of the Northern Railway Co-operative Credit Society, Ltd. *v* Industrial Tribunal, Rajasthan.
C A No 496 of 1965.

Industrial Disputes Act (*XIV of* 1947), *section* 10 (1) (d)—*Civil Procedure Code* (*V of* 1908), *section* 115—*High Court's jurisdiction under Article* 226 *of the Constitution—Articles* 133 *and* 136 *of the Constitution*

An appeal or a revision is a continuation of the original suit or proceeding and the finality must, therefore, attach to the whole of the matter and the matter should not be a live one after the decision of the High Court if it is to be regarded as final for the purpose of appeal under Article 133. Notice was taken of the fact that the whole of the controversy had not been decided by the High Court when there is an appeal or revision against an interlocutory order. In these circumstances, it is clear that if the appellant wanted to challenge the correctness of the decision of the High Court holding that this dispute was an industrial dispute, the appropriate remedy was to come up in appeal against the judgment of the High Court either by a certificate under Article 133 or by Special Leave under Article 136 of the Constitution The appellant having failed to do so, the judgment of the High Court became final, and consequently, binding between the parties The parties to that petition were the parties now before us in this appeal In this appeal brought up against the award of the Tribunal, consequently it is no longer open to the appellant to raise the plea which was rejected by the High Court by its judgment dated 7th February, 1962 The first point raised on behalf of the appellant, therefore, fails.

It was in view of this omission that the subsequent notice was given by the Vice-Chairman to Kanraj to show cause when the Vice-Chairman had formed his provisional opinion on the basis of the report of the Committee of Enquiry that the charges were proved and Kanraj should be removed from service. This subsequent show cause notice by the Vice-Chairman was, no doubt, not required

by any rule or law analogous to Article 311 of the Constitution but in the instant case this subsequent opportunity which was offered by the Vice-Chairman was the only opportunity which could have satisfied the requirement of principles of natural justice, because in the earlier enquiry Kanraj had already been prejudiced by the vagueness of the charges and by the omission to disclose to him the material in support of those charges In the enquiry, no adequate opportunity having been given to Kanraj, the Tribunal was perfectly justified in setting aside the order of removal based on the report of the Committee of Enquiry, and it appears that it was in view of the aspect explained by us above that the Tribunal proceeded to lay down that it was open to the Society to institute a fresh enquiry and give an opportunity to Kanraj to show cause after supplying copies of necessary documents to him as claimed by him when the notice dated 13th September, 1956, was issued to him. Consequently, we consider that the order passed by the Tribunal was fully justified.

K L Gosain, Senior Advocate (*S. C Malaik*, *S. K. Mehta* and *K. L. Mehta*, Advocates, with him), for Appellant.

R K. Garg and *S C. Agarwala*, Advocates, of *M/s Ramamurthi & Co.*, and *Marudhar Mridul* and *Mohan Lal Calla*, Advocates, for Respondent No. 2

G.R ——— *Appeal dismissed.*

[SUPREME COURT.]

M. Hidayatullah, *V. Bhargava* and *G K. Mitter*, *JJ* 30*th January*, 1967.

Azam Jahi Mills Ltd. *v.* The Workmen. C.As. Nos. 971 & 972 of 1965.

Industrial Disputes—Bonus—Full Bench formula—Depreciation—Income-tax Act—Companies Act (*I of* 1956).

It is well settled that depreciation allowed under the Income-tax Act after 1948 was to consist of the statutory normal depreciation as well as initial depreciation and additional depreciation. The Full Bench formula of the Labour Appellate Tribunal decided in *U.P. Electric Supply Co , Ltd* v *Their Workmen*, (1955) 2 L L J 431, that the depreciation which should be deducted from the gross profits in working the formula was normal depreciation including the multiple shift depreciation but excluding the initial depreciation and additional depreciation allowable under the Income-tax Act This decision was followed by another Labour Appellate Tribunal of India in *Surat Electricity Co 's Staff Union* v *Surat Electricity Co , Ltd.*, (1957) 2 L L J 648. There it was pointed out that the deduction allowed under the head of depreciation in the early years of the use of the machinery was rather heavy under the provisions of the Indian Income-tax Act which would have the effect of unduly lessening the available surplus under the bonus formula to the prejudice of workers even in a year of prosperity and that is why the Full Bench postulated for a more even distribution of depreciation over a period of years. This accounted for the ignoring of the initial and additional depreciation in working out the bonus formula. The net result was that the depreciation to be taken into account for working out the bonus formula was a notional amount of normal depreciation. No objection can be taken to this because the bonus formula itself is a theoretical one Both these decisions were referred to in *The Associated Cement Companies, Limited* v *Its Workmen*, (1959) S C.R. 925 , and the latter decision was approved of by this Court (see at page 960).

Therefore, the Tribunal was not right in finding that there was available surplus for calculation of bonus for the year 1960-61 and the Appeal No. 971 of 1965 must be allowed and the award set aside.

Appeal No 972 of 1965 which is by the workmen for enhancement of the bonus consequently must be dismissed.

A K Sen, Senior Advocate (*R V Pillai* and *B K Seshu*, Advocates, with him), for Appellant (In C A No. 971 of 1965) and Respondent (In C A. No. 972 of 1965).

M K. Ramamurthi, Advocate, for *M/s Ramamurthi & Co* , for Respondent (In C A No. 971 of 1965) and Appellant (In C A. No 972 of 1965)

G.R. ——— *Appeal No.* 971 *of* 1965 *allowed; Appeal No* 972 *of* 1965 *dismissed.*

[SUPREME COURT]

M. Hidayatullah, S. M. Sikri and *C A Vaidialingam, JJ.*
30*th January*, 1967.

Maneklal Jinabhai Kot *v.* State of Gujarat.
Cr. A. Nos 198-205 of 1964.

Factories Act (*LXIII of* 1948), *sections* 63, 92, 101.

There is a duty cast, under the Factories Act, upon the occupier or manager, to comply with the peremptory provisions of the Act, but under section 101, when the manager or occupier is charged with an offence, he is entitled to make a complaint, in his own turn to establish facts mentioned in the said section, and if he is able to establish that it was such other person, who has committed an offence, and satisfies the other requirements of the said section, the manager or occupier is absolved from all liability. An adequate safeguard has also been provided, under section 101, under which, in circumstances mentioned therein, the occupier or manager can save himself, if he proves that he is not the real offender, but some other person, charged by him, is.

Applying the principles referred to above, the approach made by the trial Court, and by the High Court, in this case is erroneous. Therefore, the appellant can also be considered to have established that the offence was committed by respondents 2 and 3. But, it is further necessary for the appellant to establish the two essential facts mentioned in section 101 of the Act, *viz*, (*i*) that he has used due diligence to enforce the execution of the Act and (*ii*) that respondents 2 and 3 committed the offence in question without his consent, knowledge or connivance.

On the basis of the above findings, the appellant has to be discharged from any liability under the Act, in respect of the offence charged, and respondents 2 and 3 must be held to have committed the offence in question, by violating the provisions of section 63 of the Act In consequence, respondents 2 and 3 are found guilty of violating the provisions of section 63 and are, accordingly, convicted under section 92 of the Act, and each of them is sentenced to pay a fine of Rs. 100 in default to undergo simple imprisonment for one week.

Purshottam Tricumdas, Senior Advocate (*R Gopalakrishnan*, Advocate, with him), for Appellant (In all the Appeals)

Y. L Taneja, Advocate and *S P. Nayyar*, Advocate for *R. H. Dhebar*, Advocate, for Respondent No. 1 (In all the Appeals).

G.R.

Appeals allowed;
Appellant acquitted;
Respondents 2 *and* 3 *convicted.*

[SUPREME COURT]

K N. Wanchoo, V Ramaswami, JJ
30*th January*, 1967.

I. N. Saksena *v.* State of Madhya Pradesh.
C A No 670 of 1965.

Fundamental Rule 56—*Constitution of India* (1950), *Articles* 309 *and* 311—*Stigma on retirement*—55 *years raised to* 58 *years*—*Compulsory Retirement.*

Where an order requiring a Government servant to retire compulsorily contains express words from which a stigma can be inferred, that order will amount to removal within the meaning of Article 311 But where there are no express words in the order itself which would throw any stigma on the Government servant, we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research.

The argument that the mere fact that a Government servant is compulsorily retired before he reaches the age of superannuation is in itself a stigma, is against the consistent view of the Court that if the order of compulsory retirement before the age of superannuation contains no words of stigma it cannot be held to be a removal requiring action under Article 311.

The Madhya Pradesh New Pension Rules 1951, do not apply to District Judges. Further in any case the provision with respect to retiring at the age of 55 years on three month's notice was introduced in those rules in August and September, 1964, and the Government could not therefore take advantage of that rule at the time when the appellant was retired

The order of the High Court is set aside and the order of retirement passed in this case is quashed The appellant will be deemed to have continued in the service of the Government in spite of that order As however the appellant attained the age of 58 years in August, 1966, it is not possible now to direct that he should be put back in service But he will be entitled to such benefits as may accrue now to him by virtue of the success of the writ petition.

Rameshwar Nath and *Mahinder Narain*, Advocates of M/*s Rajinder Narain & Co.*, for Appellant.

B Sen, Senior Advocate, *M N Shroff*, Advocate for *I. N. Shroff*, Advocate, with him), for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

K Subba Rao, C J , J C Shah, J M Shelat, V Bhargava, and *G K Mitter, JJ*
1*st February*, 1967.

Shibsankar Nandy *v* Prabartak Sangha
C A. No. 1004 of 1965.

Societies Registration Act (*XXXI of* 1860)—*West Bengal Estates Acquisition Act* (*I of* 1954), *section* 2 (a)—*Civil Procedure Code* (*V of* 1908), *section* 115 *and Article* 227 *of the Constitution—Transfer of Property Act* (*IV of* 1882), *Article* 19 (1) (f) *of the Constitution—West Bengal non-agricultural tenancy Act section* 24

Chapter IV of the West Bengal Estates Acquisition Act in like manner confers substantial rights on under tenants. It is only when a non-agricultural tenant transfers his rights in the leased land to a third party that the provisions of sections 23 and 24 are attracted and in such an eventuality the immediate landlord who has interest in such land and has continuous land in his actual possession is given the right to apply for the transfer of such land in his favour provided that the Court is satisfied that such land is required for any of the purposes set out in section 4 The scheme of the Act clearly is to afford security of tenure to tenants and under tenants even to the extent of making their rights transferable and heritable. It is only when such land is sought to be transferred that the immediate landlord is given the right to have it transferred to himself instead of to a third party These provisions clearly reflect the true object of the Legislature in enacting section 24 That object is to have an adjustment of rights of landlords and tenants. The consideration of the land being contiguous is therefore not the sole consideration as in the case of *Bhau Ram* v *Baijnath Singh*, (1962) (Supp) 3 S C R 724 (1961) 2 An W.R (S C) 165 (1961) 2 M L J (S C) 165 (1961) 2 S C J. 601 . A I R 1961 S C 1327. The restriction contained in section 24 cannot by any means be treated as an unreasonable restriction Consequently the contention as to the constitutional invalidity of section 24 cannot be accepted.

T. N. Mukherjee and *Dhruba Kumar Mukherjee*, Advocates, for Appellant

Sukumar Ghose, Advocate, for Respondent No. 1.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

M. Hidayatullah,
S M Sikri and
C A Vaidialingam, JJ.
1*st February*, 1967.

Workmen of Sri Ranga Vilas Motors (P.) Ltd *v.* Sri Ranga Vilas Motors (P) Ltd.
C.A. No 1065 of 1965.

Industrial Disputes Act (*XIV of* 1947), *sections* 10, 10 (1-*A*), 10 (5), 10 (1) (*d*).

The High Court based its decision on two grounds. First that there is nothing either in the order of reference or in any other material placed before it to indicate that the Government have applied their mind to the applicability of the proviso to the facts of this case or have actually acted pursuant to the proviso in making the references to the Labour Court, and secondly, that there can be no doubt that more than one hundred persons are interested in and are therefore likely to be affected by the dispute in question In our view it is not necessary that the order of reference should expressly state that it is because of the proviso that a reference is being made to the Labour Court, and if the reference can be justified on the facts, there is nothing in the Act which makes such a reference invalid. The second reason given by the High Court, with respect, is erroneous because it seems to have equated the words " interested " and " affected ". It would be noticed that section 10 (1-A) uses both the words " interested " or " affected ". Section 10 (5) also uses both the words " interested " or " affected ". It seems to us that there is a difference in the import of the words " interested " or " affected ". The Union which sponsors the cause of an individual workman is interested in the dispute but the workmen who are the members of the Union are not necessarily affected by the dispute. The dispute in this case was regarding the validity of the transfer and consequent removal of the appellant The other workmen would naturally be interested in the dispute but they are not affected by this dispute In our opinion, the High Court erred in holding that the first proviso to section 10 (1) (*d*) did not apply to the facts of this case. In view of our decision on this point, it is not necessary to go into the question whether the points in dispute fell within the second or the third Schedule to the Act.

Applying the principles of its earlier decision in *Indian Cable Co., Ltd* v. *Its Workmen*, (1962) 1 L.L J 409, to the facts of the case, the Court held. it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government.

M. K. Ramamurthi, Advocate for *M/s. Ramamurthi & Co.*, for Appellants.

O. P. Malhotra and *P C. Bhathari* Advocates, and *O. C. Mathur*, Advocate of *M/s. J B. Dadachanji & Co.*, for Respondent No. 1

G.R. *Appeal allowed.*

[SUPREME COURT]

K. N Wanchoo,
R S Bachawat and
V. Ramiswami, JJ.
2*nd February*, 1967.

The State of Maharashtra *v.* Babulal Kriparam Takkamore.
C A. No. 2340 of 1966.

City Corporation Act, 1948 (*C.P and Berar Act II of* 1950), *section* 408.

Now the opinion of the State Government that the Corporation was not competent to perform the duties imposed on it by or under the Act, was based on two grounds one of which is relevant and the other irrelevant Both the grounds as also other grounds were set out in paragraphs 1 and 2 read with the annexures 1 and 2 of the show-cause notice dated 21st July, 1965. Para 3 of the show-cause

notice stated, "And whereas the grounds aforesaid jointly as well as severally appear serious enough to warrant action under section 408 (1) of the said Act". The order dated 29th September, 1965, read with the notice dated 21st July, 1965 shows that in the opinion of the State Government, the second ground above was serious enough to warrant action under section 408 (1) and was sufficient to establish that the Corporation was not competent to perform its duties under the Act. The fact that the first ground mentioned in the order is now found not to exist, and is irrelevant, does not affect the order. We are reasonably certain that the State Government would have passed the order on the basis of the second ground alone. The order is, therefore, valid and cannot be set aside.

M. C Setalvad and *N. S. Bindra*, Senior Advocates (*R. H. Dhebar*, Advocate, with them), for Appellant.

A. S Bobde and *S. G. Kukdey* Advocates for *M/s. J. B. Dadachanji & Co.*, for Respondent No. 1.

M M Kinkhede, *G L. Sanghi* and *A. C. Ratnaparkhi*, Advocates, for Respondents Nos. 3 to 16, 19 to 31, 33, 34, 36 to 45, 47 to 53, 55 and 57.

G R. *Appeal allowed.*

[SUPREME COURT]

K. N. Wanchoo and *V. Ramaswami, JJ.*
2nd February, 1967.

S. Govinda Menon *v.* Union of India
C A. No. 1366 of 1966.

Madras Hindu Religious and Charitable Endowments Act, 1951 (*Madras Act XIX of* 1951), *sections* 20, 99, 80, 29, 100—*Rules under the Act—Disciplinary charge against the appellant*—Res judicata's *plea.*

It was argued by the appellant that the word "charges" which occurs in Rule 5 (2) and Rule 7 should be given the same meaning and no order of suspension could be passed under Rule 7 before the charges are framed under Rule 5 (2) against the appellant. We do not think there is any substance in this argument. Rule 5 (2) prescribes that the ground on which it is proposed to take action shall be reduced to the form of a definite charge or charges. Under sub-Rule 5 (3) a member of the service is required to submit a written statement of his defence to the charge or charges The framing of the charge under Rule 5 (2) is necessary to enable the member of Service to meet the case against him. The language of Rule 7 (1) is however different and that rule provides that the Government may place a member of the service under suspension "having regard to the nature of the charges and the circumstances in any case" if the Government is satisfied that it is necessary to place him under suspension. In view of the difference of language in Rule 5 (2) and Rule 7 we are of the opinion that the word "charges" in Rule 7 (1) should be given a wider meaning as denoting the accusations or imputations against the member of the Service. We accordingly reject the argument of the appellant on this aspect of the case.

For the reasons already expressed we hold that the appellant has made out no case for the grant of a writ of prohibition under Article 226 of the Constitution and the majority judgment of the High Court of Kerala dated 5th January, 1966 is correct and this appeal must be dismissed In the circumstances of the case we do not make any order as to costs.

N. S Bindra, Senior Advocate (*R H. Dhebar*, Advocate, with him), for Respondent No. 1.

Sarjoo Prasad, Senior Advocate (*N. N. Venkatachalam*, *A. G. Pudissery* and *M. R. Krishna Pillai*, Advocates, with him), for Respondent No. 2.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K. Subba Rao, C J. and *J. M. Shelat, J*
6th February, 1967.

Bishwanath *v.* Sri Thakur Radha Ballabhji.
C A. No. 780 of 1964.

Civil Procedure Code (*V of* 1908), *section* 92—*Scope and applicability.*

Three legal concepts are well settled. (1) An idol of a Hindu temple is a juridical person, (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have, according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage, see *Kalyana Venkataramana Ayyangar* v *Kasturi Ranga Ayyangar*, (1916) 31 M.L J 777: I L.R. 40 Mad. 212, 225. In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple Disapproving the decisions of Patna in *Kunj Behari* v *Shyamchand*, A I.R 1938 Pat. 394 and in *Artatran* v. *Sudersan*, A I R 1954 Orissa 11, the Court held the only remedy which the members of the public have, where the property had been alienated by a person who was a shebait for the time being was to secure the removal of the shebait by proceedings under section 92 of the Civil Procedure Code and then to secure the appointment of another shebait who would then have authority to represent the idol in a suit to recover the idol's properties.

M. S. Gupta, Lalit Kumar and *S. N Verma*, Advocates, for Appellants.

J P. Goyal and *Raghunath Singh*, Advocates, for Respondent No. 1

G.R

Appeal dismissed.

[SUPREME COURT]

J C. Shah and *G K Mitter, JJ*
6th February, 1967.

R Santhanakumar Nadar *v.* Indian Bank Ltd , Madras.
C A. No. 505 of 1965.

Transfer of Property Act (*IV of* 1882) *sections* 69, 51.—*Scope*

The point that the sale under the provisions of the mortgage deed was invalid because of want of notice to the 16th defendant is not one of substance. Section 69, sub-section (1), Transfer of Property Act gives a mortgagee or any person acting on his behalf the power to sell or concur in selling the mortgaged property or any part thereof in default of payment of the mortgage money, without the intervention of the Court in the cases specified in sub-clauses (*a*), (*b*) and (*c*) of that sub-section. Sub-section (2) of section 69 lays down *inter alia* that no such power shall be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors and default has been made in payment of the principal money or of part thereof, for three months after such service. The language of this sub-section is clear and unambiguous. The section lays down in no uncertain terms that the requisite notice may be given to the mortgagor or one of several mortgagors where there is a number of them, the obvious idea being that the mortgagor who is given the notice is constituted the agent of the other mortgagors to receive the same. It may be hard on a person in the position of a mortgagor to get no notice under this section if he comes to learn that the property has been sold without any notice to him. But if there has been no fraud or collusion in the matter, he has no cause for complaint.

The only other point raised on behalf of the appellant was that he was entitled to the value of the improvements effected by him on the portion of the property purchased under the provisions of section 51 of the Transfer of Property Act. In our opinion, that section can have no manner of application to the facts of this case. Under that section, a transferee of immovable property making any improvement therein believing in good faith that he is absolutely entitled thereto, has a right to require the person subsequently evicting him therefrom on the strength of a better title, to have the value of the improvement estimated and paid or secured to him or to purchase his interest in the property at the then market value thereof. In this case, there can be no question of the appellant believing that he was absolutely entitled to the property. He knew that he was purchasing a small portion of it and that his vendors stood to lose the property unless they paid up the mortgage money on receipt of notice from the mortgagee. As already mentioned, the appellant wanted to safeguard himself against such an eventuality by the insertion of a clause in his deed of sale and the Court directed the setting apart of Rs. 9,000 from out of the sale proceeds for the purpose. We do not think that the case referred to by the learned Counsel, *Narayana Rao* v. *Basavarayappa*, A.I.R 1956 S.C. 727, has any application to the facts of this case.

R Thiagarajan, Advocate for *R. Ganapathy Iyer*, Advocate, for Appellant.

M. S. K. Sastri and *M. S Narasimhan*, Advocates, for Respondent No. 1.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

V. Bhargava and *G. K. Mitter, JJ.*
6th February, 1967.

Calcutta Insurance Ltd. *v.* The Workmen.
C.A. No. 1135 of 1965.

Industrial Disputes Act, (XIV of 1947)—*West Bengal Shops and Establishment Act*, 1963, *sections* 11-*A*, 24—*Factories Act* (*LXIII of* 1948), *section* 79—*Life Insurance Corporation Act* (*XXXI of* 1956)—*Gratuity*.

Gratuity cannot be put on the same level as wages. We are inclined to think that it is paid to a workman to ensure good conduct throughout the period he serves the employer. "Long and meritorious service" must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to and to the harmonious employment of labourers or workmen. Further, the misconduct may be such as to undermine the discipline in the workers a case in which it would be extremely difficult to assess the financial loss to the employer. Section 78 of the Factories Act laid down that the provisions of Chapter VIII with regard to annual leave, etc., were not to operate to the prejudice of any right to which a worker might be entitled under any other law or under the terms of any award, agreement or contract of service. In *Alembic Chemical Works Co.* v. *Its Workmen*, (1961) 2 S.C.J. 745 (1961-62) 20 F.J.R 78: (1961) 1 Lab L.J. 328: A I R 1961 S.C. 647, the Tribunal on a reference under section 10 (1) (*d*) had directed that the workmen should be entitled to privilege leave up to three years completed years of service, 16 days per year and up to nine completed years, 22 days per year and thereafter one month for every 11 months of service with accumulation up to three years. The Tribunal had also provided for sick leave at 15 days in a year with full pay and dearness allowance with a right to accumulate up to 45 days.

A. K. Sen, Senior Advocate (*A. N. Sinha* and *P. K. Mukherjee*, Advocates, with him), for Appellant.

Madan Mohan and *G. D. Gupta*, Advocates, for Respondents.

G R. *Award modified as indicated above No order as to costs.*

[SUPREME COURT]

J. C. Shah and *G. K. Mitter, JJ.* *7th February*, 1967.

State of Orissa *v.* Dr. (Miss) Binapani Dei. C.A. No 499 of 1965.

Constitution of India (1950), *Article* 311—*Orissa Civil Services (Classification, Control and Appeal) Rules*, 1962, *Rule* 13—*Compulsory retirement.*

The State has undoubtedly authority to compulsorily retire a public servant who is superannuated But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken.

If an enquiry was intended to be made, the State authorities shouldhave placed all the materials before the first respondent (concerned civil servant) and called upon her to explain the discrepancies and to give her explanation in respect of those discrepancies as to her age and to tender evidence about her date of birth.

It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why 16th April, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, and the High Court was, in our judgment, right in setting aside the order of the State.

Dipak Dutt Chaudhury and *R. N. Sachthey*, Advocates, for Appellant.

Naunit Lal, Advocate, for Respondents.

G R. ——— *Appeal dismisesd.*

[SUPREME COURT.]

K N Wanchoo, R S Bachawat and *J. M Shelat, JJ.* *16th February*, 1967.

Khambhalia Municipality *v.* State of Gujarat. C.A.No. 1340 of 1966.

Gujarat Panchayats Act 1961 (*VI of* 1962)—*Bombay District Municipal Act* (*III of* 1901)—*Gujarat Panchayat Laws (Amendment) Ordinance*, 1963—*Gujarat Panchayat (Suspension of Provisions and Reconversion of Certain Local Areas into Municipal Districts) Act*, 1962—*Gujarat Municipalities Act*, 1963.

By Majority.—It is the policy of the Act that panchayats should be established within a reasonable time in all local areas with populations not exceeding 30,000 and not included in a notified area or a cantonment. This policy guides and con-

trols the discretionary power of the State Government under section 9 (1). Having regard to this policy section 9 (1) cannot be said to suffer from the vice of excessive delegation of legislative power to the State Government. Pursuant to this policy the Gujarat Government has established panchayats in all villages within the State. The table at page 4 of the " Panchayat Raj at a glance as on 31st March, 1966 " published by the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Community Development), Government of India, New Delhi, shows that in the State of Gujarat there are 11,785 panchayats, covering 18,247 villages and that 100 per cent of the villages and all the rural population are now included in the panchayats.

Section 9 (1) read with section 307 shows that a local area co-extensive with or included within the limits of a municipal borough or a municipal district with a population not exceeding 30,000 may be declared to be a gram or nagar The democratic decentralization committee set up under the Government resolution dated 15th July, 1960 recommended in paragraphs 4, 6 of its report that the life of towns with populations over 30,000 is different from that of villages They are better served by municipalities. For this reason they are excluded from the purview of section 9 (1).

We have no reason to doubt that appropriate steps will be taken by the State Government with regard to the Wadhawan area. But the non-conversion of any of these municipalities into nagar panchayats does not vitiate the Notification of 14th June, 1965. This Notification is lawful and is justified by section 9 (1). Kambalia has a population of 12,249 and was rightly declared to be a nagar. Having regard to the policy of the Act, it was the duty of the State Government to declare it to be a nagar, and the Government has carried out its duty.

Having regard to the policy of the Act, it is plain that the discretionary power under section 9 (2) is vested in the State Government for the purpose of reorganizing the local areas into new units of local self-Government. For such purposes, it may be necessary to establish new panchayats, reconstitue old panchayats, amalgamate or divide existing grams and pending such reorganization it may sometimes be even necessary that an area should cease to be a gram or nagar. It is impossible to visualise all the contingencies when action under section 9 (2) should be taken and the necessary discretion was properly left to the State Government. We are satisfied that section 9 (2) cannot be held unconstitutional on the ground of excessive delegation. We may add that no action has been taken against the appellant under section 9 (2).

Purshottam Trikamdas, Senior Advocate (*Ravinder Narain*, Advocate of *M/s. J. B. Dadachanji & Co.*, with him), for Appellants.

N. S. Bindra, Senior Advocate (*K. L. Hathi*, Advocate and *S. P. Nayyar*, Advocates for *R. H. Dhebar*, Advocate, with him), for Respondents.

G.R. *Appeal dismissed*
