PETITIONER:
RUSTOM CAVASJEE COOPER

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
10/02/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SIKRI, S.M.
SHELAT, J.M.
BHARGAVA, VISHISHTHA
MITTER, G.K.
VAIDYIALINGAM, C.A.
HEGDE, K.S.
GROVER, A.N.
RAY, A.N.
REDDY, P. JAGANMOHAN
DUA, I.D.

CITATION:
1970 AIR 564 1970 SCR (3) 530
1970 SCC (1) 248
CITATOR INFO :

F	1972 SC 106	(20,21,22,41,42,105)
RF	1972 SC1660	(9)
F	1973 SC 602	(44,46)
RF	1973 SC 974	(5,9,10)
RF	1973 SC1425	(28,39)
RF	1973 SC1461	(413,435,601,605,711,712,1033,
R	1974 SC1300	(24)
R	1974 SC2077	(17)
RF	1974 SC2098	(22,28)
RF	1974 SC2154	(21)
R	1974 SC2192	(131)
F	1975 SC 32	(30,32)
R	1975 SC 550	(12)
RF	1975 SC1699	(4,10)
RF	1975 SC2299	(606)
R	1976 SC1031	(17)
RF	1976 SC1207	(53,57,58,59,274,450,458,518,5
RF	1977 SC 915	(8)
R	1978 SC 215	(15,41,73,74,75,76,79,85)
R	1978 SC 597	(9,40,41,54,55,68,68A,118,131,
R	1978 SC 803	(30,34)
RF	1979 SC 25	(35)
E&R	1979 SC 248	(9,15,16,19,27)
RF	1979 SC 478	(101)
RF	1979 SC1925	(16)
R	1980 SC 898	(41,45,47,57,61)
RF	1980 SC1789	(36)
F	1980 SC1955	(16)
RF	1981 SC 234	(99)
RF	1981 SC1597	(3)
F	1982 SC 697	(20)
R	1982 SC 710	(16,71,87)
MV	1982 SC1325	(80)
R	1983 SC 1	(71)
R	1983 SC 473	(6,24)

R	1983 SC 937	(12,31)
R	1983 SC1190	(14)
R	1984 SC 774	(9,15)
RF	1984 SC1178	(17)
D	1984 SC1346	(5)
D	1985 SC1416	(103,104)
R	1985 SC1737	(13)
RF	1986 SC 468	(26,28,30,31)
RF	1986 SC 555	(6)
RF	1986 SC 872	(77)
R	1986 SC1466	(11)
D	1987 SC 579	(8)
RF	1987 SC1706	(2)
RF	1988 SC 151	(13)
RF	1988 SC 782	(50)
RF	1988 SC1208	(27)
RF	1988 SC1353	(18)
D	1988 SC1737	(53)
RF	1989 SC 389	(6)
F	1989 SC1629	(16)
R	1991 SC 101	(32,259)
RF	1991 SC 855	(21)
F	1992 SC1701	(26,27)

ACT:
Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969-Sections 4, 5, 6, 15(2) and Schedule II-Fundamental rights, infringement of-Legislative competence-Constitution of India, Arts. 14, 19 and 31 (2), Entries 43, 44, 45 List I, Entry 42 List III Seventh Schedule.
Constitution of India, 1950, Art. 14-Equality--Banking Companies (Acquisition and Transfer of Undertakings) Act 1969, s. 15(2)-Statute permitting Banks to do business other than Banking but practically preventing them from doing not-banking business--If discriminatory.
Constitution of India, 1950, Art. 19(1) (f) cl. (6) (ii) anel 19(1) (g)- Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969-Carrying on of business by the State to the exclusion of citizens-If Could be challenged under Art. 19(1)(g)-Restrictions on the right to do non-banking business-If unreasonable.
Constitution of India, 1950, Arts. 19(1)(f) and 31(2)-If mutually -exclusive.
Constitution of India, 1950, Art. 31(2)-Compensation-Meaning of compensation-Undertaking-Acquisition as a unit-Principles of valuation-Justiciability of compensation.
Constitution of India, 1950, Art. 123-Ordinance-Promulgation of Nature of power conferred by Article.
Constitution of India, 1950, Art. 32--Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969-When shareholder can move petition for infringements of the rights of the Company.
Legislative competence-Entry 45 List I, Entry 42, List III Seventh Schedule-"Banking", meaning of-"Property" meaning of-Banking Companies (Acquisition and Transfer of Undertakings-) Act, 1969 Section 4-"Undertaking", meaning of-Validity of law acquiring undertaking.

HEADNOTE:
On July 19, 1964, the Acting President promulgated, in exercise of the power conferred by cl. (1) of Article 123 of the Constitution, Ordinance 8 of 1969, transferring to and

vesting the undertaking of 14 named Commercial Banks, which held deposits of not less than rupees fifty crores, in the corresponding new Banks set up under the Ordinance. Petitions challenging the constitutionality of the Ordinance were lodged in this Court, but before they were heard Parliament enacted the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. The object of the Act was to provide for the acquisition and transfer of the Undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with the national policy and _objectives and for matters connected therewith or incidental
531
thereto. The Act repealed the Ordinance and came into force on July 19, 1969, i.e., the day on which the Ordinance was promulgated, and the Undertaking of every named Bank with all its rights, liabilities and assets was deemed, with effect from that date, to have vested in the corresponding new bank. By s. 15(2) (e), the named Banks were entitled to engage in business other than banking which by virtue of s. 6(1) of the Banking Regulation Act, 1949, they were not prohibited from carrying on. Section 6 read with Schedule 11 provided for and prescribed the method of determining compensation for acquisition of the undertaking. Compensation to be determined was for the acquisition of the undertaking as a unit and by section 6(2), though separate valuation had to be made in respect of the several matters specified in Schedule 11 of the Act, the amount of compensation was to be deemed to be a single compensation. Under Schedule 11 the compensation payable was to be the sum -total of the value of the assets under the heads (a) to (h), calculated in accordance with the provisions of Part I less the sum total of the liabilities and obligations calculated in accordance with the provisions of Part 11. The corresponding new Banks took over vacant possession of the lands and buildings of the named Banks. By Explanation I to cl. (e) of Part I of Schedule It the value of any land or building to be taken into account in valuing the assets was to be the market value or the ascertained value whichever was less; by Explanation 2 cl. (1) ascertained value"' in respect of buildings wholly occupied on the date of the commencement of the Act was to be twelve times the amount of annual rent or the rent for which the building could reasonably be expected to be let out from year to year, reduced by certain deductions for maintenance, repairs etc.; under cl. (3) of Explanation 2 the value of open land with no building thereon or which was not appurtenant to any building was to be determined with reference to the price at which sale or purchase of comparable'lands were made during the period of three years immediately preceding the commencement of the Act. The compensation was to be determine(1), in the absence of agreement, by a tribunal and paid in securities which would mature not before ten years. The petitioner held shares in some of the named Banks, had accounts. current and fixed deposit, in these Banks and was also a Director of one of the Banks. In petitions 'under Article 32 of the Constitution he challenged the validity of the Ordinance and the Act on the following principal grounds (i) the Ordinance was invalid because the condition precedent to the exercise of the power under Article 23 did not exist:
(ii) the Act was not within the legislative competence of Parliament, because, (a) to the extent to which the Act vested in the corresponding new Banks the assets of business other than Banking the Act trenched upon the authority of

the State Legislature and (b) the power to legislate for acquisition of property in entry 42 List III did not include the power to legislate for acquisition of an undertaking;
(iii) Articles 19(1)(f) and 31(2) are not mutually exclusive and a law providing for acquisition of property for a public purpose could be tested for its validity on the ground that it imposed limitations on the right to property which were not reasonable; so tested, the provisions of the Act which transferred the Undertaking of, the named Banks and prohibited those Banks from carrying on business of Banking and practically prohibited them from carrying on non-banking busi-
532
ness, impaired the freedoms guaranteed by Articles 19(1) (f) and (g);
(iv) the provisions of the Act which prohibited the named Banks from carrying on banking business and practically prohibited them from carrying on non-banking business violated the guarantee of equal protection and were, therefore, discriminatory;
(v) the Act violated the guarantee of compensation under Article 31(2);
(vi) the Act impaired the guarantee of 'freedom of trade under Article 301; and
(vii) -retrospective operation given to Act 22 of 1969 was ineffective since there was no valid Ordinance in existence and the provision in the Act retrospectively validating infringement of the fundamental rights of citizens was not within the competence of Parliament.
On behalf of the Union of India a preliminary objection was raised that the petitions were not maintainable because, no fundamental right of the petitioner was directly impaired as he was not the owner of the property of the undertaking taken over.
HELD : (Per Shah, Sikri, Shelat, Bhargva, Mitter, Vaidialingam Hegde, Grover, Reddy and Dua, JJ.)
1. The petitions were maintainable.
A company registered under the Indian Companies Act is a legal person, separate and distinct from its individual members. Hence a shareholder, a depositor or a director is not entitled to move a petition for infringement of the rights of the company unless by the action impugned his rights are also infringed. But, if the State action impairs the right of the share-holders as well as of the company the Court will not, concentrating merely upon the technical operation of the action deny itself jurisdiction to grant relief. In the -present case the petitioner's claim was that by the Act and the Ordinance the rights. guaranteed to him under Articles 14, 19 and 31 of the Constitution were impaired. He thus challenged the infringement of his own rights and not of the Banks. [555 G-556 H]
The State Trading Corporation of India Ltd. Ors. v. The Commercial Tax Officer, Visakhapatnam & Ors., [1964] 4 S.C.R. 99 and Tata Engineering and Locomotive Co. Ltd. v. State of Bihar and Ors., [1964] 6 S.C.R. 885 held inapplicable.
Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. and Ors., [1954] S.C.R. 674 and Chiranjit Lal Chowdury v. The Union of India" [1950] S.C.R. 869, referred to.
2. (i) Exercise of the power to promulgate an Ordinance under Article 123 is strictly conditioned. The clause relating to the satisfaction is composite; the satisfaction relates to the existence of circumstances, as well as to the

necessity to take immediate action on account of those circumstances. Determination by the President of the existence of circumstances and the necessity to take immediate action on which the satisfaction depends, is not declared final.
533
[Since the Act was declared invalid no opinion was expressed on the extent of the jurisdiction of the court to examine whether the condition relating to satisfaction of the President was fulfilled.] [559 H-560 B; 561 G]
(ii) Act 22 of 1969 was within the legislative competence of Parliament.
The competence of Parliament is not covered in its entirety by entries 43 and 44 of List I of the Seventh Schedule. A law regulating the business of a corporation is not a law with respect to regulation of a corporation. [563 B]
Parliament has exclusive power to legislate with respect to "Banking" in entry 54 List I. A legislative entry must receive a meaning conducive to the widest amplitude subject to limitations inherent in the federal scheme which distributes legislative power between the union and the constituent units. But, the field of "banking" cannot be extended to include trading activities which, not being incidental to banking, encroach upon the substance of the entry "trade and commerce" in entry 26 List II. It cannot be said that all forms of business described in s. 6(1) of the Banking Regulation Act, 1949, cls. (a) to (n) are, if carried on in addition to banking as defined in s. 5(b) of the Act, banking, and that Parliament is competent to legislate in respect that business under entry 54 List I. [565 D, 566 D]
The contention that Parliament was incompetent to legislate for acquisition of the named Banks in so far as it related to assets of the non-banking business had to fail for two reasons : (a) there was no evidence that the named Banks held any assets for any distinct nonbanking business, and (b) the acquisition was not shown to fall within any entry in List II of Seventh Schedule. [568E]
Power to legislate for acquisition of "Property" in entry 42 List III includes the power to legislate for acquisition of an undertaking. The expression "property" in entry 42, List III, has a wide connotation and it includes not only assets, but the Organisation, liabilities and obligations of a going concern as a unit. The expression "undertaking" in section 4 of the Act clearly means a going concern with all its rights, liabilities and assets as distinct from the various rights and assets which compose it. The obligations and liabilities of the business form an integral part of the undertaking and for compulsory acquisition cannot be divorced from the assets, -rights and privileges. A law could. therefore, be enacted for compulsory acquisition of an undertaking as defined in s. 5 of the Act. [568 B-D]
There was no satisfactory proof in support of the plea that the Act was not enacted in the larger interest of nation but to serve political ends. Whether by the exercise of the power vested in the Reserve Bank under the pre-existing laws, results could be achieved which it was the object of the Act to achieve was not relevant in considering whether the Act amounted to abuse of legislative power. This court has the power to strike down a law on ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law. [583 D, 584 H]
Commonwealth of Australia v. Bank of New South Wales, L.R. [1950] A.C. 235 and Rajahmundry Electric Supply Corporation Ltd. v. The State of Andhra, [1954] S.C.R. 779, referred to.

(iii) (a) Articles 19(1)(f) and 31(2) are not mutually exclusive.

534

Under the Constitution the extent of protection against impairment of a fundamental right is determined not by the object of the legislature nor by the form of the action, but by its direct operation upon the individual's tights. [576C] In this Court, there is, however. a body di authority that the nature and extent of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual but by its object. Thereby the constitutional scheme which makes the guaranteed rights subject to the permissible restrictions within their allotted field, fundamental, got blurred and gave impetus to a theory that certain Articles of the Constitution enact a Code dealing exclusively with matters dealt with therein and the protection which an aggrieved person may claim is circumscribed by the object of the State action. The decision in A. K. Gopalan v. The State of Madras, [1950] S.C.R. 88, given early in the history of the Court. has formed the nucleus of this theory. The principle underlying the opinion of the majority in Gopalan was extended to the protection of the freedom in respect of property and it was held that Art. 19(1)(f) and 31(2) were mutually exclusive in their operation and that the substantive provisions of a law relating to acquisition of property were not liable to be challenged on the ground that they imposed unreasonable restrictions on. the right to hold property. With the decision in Kavalappara Kochuni v. State of Kerala, [1960] 3 S.C.R. 887, there arose two divergent lines of authority : (i) "authority of law" in Art. 31 (1) is liable to be tested on the ground that it violates other fundamental rights and freedoms including the right to hold property guaranteed 'by Art. 19(1)(f); and (ii) "authority of a law" within the meaning of Art. 3 1(2) is not liable to be tested on the ground that it impairs the guarantee of Art. 19(1) (f), in so far as it imposed substantive restrictions through it may be tested on the ground of impairment of other guarantees. The expression "law" in the two clauses of Article 31 had, therefore, two different meanings. [570 C-576 B]

The theory that the object and form of the State action determined the extent of the protection which the aggrieved party may claim is not consistent with the constitutional scheme. Clause (5) of Art. 19 and cls. (1) & (2) of Art. 31 prescribes restrictions upon State action subject to which the right to property may be exercised. Article 19(5) is a broad generalisation dealing with the nature of limitations which may be placed by law on the 'right to property. The guarantees, under Art. 31(1) & (2) arise out of the limitations imposed on the authority of the State, by law, to take over the individual's property. The true character of the limitations under the two provisions is not different. Clause (5) of Art. 19 and cls, (1) & (2) of Art. 31 are parts of a single pattern-, Art. 19(1)(f) enunciating the basic right to property of the citizen and Art. 19(5) and cls. (1) & (2) of Art. 31 dealing with the limitations which may be placed by law subject to which the rights may be exercised. Limitations prescribed for ensuring due exercise of the authority of the State to deprive a person of his property and of the power to compulsorily acquire his property are, therefore, specific classes of limitations on the right to property falling within Art. 19(1)(f). In the Constitution the enunciation of rights either expressly or by implication does not follow a uniform pattern. But one

thread runs through them; they seek to protect the 'rights of the individual or groups of individuals against infringement of those rights within specific limits. [576E-577 G]

Formal compliance with the conditions under Article 31(2) is not sufficient to negative the protection of the guarantee of the right to pro-

535

perty. The validity of "law" which authorises deprivation of property and a "law" which authorises compulsory acquisition of property for a public purpose must be adjudged by the application of the same tests. Acquisition must be under the authority of a law and the expression 'law" means a law which is within the competence of the legislature and does not impair the guarantee of the rights in Part III. if property is compulsorily acquired for a public purpose and the law satisfies the 'requirements of Art. 31(2) and 31(2A), the -court may presume that by the acquisition a reasonable restriction on the exercise of the right to hold' property is imposed in the interest of the general public. This is so, not because the claim to plead infringement of the fundamental right under Art. 19(1)(f) does not avail the owner; it is because the acquisition imposes permissible restriction on the right of the owner of the, property compulsorily acquired. [577 H-578 D]

The assumption in A. K. Gopalan v. The State of Madras, [1950] S.C.R. 88, held incorrect. [578 E]

Kavalappara Kottarathi Kochuni & Ors. v. State of Madras, [1960] 3 S.C.R. 887, Swami Motor Transport Co. (P) Ltd. v. Sri Sankaraswamigal Mutt, [1963] Supp. 1 S.C.R. 282, Maharana Shri Javavantsingji v. State of Gujarat, [1962] Supp. 2 S.C.R. 411, 438, Ram Singh & Ors. v. State of Delhi, [1951] S.C.R. 451, State of West Bengal v. Subodh Gopal, [1954] S.C.R. 587. State of Bombay v. Bhanji Munji & Anr. [1966] 1 S.C.R. 777, Babu Barkya Thakur v. State of Bombay, [1961] 1 S.C.R.. 128, Smt. Sitabati Debi v. State of West Bengal, [1967] 2 S.C.R.940 and State of Madhya Pradesh v. Ranojirao Shinde, [19681 3 S.C.R.489, referred to.

(b) The law which prohibited, after July 19, 1969,the named Banks from carrying on banking business, being a necessary incident of the right assumed by the Union, could not be challenged because of Art.19(6)(ii) in so far as it affected the right to carry on business. [583 C]

Clause (6) of Art. 19 consists of two parts : (i) -the right declared by sub-cl. (g) is not protected against the operation of any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by that sub-clause; and (ii) in particular sub-cl. (g) does not affect the operation of. any law relating inter alia, to carrying on by the State or by a Corporation owned or controlled by the State, of any. trade, business, industry or service whether or not such law provides for the exclusion, complete or partial, of citizens. It cannot be held that the expression "in particular" used in cf. (6) is intended' either to particularise or to illustrate the general law set out in the first limb of the clause and, therefore, is subject to the enquiry whether it imposes reasonable restrictions on the exercise of the right in the interest of the general public. The rule enunciated by this Court in Akadasi Padhan v. State of Orissa, [1963] Supp. 12 S.C.R. 691, applies to all laws relating to the carrying on by the State of any trade, business,. industry or service. The basic and essential provisions of law which are "integrally and essentially connected" with the carrying of trade by the

State wilt not be exposed to the challenge that they impair guarantee under Art. 19(1)(g), whether the citizens are excluded completely or partially from carrying on that trade, or the trade is competitive. Imposition of restrictions which are incidental or subsidiary to the carrying on of trade by the State whether to the exclusion of the citizen or not must however. satisfy the test of the main limb of the Article. [580 F, H; 581 H]

Akadasi Padhan v. State of Orissa, [1963] Supp. 2 S.C.R. 691,. followed.

536

Early Fitzwilliam's Wentworth Estates Co. v. Minister of Housing & Local Government & Anr. [1952] 1 All E.R. 509, Saghir Ahmad v. State of U.P. [1955] 1 S.C.R. 707, 727, Rasbihari Panda v., State of Orissa [1969] 3 S.C.R. 374, Vrajlal Manilal & Co. v. State of Madhya Pradesh & Ors. [1970] 1 S.C.R. 400 and Municipal Committee Amritsar v. State of Punjab, [1969] 3 S.C.R. 447, referred to..

(c) The restrictions- imposed upon the right of the named Banks to ,carry "non-banking" business were plainly unreasonable.

By s. 15(2) (e) of the Act the Banks were entitled to engage in business other than banking. But a business organisation deprived of its entire assets and undertaking, its managerial and other staff, its premises and its name, even if it had a right to carry on non-banking business would not be able to do so, specially, when even the portion of the value of its undertaking made payable to it as compensation was not made immediately payable. Where restrictions imposed upon the carrying on of a business are so stringent that the business cannot, in practice, be carried on, the Court will regard imposition of the restrictions as unreasonable. [579 F, 586 H]

Mohammad Yasin v. Town Area Committee, Jalalabad & Anr. [1952] S.C.R. 572 and Dwarkadas Shrinivas v. Sholapur Spinning & Weaving Co. Ltd. & Ors., [1954] S.C.R. 674, referred to.

(iv) When, after acquiring the assets, undertaking, organisation, goodwill and the names of the named Banks they are prohibited from carrying on banking business, whereas, other banks, Indian as well as foreign, are permitted to carry on banking business, a flagrantly hostile discrimination is practised. There is no explanation why the named Banks are specially selected for being subjected to this disability. Section 15(2) of the Act-which by the clearest implication prohibited the named Banks from carrying on banking business is, therefore, liable to be struck down.

The named Banks, though theoretically competent are, in substance, prohibited from carrying on non-banking business. For reasons set out for holding that the restriction is unreasonable, the guarantee of equality was impaired by preventing the named Banks from carrying on nonbanking business. [590 E-H]

[In the absence of any reliable data the Court did not express any opinion on the question whether selection of the undertaking of some out of many banking institutions for compulsory acquisition is liable to be struck down as hostile discrimination.] [589 F]

Chiranjit Lal Chowdhuri v. The Union of India, [1950] S.C.R. 869. State of Bombay v. F. N. Balsara, [1951] S.C.R. 682, State of West Bengal v. Anwar Ali Sarkar, [1952] S.C.R. 284, Budhan Choudhry and Ors. v. State of Bihar, [1955] 1 S.C.R. 1045, Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar, [1959] S.C.R. 279 and State of Rajasthan v.

Mukanchand, [1964] 6 S.C.R. 903, 910, referred to.
(v) The Act violated the guarantee of compensation under Art. 31(2) in that it provided for giving certain amounts determined according to principles which were not relevant in the determination of compensation of the undertaking of the named Banks and by the method prescribed the amounts so declared could not be regarded as compensation. [610 F]
In P. Vajravelu Mudalkar v. Special Deputy Collector, Madras, [1965] 1 S.C.R. 614, and in the cases following it arising under statutes enacted.
537
after the coming into force of the Constitution (Fourth Amendment) Act, 1955 this Court held that the expression compensation in Art. 31(2) after the Constitution (Fourth Amendment) Act continued to have the same meaning it had in Art. 31(2) before it was amended viz., "just equivalent" or "full indemnification". But this Court in Tile State of Gujarat v. Shantilal Mangaldas, [1969] 3 S.C.R. 341, observed that compensation payable as compulsory acquisition of property was not by the application of any principles, determinable as a precise sum and by calling it a "just" or "fair" equivalent, no definiteness could be attached thereto, that the rules relating to determination of value of lands, buildings, machinery and other classes of property differed, and the application of several methods or principles lead to widely divergent amounts; that principles could be challenged on the ground that they were irrelevant to the determination of compensation but not on the plea that what was awarded as a result of the application of those principles was not just or fair compensation; and that a challenge to a statute that the principles specified by it did not award a just equivalent would be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable. Notwithstanding the difference in Vajravelu and Shantilal Mangaldas, both the lines of thought, which converge in the ultimate result, support the view that the principle specified by the law for determination of compensation is beyond the pale of challenge, if it is relevant to the determination of compensation and is a recognised principle applicable in the determination of compensation for property compulsorily acquired and the principle is appropriate in determining the value of the class of property sought to be acquired. On the application of the view expressed in Vajravelu and Shantilal Mangaldas cases the Act had to be struck down as it failed to provide the expropriated Banks compensation determined according to relevant principles. [594 G, 595 C, 598 F-H]
P. Vajravelu Mudaliar v. Special Deputy Collector, Madras, [1965] 1 S.C.R. 614 and State of Gujarat v. Mangaldas & Ors. [1969] 3 S.C.R. 341 applied.
Attorney-General v. De Keyser’s Royal Hotel, L.R. [1920] A.C. 508. State of West Bengal v. Mrs. Bela Banerjee, [1954] S.C.R. 558, N. B. Jeejeebhoy v. Assistant Collector, Thana Prant, [1965] 1 S.C.R. 636. Union of India v. Kamalabai Harjiwandas Parekh & Ors., [1968] 1 S.C.R. 463, Union of India v. Metal Corporation of India, [1967] 1 S.C.R. 255, State of Madras v. D. Namasivaya Mudaliar, [1964] 6 S.C.R. 936, Lachman Dass v. Municipal Committee, Jalalabad A.I.R. 1969 S.C. 1126, Trego v. Huni, L.R. [1896] A.C. 7, State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, [1952] S.C.R. 889 and Bombay Dyeing & Manufacturing Co. Ltd. v. State of Bombay, [1958] S.C.R. 1122. referred to.
There are different methods applicable to different classes of property and a method appropriate to the determination of

value of one class of property may be wholly inappropriate in determining the value of another class. A principle specified by Parliament for determining compensation for the property to be acquired is not conclusive. But if several principles are appropriate and one is selected for determination of the value of the property to be acquired, selection of that principle to the exclusion of other principles is not open to challenge, for, the selection must be left to the wisdom of the Parliament. [599 C, F]

The object underlying the principles of valuation is to award, the owner the equivalent of his property with its existing advantages and its

538

potentialities. Where there is an established market for the property acquired the problem of valuation presents little difficulty. Where there is no established market for the property acquired, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of the acquisition, the disinclination of the owner to part with the property and the benefit which the acquirer is likely to obtain by the acquisition. [599 G]

Compensation to be determined under the Act was for acquisition of the undertaking and when an undertaking is acquired as a unit the principles for determination of compensation must be relevant and appropriate to the acquisition of the entire undertaking. But the Act instead of providing for valuing the entire undertaking as a unit provided for determining the value, reduced by the liabilities, of only some of the components which constituted the undertaking and also provided different methods of determining compensation in respect of each such component. This method is prima facie not a method relevant to the determination of compensation for acquisition of the undertaking, for, the aggregate value of the component-, is not necessarily the value of the entirety of a unit of property acquired, especially, when the property is a going concern with an organised business. On this ground alone acquisition of the undertaking was liable to be declared invalid for it impaired the constitutional guarantee for payment of compensation for acquisition of property by law. [601 D]

Even if it be assumed that the aggregate value of the different components was equal to the value of the undertaking of the named banks as a going concern, the principles specified did not give a true recompense to the bank for loss of the undertaking. In determining the compensation for the undertaking (i) certain important classes of assets were omitted from the heads (a) to (h); (ii) the method specified for valuation of lands and buildings was not relevant to determination of compensation and the value determined thereby in certain circumstances was illusory as compensation; and (iii) the principle for determination of the aggregate Value of liabilities was also irrelevant. 1602 B]

The undertaking of a Banking Company taken once as a going concern would ordinarily include the good-will and the value of the unexpired long-term leases in the prevailing conditions in the urban areas. But good-will of the banks was not one of the items in the assets in the schedule. Thus, the value determined by excluding important components of the undertaking such as the good-will and the value of the unexpired period of cases would not be compensation for the undertaking. The view of this Court in Vajravelu

Mudaliar that exclusion of potential value amounted to giving inadequate compensation and was not fraud on power had no application 'when valuation of an undertaking was sought to be made by breaking it up -into several heads of assets, and important heads were excluded and others valued by the application of irrelevant principles. [602 C, 608 B]
Trego v. Hunt, L.R. [1896] A.C. 7, referred to.
Making a provision 'for payment of capitalised annual rental at twelve time the amount of rent cannot reasonably be regarded as payment of compensation having regard to the conditions prevailing in the money market. Again, the annual rent was reduced by several outgoings and the balance was capitalised. The vice of items (v) & (vi) of cl. (1) of Explanation 2 was that they provided for deduction of a capital charge

539

out of the annual rental which according to no rational system of valuing property by capitalisation of the rental method was admissible. The method provided by the Act permitted the annual interest on the amount of the encumbrance to be deducted before capitalisation and the capitalised value was again reduced by the amount of the encumbrance because, the encumbrance included not only those mortgages or capital charges in respect of which the amount had fallen due but also the liability under the mortgage or capital charge whether the period stipulated under the deed creating the encumbrance had expired or not. In effect a single debt was, in determining the compensation, debited twice, first, in computing the value of assets and, again, in computing the liabilities. By the Act, the corresponding new banks took over vacant possession of the lands and buildings belonging to the named banks. The Act instead of taking into account the value of the premises as vacant premises adopted a method which could not be regarded as relevant. Under cl. 3 of Explanation 2 the value of the open land was to be the market value whereas the value of the land with buildings to be taken into account was the value determined by the method of capitalisation of annual rent or market value whichever was less. The Act, therefore, did not specify a relevant principle for determination of compensation for lands and buildings. [604 B605 B, 606 B-607 F]
The deficiencies in the Act did not result merely in inadequate compensation within the meaning of Art. 31(2). The Constitution 'guarantees a right to compensation-an equivalent in money of the property compulsorily acquired. That is the basic guarantee. The law must, therefore, provide compensation and for determining compensation relevant principles must be specified : if the principles are not relevant the ultimate value determined is not compensation. Therefore, determination of compensation to be paid for the acquisition of an undertaking as a unit after awarding compensation :for some items which go to make up the under-, taking and omitting important items amounted to adopting an irrelevant principle in the determination of the value of the undertaking and did not furnish compensation to the expropriated owner. [607 H, 608 E]
Further, by giving the expropriated owner compensation in bonds of the face value of the amount determined maturing after many years and carrying a certain rate of interest, the constitutional guarantee was not necessarily complied with. If the market value of the bonds is not approximately equal to the face value, the expropriated owner may raise a grievance that the guarantee under Art. 31 (2) is impaired. [609 D-E]

[In view of the finding that there was no evidence that the named banks owned distinct assets apart from the assets of the banking business the Court did not express any opinion on the question whether a composite undertaking of two or more distinct lines of business may be acquired where there is a public purpose for the acquisition of the assets of one or more lines of business but not in respect-of all the lines of business. [591 F]

The Court did not also express any opinion on the question whether in adopting the method of determination of compensation, by aggregating the value of assets which constitute the undertaking, the rule that cash, and choses-in-action are incapable of compulsory acquisition may be applied. [604 B]

In view of the decision that the provisions relating to determination and payment of compensation impaired the guarantee under Art. 31(2). the Court did not consider whether the Act violated the freedom of trade, commerce and intercourse in respect of (i) agency business (ii) the business of guarantee and indemnity carried on, by the named banks..

540

For the same reason the court did not consider the validity of the retrospective operation given to the Act by ss. 1 (2) and 27.] [609 H]

Section 4 is the kingpin in the mechanism of the Act. -Sections 4, 5 and 6 read with Sch. 11 provide for the statutory transfer and vesting of the undertaking of the named banks in the corresponding new batiks and prescribe the method of determining of compensation for expropriation of The undertaking. Those provisions are void as they impair the fundamental guarantee under Art. 31(2). Sections 4, 5 and 6 and Sch. 11 are not severable from the rest of the Act. The Act in its entirely had to be declared void. [610 G]

Per Ray, J. dissenting

[His Lordship did not deal with the preliminary objection based on the petitioner's locus standi since the petitions were heard on merits.]

(i) The interpretation of Article 123 is to be made first, on the language of the Article and, secondly, the context in which that power Is reposed in the President, The power is vested in the President who the executive head and the circumstances contemplated in the Article are a guide to the President for exercise of such power. Parliament is not In session throughout the year and during the gaps between sessions the legislative power of promulgating Ordinance is reposed in the Presidence, in cases of urgency and emergency. The President is the sole, judge whether he will make the Ordinance. The President under Article 74(1) of the Constitution, acts on the advice of Ministers who are responsible to Parliament and under Article 74(2) such advice is not to be enquired into by any Court. The Ordinances promulgated under Article 123, are limited in life and the Ordinance must be laid before Parliament and the life of the Ordinance may be further shortened. The President, under Article 361(1), is not answerable to any Court for acts done in the performance of his duties. The power under Article 123 relates to policy and to an emergency when immediate action is considered necessary and it an objective test is applied the satisfaction of the President contemplated in the Article will be shorn of the power of the President himself and as the President will be acting on the advice of Ministers it may lead to disclosure of facts which under Article 75(4) are not to be disclosed.

For these reasons it had to he held that the satisfaction of the President under Article 123 is subjective. [657 D-H]
The only way in which the exercise of power by the President can be challenged is by establishing bad 'faith or mala fide or corrupt motive. The fact that the Ordinance was passed shortly before the Parliament session -began, did not show any mala fide. Besides, the respondent was not called upon to meet any case of mala fides. [659 G]
Bhagat Singh v. King Emperor, 58 I.A. 169, King Emperor v. Sibnath Banerjee, 72 I.A. 241, Lakhi Narayan Das v. Province of Bihar, [1949] S.C.R. 693, Liversidge v. Sir John Anderson, [1942] A.C. 206, Point of Ayr Collieries Ltd. v. Lloyd-George, [1943] 2 All E.R. 546 and Carltona, Ltd. v. Commissioners of Works, [1943] 2 All E.R. 5610, Hugli Electricity Co., Ltd. v. Province of Bombay, 76 I.A. 57 and Padfield v. Minister of Agriculture, Fisheries and Food, [1968] 1 All E.R. 604, referred to.
Barium Chemicals Ltd. v. The Company Law Board, [1966] Supp. S.C.R. 311 and Rohtas Industries case, [1969] 3 S.C.R. 108, distinguished.
(ii) The Act was one for acquisition of property and was also in relation to banking. The legislation was valid with reference to entry 42 List III (Acquisition and requisitioning of property) and entry 45 List I (Banking) and it did not trench upon entry 26 List II, namely, trade and ,commerce within the State. [633 D-F]
541
Under s. 6(1) of the Banking Regulation Act, 1949, the four types of businesses, namely, (i) the receiving of scrips or other valuables on deposit or for safe custody and providing of safe deposit vaults, (ii) agency business, (iii) business of guarantee, giving of indemnity and underwriting and (iv) business of acting as executors and trustees, disputed by the petitioner not to be banking business, are recognised as legitimate forms of business of a banking company. The provisions contained in s. 6(1) are the statutory restatement of the gradual evolution, over a century, of the various kinds of business of banking companies. By cl. (n) of s. 6(1), in addition to the forms of business mentioned in cls;. (-a) to (n), a banking company may engage in "doing all such other things as are incidental or conducive, to the promotion or advancement of the business of the company". The words "other things" 'appearing in cl. (n), after enumerating the various types of business in cls. (a) to (n), point to the inescapable conclusion that the business mentioned in cls. (a) to (n) are all incidental or conducive to the promotion or advancement of the business or the, banking company. Entry 45 in List I of Seventh Schedule is only "banking" and it does not contain any qualifying words like "the conduct of business" occurring in entry 38 of the Government of India Act, 1935. "Banking will therefore have the wide meaning to include all legitimate business of a banking company referred to in s. 5(b) as well as in s. 6(1) of the 1949 Act. Further, the restriction contained in s. 6(2) of the 1949 Act that no banking company shall engage in any form of business other than those referred to in sub-s. (1) establishes that the various types of business mentioned in sub-s. (1) are, normal recognised business of a banking company and, as such, are comprised in the Undertaking of the bank. [624 F, 625 F-G, 627 D-E]
Tennant v. The Union Bank of Canada, [1894] A.C. 51, Banbury v. Bank of Montreal, [1918] A.C. 624, Commonwealth of Australia and Others v. Bank of New South Wales and Others, [1950] A.C. 235, Bank of Chettinad v. T.C. of Colombo [1948] A.C. 378 P.C., United Dominions Trust Ltd. v. Kirkwood,

[1966] 1 Q.B. 783, United Provinces v. Mst. Atiqa Begum and Others, [1940] F.C.R. 110 and Union Colliery Company of British Columbia v. Bryden, [1899] A.C. 580, referred to.
The Undertaking of a banking company is property which can be validly acquired under Article 31(2) of the Constitution. The word " property" should be given a liberal and wide connotation and would take in those well recognised types of interest which have the insignia or characteristics of proprietary right. By Undertaking of a bank is meant the entire integrated Organisation consisting of all property, movable or immovable and the totality of undertaking is one concept which is not divisible into components or ingredients. [635 H, 636 D]
Gardner v. London Chatham and Dover Railway Co., [1867] Vol. II Chancery Appeals 201, Re : Panama, New Zealand and Australian Royal Mail Company, Re : Portsmouth (Kingston Fratton and Southsea) Tramsway Co., [1892] 2 Ch. 362, H. H. Vivian and Company Ltd., [1900] 2 Ch. 654, Doughty v. Lomagunda Reefs Ltd. [1902] 2 Ch. D. 837. Minister for State for the Army v. Datziel, 68 C.L.R. 261, Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] S.C.R. 1005 and J. K. Trust Bombay v. The Commissioner of Income-tax Excess Profits Tax, Bombay [1958] S.C.R. 65, referred to.
State of Madhya Pradesh v. Ranojirao Shinde & Anr., [1968] 3 S.C.R. 489, held inapplicable.
542
(iii) (a) Article 19(1) (f) and (g) do not at all enter the domain of Art. 31(2).
The view of this Court in Kavalappar Kochunni v. Slate of Madras ;and Sitabati Devi v. State of West Bengal was; that Art. 31(2), after the Constitution Fourth Amendment Act, 1955, related entirely to acquisition or requisition of property by the State and was totally distinct from .the scope and content of Art. 31(1) with the result that Art. 19(1)(f) ,did not enter the area of acquisition or requisition of property by the .State. Again, in State of Gujarat v. Shantilal Mangaldas the Court observed : ["Sitabati Devi] unanimously held that the validity of the Act ,relating to acquisition and requisition cannot be questioned on the ground 'hat it offended Art. 19(1)(f) and cannot be decided by the criterion ,under Article 19(5)". [621 C. H]
The provisions of the Constitution are to be interpreted in a harmonious manner, that is, each provision must be rendered free to operate with full vigour in its own legitimate field. If acquisition or requisition of property for a public purpose has to satisfy again the test of reasonable restriction in the interest of the general public, harmony is repelled and Art. 31(2) -becomes a mere repetition and meaningless. A reasonable restriction is inherent and implicit in public purpose. That is why public purpose is dealt with separately in Art. 31 (2). It will be pedantry to say that acquisition for public purpose is not in the interest of the public. Articles 31(2) and 31(2)(A.) form a self contained code, because : (i) it provides for acquisition or requisition with authority of a law; (ii) the acquisition or requisition is to be for a public purpose; (ii) the law should provide for compensation; (iv) the adequacy of compensation is not to be questioned; and, finally, the amendment of Art. 31 indicates in bold relief the separate and distinctive field of law for acquisition and requisition, by the State, of property for public purpose. [622 C-623 C]
A public purpose is a purpose affecting the interest of the

general public and, therefore, the welfare State is given powers of acquisition or requisition of property for public purpose. One cannot be guided either by passion and property on the one hand or prejudice against deprivation on the other. Public purpose steers clear of both passion and prejudice The object of the Act according to the legislation is to use the deposits in wider public interest and what was true of public purpose when the Constitution was ushered in the mid-century is a greater truth after two decades.[623 H]
A. K. Gopalan v. State of Madras, [1950] S.C,R. 88. State of West Bengal v. Subodh Gopal Bose, [1954] S.C.R. 587, State of Bombay V. Bhanji Munji and Anr., [1955] 1 S.C.R. 777, Kavalappara Kottarthil Kochuni and Ors. v. The State of Madras and Ors., [1960] 3 S.C.R. 887, Smt. Sitabati Devi and Anr. v. State of West Bengal and Anr. [1967] 2 S.C.R. 940, State of Gujarat v. Shantilal Mangaldas and Others, A.I.R. 1969 S.C. 634, State of Bihar v. Maharaja Darbhanga, [1952] S.C.R. 889 and Iswari Prasad v. N. R. Sen A.I.R. 1952 Cal. 273. referred to.
Even on the assumption that Article 19(1)(f) or (g) is attracted in case of acquisition or requisition of property dealt with by Article 31(2), the Act had to be upheld as a reasonable -restriction in the interest of the general public. [654 H]
(b) Article 19(6) in the two limbs and in the two sub-articles of the second limb deals with separate matters and state monopoly in respect of
543
trade or 'business is not open to be reviewed in courts on the ground of reasonableness. [638 D]
Akadasi Padhan v. State of Orissa, [1963] Supp. 2 S.C.R, 691, followed,
Motilal v. Government of the State of Uttar Pradesh I.L.R. [1951] 1 All. 269 and Municipal Committee of Amritsar v. State of Punjab, Writ Petition No. 295 of 1965 decided on-30 January, 1969, referred to.
Earl Fitzwilliant's Wentworth Estates Co. v. Minister of Housing and Local Government and Another, [1952] A.C. 362, distinguished.
(c) Section 15(2) of the Act allowed the named Banks to carry on business other than banking. if the entire undertaking of a banking company was -taken by way of acquisition, the assets could not be separated to distinguish those belonging to the banking business from, others belonging to non-banking business, because, assets were not in fact divisible on any such basis. Furthermore, that would be striking at the root of acquisition of the entire undertaking. No acquisition or requisition of the undertaking of a banking company is complete or comprehensive without all businesses which are incidental and conducive to the entire business of the bank. It would be: strange to hold that in the teeth of express provisions in the Act permitting the banks to carry on businesses other than banking that the same would amount to a prohibition On the bank to carry on those businesses. Constitutionality of the Act could not be impeached on the ground of lack of immediate resources to carry on. business. The petitioners contention based on Art. 19(6) therefore had to fail. [639B-E]
(iv) The acquisition of the undertaking did not offend Art. 14 because of intelligible differentia and their rational relation to the object to be achieved by the Act and it followed that these Banks could not, therefore, be, allowed to carry on banking business to nullify the very object of the Act. The fourteen banks were not in the same class as

other scheduled banks. The classification, was on the basis of the fourteen Banks having deposit of Rs. 50 crores and over. The object of the Act was to control the deposit resources for developing national economy and as such the selection of fourteen Banks, having regard to their larger resources, their greater coverage,, their managerial and personal resources and the administrative and organisational factors involved in expansion, was both intelligible and sound and related to the object of the Act. From the point of view of resources these fourteen banks were better suited than others and, therefore, speed and efficiency which were necessary for implementing the objectives of the Act 'Could be ensured by such classification. The legislature is the best judge, of what should subserve public interest. [644 E, 642 E-H]

Shri Ram Krishna Dalmia v. Shri Justice S. R, Tendolkar, [1959] S.C.R. 279, P. V. Sivarajan v. The Union of India, [1959] 1 Supp. 779, Kathi Raning Rawat v. State of Saurashtra [1952] S.C.R. 435, The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. The State of Delhi, [1962] Supp. 1 S.C.R. 156, Mohd. Hanif Quareshi v. State of Bihar, [1959] S.C.R. 628 and Harnam Singh v. Regional Transport Authority, Calcutta, 1954 S.C.R. 371, referred to.

(v) When principles are laid down in a statute and those principles. are relevant to determination of compensation, namely, they are principles in relation' to the, property acquired or are principles relevant to the time of acquisition of property or the amount fixed is not obviously and shockingly

544

illusory, there is no infraction of Art. 31(2) and the owner cannot impeach it on the ground of "just equivalent" of the property acquired. The relevancy is to compensation and not to adequacy. It is unthinkable that Parliament, after the Constitution Fourth Amendment Act, intended that the word compensation should mean 'just equivalent' when Parliament had put a bar on challenge to the adequacy of compensation. Just compensation cannot be inadequate, and anything which is impeached as unjust or unfair is impinging on adequacy. [649 C-E]

Vajravelu Mudaliar v. Special Deputy Collector, Madras, [1965], 1 S.C.R. 614, Shantilal Mangaldas v. State of Gujarat, [1969] 3 S.C.R. 341, Bela Banerjee's case, [1954] S.C.R. 558, Union of India v. The Metal Corporation of India Ltd., [1967] 1 S.C.R. 255 and Cruttwell v. Lye, 17 Ves. 335, referred to.

Under the Act entire undertaking was the subject matter of acquisition and compensation was to be paid for the undertaking and not for each of the assets of the undertaking. There is no uniform established principle for valuing an undertaking as a going concern but the usual principle is assets minus liabilities. If it be suggested that no compensation was provided for any particular asset that would be Questioning adequacy of compensation, because, compensation was provided for the entire undertaking. When the relevant principle set out was ascertained value it could not be urged that market value should have been the principle. It would really be going into adequacy of compensation by preferring the metrits of one principle to that of the other for the oblique purpose of arriving at what was suggested to be just equivalent. [650 G, 651 F-G. 649 D]

The contention as to exclusion of good-will amounted to questioning adequacy and would not vitiate the principle of

valuation which had been laid down. Good-will can arise when the undertaking is sold as a going concern. The fourteen banks carried on business under licence by reason of s. 22 of the Banking Regulation Act, and the concept of sale in such it situation is unreal. In case of compulsory acquisition no goodwill passes to the acquiring authority. Besides, no facts were pleaded in the petition to $.how what goodwill the banks had. [653 F]

In the valuation of lands and buildings market value is not the, only principle. That is why the Constitution has left the laying down of the principles to the legislature. Ascertained value; is a relevant and sound principle based on capitalisation method which is accepted for valuation of land and properties. The contention that twelve times the annual rent was not a relevant principle and was not an absolute rule and compensation might be illusory could not be accepted. Capitalisation method is not available to land because land is not generally let out. Nor can it he said that the principle is irrelevant when there are two plots side by side one with building and the other vacant because standard rent necessarily takes into account value of land on which the building is situated. If rental method be applied to land the value may be little, but it is a principle relevant to' determination of compensation. Furthermore, there was no case in the petition that there was land with building side by side with vacant land. [651 F-H, 652 A-C]

As to securities shares and debentures Explanation (iv) and (v) to Part 1(c) would be operative only when market value of shares; and debentures was considered reasonable by reason of its having been affected by abnormal factors or when market value of shares and debentures was not ascertainable. In both cases principles were. laid down, namely, how

545

valuation had to be made taking into account various factors and these principles were relevant to determination of compensation.

Deductions on account of maintenance and repairs is essential in the capitalization method. Insurance would also be an essential deduction in the capitalisation method and it could not be assumed that the Bank would insure for a value higher than what was necessary; also payment of tax or ground rent might be out of income but these had to be provided for in ascertaining value of the building under the capitalisation method.

There was no basis for the argument that Explanation 2 (i) (vi) which dealt with deduction of interest on borrowed capital was included twice, namely, under Explanation 2(i) (vi) and also under liabilities in Part II. Interest on mortgage or borrowed capital is one of the deductions in calculating outgoings under capitalisation method. In Part 11 the liabilities were those existing at the commencement of the Act and contingent liabilities which corresponding new Bank might reasonably be expected to be required to meet out of its own resources on or after the commencement of the Act. Interest payable on mortgage or borrowed capital on or after the commencement of the Act would not be taken into account as outground for saying that the principle was not relevant. [654 G]

The contentions that no time limit was mentioned with regard to payment of compensation in s. 6(1) and that s. 6(6) was an unreasonable: restriction had no force because (i) there was no question of fixing time within which agreement was to be reached or determination was to be, made by a tribunal

and (ii) 'under s. 6(6) the government would pay the money to the Bank only if the Bank agreed to pay to the share-holders; therefore, s. 6(6) was a provision for the benefit of the Bank and the, share-holders and there was no unreasonableness in it. [652 D-653 D]
The principles set out in the Act was relevant to the determination of compensation. It might be that adoption of one principle conferred lesser sum of money than adoption of another; but that would not be. a ground for saying that the principle was not relevant. [654 G]
(vi) Article 305 directly applies to a law relating to banking and all business necessarily incidental to it carried on by the State to the complete or partial exclusion of the fourteen banks. Article 302 can have no application and an individual cannot complain of violation of Art. 301 in such a case. Article 305 applied in the present case arid, therefore neither Art. 301 nor Art. 302 was applicable. [641 H]
(vii) A legislation which has retrospective effect affecting acquisition or requisition of property is not unconstitutional and is valid. The Act which was retrospective in operation did not violate article 31(2) because the Article speaks of "authority of law" without any words of limitation or restriction as to law being in force at the time. Further, the vital distinction between Art. 20(1) and Art. 31(2), namely, that the former cannot have by its own terms have any retrospective operation while the latter can, is to be kept in the forefront in appreciating the soundness of the proposition that retrospective legislation as to acquisition of property does not Violate Art. 31(2). [615 A-B, 617 B]
M/S. West Ramand Electric Distribution Company Ltd. v. State of Madras, [1963] 2 S.C.R. 747, and State of Mysore v. Achiah Chetty, A.I.R. 1969 S.C. 477. followed.
Punjab Province v. Daulat Singh & Others, 73 I.A. 59, explained.
Sup. CI/70-5
546
(viii) The Act contained enough guidelines for reaching the objectives set out in the preamble. First, the government could give directions only in regard to policy involving public interest; secondly, directions could only be given by the Central Government and no one else; thirdly, these directions could only be given after consultations with the Governor of the Reserve Bank; the Central Government and the Governor of the Reserve Bank are high authorities; fourthly, matters involving public interest are objective and subject to judicial scrutiny. In working the Act directions from the Central Government were necessary to deal with policy and other matters to serve the needs of national economy. [640D]
Harishankar Bagla v. The State of Madhya Pradesh, [1955] 1 S.C.R. 380, reffered to.

JUDGMENT:
ORIGINAL JURISDICTION : Writ Petitions Nos. 222, 300 and 298 of 1969.
Writ Petitions under Art. 32 of the Constitution of India for enforcement of the fundamental rights.
N. A. Palkhivala, M. C. Chagla, A. J. Raja, N. N. Palkhivala,
R. N. Bannerjee, S. Swarup, B. Datta, J.B. Dadachanji, 0. C. Mathur, -and Ravinder Narain, for the petitioner (in W.P.

Nos. 222 -and 300 of 1969).
R. V. S. Mani, for the petitioner (in W.P. No. 298 of 1969).
Niren De, Attorney-General, Jagadish Swarup, Solicitor-General, M. C. Setalvad, C. K. Daphtary, R. H. Dhebar R. N. Sachthey and S. P. Nayar, for the respondent (in W.P. No. 222 of 1969).
Niren De, Attorney-General, Jagadish Swarup, Solicitor-General, M. C. Setalvad, C. K. Daphtary, N. S. Bindra, R. H. Dhebar, R. N. Sachthey, S. P. Nayar and N. H. Hingorani, for respondent (in W.P. No. 300 of 1969).
Niren De, Attorney-General, Jagadish Swarup, Solicitor-General" M. C. Setalvad, C. K. Daphtary, V. A. Seyid Muhammad, R. H. Dhebar, R. N. Sachthey and S. P. Nayar, for the respondent (in W.P. No. 298 of 1969).
M. C. Setalvad, S. Mohan Kumaramangalam, R. K. Garg, S. C. Agarwal and V. J. Francis, for intervener No. 1.
M. C. Setalvad, R. H. Dhebar and S. P. Nayar, for intervener No. 2.
S. Mohan Kumaramangalam and A. V. Rangam, for intervener No. 3.
Lal Narain Sinha, Advocate-General, Bihar, R. K. Garg and D. P. Singh, for interevener No. 4.
V. K. Krishna Menon, M. R. K. Pillai and D. P. Singh, for intervener No. 5.
547
P. Ram Reddy and P. Parameswara Rao, for intervener No. 6.
M. C. Chagla, Santosh Chatterjee and G. S. Chatterjee, for intervener No. 7.
The Judgment of J. C. SHAH, S. M. SIKRI, J. M. SHELAT, V. BHARGAVA, G. K. MITTER, C. A. VAIDIALINGAM, K. S. HEGDE, A. N. GROVER, P. JAGANMOHAN REDDY AND 1. D. DUA, JJ. was delivered by SHAH J. A. N. RAY, J. gave a dissenting Opinion.
Shah, J. Rustom Cavasjee Cooper-hereinafter called 'the petitioner'-holds shares in the Central Bank of India Ltd., the Bank of Baroda Ltd., the Union Bank of India Ltd., and the Bank of India Ltd., and has accounts-current and fixed deposit -with those Banks : he is also a director of the Central Bank of India Ltd. By these petitions he claims a declaration that the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance 8 of 1969 promulgated on July 19, 1969, and the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969 which replaced the Ordinance with certain modifications impair his rights guaranteed under Arts. 14, 19 and 31 of the Constitution, and are on that account invalid.
In India there was till 1949 no comprehensive legislation governing banking business and banking institutions. The Central Legislature enacted the Banking Companies Act 10 of 1949 (later called "The Banking Regulation Act") to consolidate and amend the law relating to certain matters concerning banking. By s. 5 (b) of that Act, "banking" was defined as meaning "the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise",, and by s. 5(c) a "banking company" meant "any company which transacts the business of banking in India". By s. 6 it was enacted that in addition to the business of banking as defined in s. 5(b) a banking company may engage in one or more of the forms of business specified in cls. (a) to (o) of sub-s. (1). By sub-s. (2) of s. 6 banking companies were prohibited from engaging "in any form of business other than those referred to in sub-section (1)". The Act applied to commercial

banks, and enacted provisions, amongst others, relating to prohibition of employment of managing agents and restrictions on certain forms of employment; minimum paid-up capital and reserves; regulation of voting rights of shareholders and election of Board of Directors; prohibition of charge on unpaid capital; restriction on payment of dividend; maintenance of a percentage of assets; return of unclaimed deposits; and accounts and balance sheets. It also enacted provisions authorising the Reserve Bank to issue directions

548

to and for trial of proceedings against the Banks and for speedy disposal of winding up proceedings of Banks.

The Banking Regulation Act was amended by Act 58 of 1968, to give effect to the policy of "social control" over commercial banks. Act 58 of 1968 provided for reconstitution of the Boards of Directors of commercial banks with a Chairman who had practical experience of the working of a Bank or financial, economic and business administration, and with a membership not less than 51% consisting of persons having special knowledge or practical experience in accountancy, agriculture and rural economy, banking, cooperation, economics, finance, law and small-scale industry. The Act also provided that no loans shall be granted to any director of the Bank or to any concern in which he is interested as Managing Director, Manager, employee, or guarantor or partner or in which he holds substantial interest. The Reserve Bank was invested with power to give directions to commercial banks and to appoint directors or observers in the interest of depositors or proper management of the Banking Companies, or in the interest of Banking policy (which expression was defined by s. 5 (ca) as "any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, volume of deposits and other resources of the bank -and the need for equitable allocation and the efficient use of these deposits and resources". The Reserve Bank was also invested with power to remove managerial and other personnel from office and to appoint additional directors, and to issue directions prohibiting certain activities in relation to Banking Companies. The Central Government was given power to acquire the business of any Bank if it failed repeatedly to comply with any direction issued by the Reserve Bank under certain specific provision in regard to any matter concerning the affairs of the Bank and if acquisition of the Bank was considered necessary in the interest of the depositors or in the interest of the banking policy or for the better provision of credit generally or of credit to any particular section of the community or in a particular area.

During the last two decades the Reserve Bank reorganised the banking structure. A number of units which accounted for a small section of the banking business were, amalgamated under directions of the Reserve Bank. The total number of commercial banking institutions was reduced from 566 in 1951 to 89 in 1969, 73 scheduled and 16 non-scheduled.

In exercise of the authority conferred by the State Bank of India Act 21 1955 the undertaking of the former Imperial Bank of India was taken over by a public corporation controlled by the

549

Central Government. The State Bank took over seven subsi-diaries under authority conferred by Act 38 of 1959. There

were in June 1969 14 commercial banks operating in India each having deposits exceeding Rs. 50 crores. The following is an analysis of the commercial banking structure in India in June 1969 :

	No. of Banks	No. of Offices	Deposits (in crores)	Credit (in crores)
State Bank of India	1	1,566	948967	
Subsidiaries of State Bank of India	7	888	291	219
Indian scheduled commercial banks (each with deposit exceeding Rs. 50 cores)	14	4,130	2,632	1,829
Banks incorporated in foreign countries	15*	130	478	385
Other Indian Scheduled Banks	36	1,324	296	197
Non-scheduled commercial Banks	16	216	28	16

*Only 13 were operating.

Late in the afternoon of July 19, 1969 (which was a Saturday) the Vice-President (acting as President) promulgated, in exercise of the power conferred by cl. (1) of Art. 123 of the Constitution, Ordinance 8 of 1969 transferring to and vesting the undertaking of 14 named commercial banks in corresponding new banks set up under the Ordinance. The long little of the Ordinance read as follows

"An Ordinance to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto."

By S. 2 "banking company" was defined as not including a foreign company within the meaning of S. 591 of the Companies Act, 1956. An "existing bank" was defined by s. 2(b) as meaning " a banking company specified in column 1 of the First Schedule, being a company the deposits of which, as shown in the return as on the last Friday of June, 1969, furnished to the Reserve Bank

550

under section 27 of the Banking Regulation Act, 1949, were not less than rupees fifty crores". In the Schedule to the Act were included the names of fourteen commercial banks

1. The Central Bank of India Ltd.
2. The Bank of India Ltd.
3. The Punjab National Bank Ltd.
4. The Bank of Baroda Ltd.
5. The United Commercial Bank Ltd.
6. Canara Bank Ltd.
7. United Bank of India Ltd.
8. Dena Bank Ltd.
9. Syndicate Bank Ltd.
10. The Union Bank of India Ltd.
11. Allahabad Bank Ltd.
12. The Indian Bank Ltd.
13. The Bank of Maharashtra Ltd.
14. The Indian Overseas Bank Ltd.

These banks are hereinafter referred to as the named banks. A "corresponding new bank" was defined in relation to an existing bank as meaning "the body corporate specified against such bank in column 2 of the First Schedule". By s. 2 (g) it was provided that the words and expressions used in the Ordinance and not defined, but defined in the Banking Regulation Act, 1949, had the meaning respectively assigned

to them in that Act. Thereby the definitions of "banking" and "banking company" in s. 5 (b) and s. 5 (c) of the Banking Regulation Act were incorporated ill the Ordinance. The principal provisions of the Ordinance were

(1) Corporations styled in the ordinance "corresponding new banks" shall be established, each such corporation having paid up capital equal to the paid-up capital of the named bank in relation to which it is a corresponding new bank. The entire capital of the new bank shall stand vested in the Central Government. The corresponding new banks shall be authorised to carry on and transact the business of banking as defined in cl. (b) of s. 5 of the Banking Regulation Act, 1949, and also to engage in one or more forms of business specified in sub-s. (1) of s. 6 of that Act. The Chairman of the named bank holding office immediately before the commencement of the Ordinance; shall be the Custodian of the corresponding new bank. The general superintendence and direction of the affairs and business of a corresponding bank shall be vested in the Custodian, who shall be the chief executive officer of that bank.

551

(2) The undertaking within or without India of every named bank on the commencement of the Ordinance shall stand transferred to and vested in the corresponding new bank. The expression "undertaking" shall include all assets, rights, powers, authorities and privileges, and all property, movable and immovable, cash balances, reserve fund investments and all other rights and interests arising out of such property as are immediately before the commencement of the Ordinance in the ownership, possession, power or control of the named bank in relation to the undertaking, including -all books of accounts, registers, records and all other documents of whatever nature relating thereto. It shall also include all borrowings, liabilities and obligations of whatever kind then subsisting of the named bank in relation to the under-taking. If according to the law of any foreign country, the provisions of the Ordinance by themselves do not effectively transfer or vest any asset or liability situated in that country in the corresponding new bank, the affairs of the named bank in relation to such asset or liability shall stand entrusted to the chief executive officer of the corresponding new bank with authority to take steps to wind up the affairs of that bank. All contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the commencement of the Ordinance, and to which the named bank is a party or which are in favour of the named bank shall be of as full force and effect against or in favour of the corresponding new bank, and be enforced or acted upon as fully and effectively as if in the place of the named bank the corresponding new bank is a party thereto or as if they are issued in favour of the corresponding new bank. In pending suits or other proceedings by or against the named bank, the corresponding new bank shall be substituted in those suits or proceedings. Any reference to any named bank in any law, other than the Ordinance, or in any contract or other instrument shall be construed as a reference to the corresponding new bank in relation to it.

(3) The Central Government shall have power to frame a scheme for carrying out the provisions of the Act, and for that purpose to make provisions for the corresponding new banks relating to capital structure, constitution of the Board of Directors, manner of payment of compensation to the shareholders, and matters incidental, consequential and

supplemental. Corresponding new banks shall also be guided in the discharge of their functions by such directions in regard to matters of policy involving public interest as the Central Government may give.
(4) On the commencement of the Ordinance, every person holding office as Chairman, Managing Director, or other Direc-
552
tor of a named bank, shall be deemed to have vacated office, and all officers and other employees of a named bank shall become officers or other employees of the corresponding new banks. Every named bank shall stand dissolved on such date as the Central Government may by notification in that behalf appoint.
(5) The Central Government shall give compensation to the named banks determined according to the principles set out in Second Schedule, that is to say,-
(a) where the amount of compensation can be fixed by agreement, it shall be determined in accordance with such agreement;
(b) where no such agreement can be reached, the Central Government shall refer the matter to the Tribunal within a period of three months from the date on which the Central Government and the existing bank fail to reach an agreement regarding the amount of compensation.
Compensation so determined shall be paid to each named bank in marketable Central Government securities. For the purpose of determining compensation, Tribunals shall be set up by the Central Government with certain powers of a Civil Court.
(6) The Central Government shall have power to make such orders not inconsistent with the provisions of the Ordinance which may be necessary for the purpose of removing defects.
Under the Ordinance the entire undertaking of every named commercial bank was taken over by the corresponding new bank, and all assets and contractual rights and all obligations to which the named bank was subject stood transferred to the corresponding new bank. The Chairman and the Directors of the Banks vacated their respective officers. To the named banks survived only the right to receive compensation to be determined in the manner prescribed. Compensation, unless settled by agreement, was to be determined by the Tribunal, and was to be given in marketable Government securities. The entire business of each named bank was accordingly taken over, its chief executive officer ceased to hold office and assumed the office of Custodian of the corresponding new bank, its directors vacated office; and the services of the ad-
ministrative and other staff stood transferred to the corresponding new bank. The named bank had thereafter no assets, no business, and no managerial, administrative or other staff, it was incompetent to use the word "Bank" in its name, because of the provisions contained in s. 7 (1) of the Banking Regulation Act, 1949, and was liable to be dissolved by a notification of the Central Government.
553
Petitions challenging the competence of the President to promulgate the Ordinance were lodged in this Court on July 21, 1969. But before the petitions could be heard by this Court, a Bill to enact provisions relating to acquisition and transfer of undertakings of the existing banks was introduced in the Parliament, and was enacted on August 9, 1969, as "The Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969". The long title of the Act was in terms identical with the long title of the Ordinance.

By sub-s. (1) of s. 27 of the Act, Ordinance 8 of 1969 was repealed. In the First Schedule were included the-names of the 14 banks named in the Ordinance in juxtaposition with the names of the corresponding new banks. By sub-s. (2) of s. 1, the Act came into force on July 19, 1969, and the undertaking of every named bank was deemed, with effect from that date, to have, vested in the corresponding new bank. By s. 27 (2), (3) and (4) actions taken or things done under the Ordinance inconsistent with the provisions of the Act were not to be of any force or effect, and no right, privilege, obligation or liability was to be deemed to have been acquired, accrued or incurred under the Ordinance.

The general scheme of the Ordinance relating to the transfer to and vesting in the corresponding new bank of the undertaking of each named bank, payment of compensation, and management of the corresponding new bank, remained unaltered. The Act departed from the Ordinance in certain matters :

(1) Under the Act the named banks remain in existence for certain purposes and they are not liable to be dissolved by order of the Government. If under the laws in force in any foreign country it is not permissible for a banking company-, owned or controlled by Government, to carry on the business of banking in that country, the assets, rights, powers, authorities and privileges and property, movable and immovable, cash balances and investments of any named bank operating in that country shall not vest in the corresponding new bank. The directors of the named banks shall remain in office and may register transfers or transmission of, shares; arrive at an agreement about the amount of compensation payable under the Act or appearing before the Tribunal for obtaining a determination as to the amount of compensation; distribute to shareholders the amount of compensation received by the Bank under the Act for the acquisition of its undertaking; carry on the business of banking in any country outside India if under the law in force in that country any bank, owned or controlled by Government, is prohibited from carrying on the business of banking there; an carry on any business other than the business of banking. The Central Government has power to authorise the corresponding new bank to advance the amount required by the named bank in connection with the functions which the directors may perform. Reference to any named bank in any law, or in any

554

contract or other instrument shall be construed as a reference to the corresponding new bank in relation to it, but not in cases where the named bank may carry on any business and in relation to that business.

(2) Principles for determination of compensation and the manner of payment are modified. Interim compensation may be paid to a named bank if it agrees to distribute to its shareholders in accordance with their rights and interests. A major change is made in the principles for determining compensation set out in Sch. 11. By Explanation I to cl. (e) of Part I of Sch. II, the value of any land or buildings to be taken into account in valuing the assets is to be the market value of the land or buildings, but where such market value exceeds the "ascertained value", that "ascertained value" is to be taken into account, and by Explanation II the "ascertained value" of any building wholly occupied on the date of the commencement of the Act is to be twelve times the amount of the annual rent or the rent for which the building may reasonably be expected to be let out from year to year, and reduced by one-sixth of the

amount of the rent on account of maintenance and repairs, annual premium paid to insure the building against risk of damage or destruction, annual charge, if any, on the building, ground rent, interest on any mortgage or other capital charge on the building, interest on borrowed capital if the building has been acquired, constructed, repaired, renewed or re-constructed with borrowed capital, and the sums paid on account of land revenue or other taxes in respect of such building.

(3) The Central Government may reconstitute any corresponding new bank into two or more corporations; amalgamate any corresponding new bank with another banking institution; transfer the whole or any part of the undertaking of a corresponding new bank to any other banking institution; or transfer the whole or any part of the undertaking of any other banking institution to a corresponding new bank. The Board of Directors of the corresponding new banks are to consist of representatives of the depositors of the corresponding new bank, employees of such banks, farmers, workers and artisans to be elected in the prescribed manner and of other persons as the Central Government may appoint.

(4) The profits remaining after making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and all other matters for which provision is necessary under any law, the corresponding new bank shall transfer the balance of profits to the Central Government.

(5) Provision of law relating to winding up of corporations do not apply to the corresponding new banks, and a corresponding new bank may be ordered to be liquidated only by the order of the Central Government.

555

The petitioner challenges the validity of the Ordinance and the Act on the following principal grounds :

(i) The Ordinance promulgated in exercise of the power under Art. 123 of the Constitution was invalid, because the condition precedent to the exercise of the power did not exist;

(ii) That in enacting the Act the Parliament encroached upon the State List in the Seventh Schedule of the Constitution, and to that extent the Act is outside the legislative competence of the Parliament;

(iii) That by enactment of the Act, fundamental rights of the petitioner guaranteed by the Constitution- under Arts. 14, 19 (1) (f) & (g) and 31(2) are impaired;

(iv) That by the Act the guarantee of freedom of trade under Art. 301 is violated; and

(v) That in any event retrospective operation given to Act 22 of 1969 is ineffective, since there was no valid Ordinance in existence. The provision in the Act retrospectively validating infringement of the fundamental rights of citizens was not within the competence of the Parliament. That sub-sections (1) & (2) of s. 11 and s. 26 are invalid.

The Attorney-General contended that the petitions are not maintainable, because no fundamental right of the petitioner is,' directly impaired by the enactment of the Ordinance and the Act, or by any action taken thereunder. He submitted that the petitioner who claims to be a shareholder, director and holder of deposit and current accounts with the Banks is not the owner of the property of the undertaking taken over by the corresponding new banks and is on that account incompetent to maintain the petitions complaining that the rights guaranteed under Arts. 14, 19 and 31 of the Constitution were impaired.

A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit. Again a director of a Company is merely its agent for the purpose of management. The holder of a deposit account in a Company is its creditor : he is not the owner of any specific fund lying with the Company. A
556
shareholder, a depositor or a director may not therefore be entitled to move a petition for infringement of the rights of the Company, unless by the action impugned by him, his rights are also infringed.
By a petition praying for a writ against infringement of fundamental rights, except in a case where the petition is for a writ of habeas corpus and probably for infringement of the guarantee under Arts. 17, 23 and 24, the petitioner may seek relief in respect of his own rights and not of others. The shareholder of a ,Company, it is true, is not the owner of its assets; he has merely a right to participate in the profits of the Company subject to the ,contract contained in the Articles of Association. But on that account the petitions will not fail. A measure executive or legislative may impair the rights of the Company alone, and not of its shareholders; it may impair the rights of the shareholders and not of the Company : it may impair the rights of the shareholders as well as of the Company. Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired, if that action impairs the rights of the Company as well. The test in determining whether the shareholder's right is impaired is not formal: it is essentially qualitative: if the State action impairs the right of the shareholders as well as to the Company, the Court will not, concentrating merely upon the technical operation of the action, deny itself jurisdiction to grant relief.
The petitioner claims that by the Act and by the Ordinance the rights guaranteed to him under Arts. 14, 19 and 31 of the Constitution are impaired. He says that the Act and the Ordinance are without legislative competence in that they interfere with the guarantee of freedom of trade and are not made in the public interest; that the Parliament had no legislative competence, to enact the Act and the President had no power to promulgate the Ordinance, because the subject-matter of the Act and the Ordinance is (partially at least) within the State List; and that the Act and Ordinance are invalid because they vest the undertaking of the named banks in the new corporations without a public purpose and without setting out principles and the basis for determination and payment of a just equivalent for the property expropriated. He says that in consequence of the hostile discrimination practised by the State the value of his investment in the shares is substantially reduced, his right to receive dividend from his investment has ceased, and he has suffered great financial loss, he is deprived of the right as a shareholder to carry on business through the agency of the Company, and that in respect of the deposits the obligations of the-- corresponding new banks -not of his choice are substituted without his consent.
(1) [1954] S. C. R. 674.
557
In Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving

Co. Ltd. and Others(1) this Court held that a preference shareholder of a company is competent to maintain a suit challenging the validity of the "Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance" 2 of 1950 (which was later replaced by Act 27 of 1950), which deprived the Company of its property without payment of compensation within the meaning of Art. 31. Mahajan, J., observed :

"The plaintiff and the other preference shareholders are in imminent danger of sustaining direct injury as a result of the enforcement of this Ordinance, the direct injury being the amount of the call that they are called upon to pay and the consequent forfeiture of their shares."

Das, J., in the same case examined the matter in some detail and observed at p. 722 :

"The impugned Ordinance,.....the preference shareholders by imposing on them this liability, or the risk- of it, and gives them a sufficient interest to challenge the validity of the Ordinance, ... Certainly he can show that the Ordinance under which these persons have been appointed was beyond the legislative competence of the authority which made it or that the Ordinance had not been duly promulgated. If he can, with a view to destroy the locus standi of the persons who have made the call, raise the question of the invalidity of the Ordinance .... I can see no valid reason why, for the self same purpose, he should not be permitted to challenge the validity of the Ordinance on the ground of its unconstitutionality for the breach of the fundamental rights of the company or of other persons."

A similar view was also taken in Chiranjit Lal Chowduri v. The Union of India(1) by Mukherjea, J., at p. 899, by Fazl Ali, J., at p. 876, by Patanjali Sastri, J., at p. 889 and by Das, J., at p. 922.

The judgment of this Court in The State Trading Corporation of India Ltd. & Others v. The Commercial Tax Officer, Visakhapatnam & Ors.(2) has no bearing on this question. In that case in a petition under Art. 32 of the Constitution the State Trading Corporation challenged the infringement of its right to hold property and to carry on business under Art. 19 (1) (f) & (g) of

(1) [1950] S. C. R. 869. (2) [1964] 4 S.C.R. 99.

558

the Constitution and this Court opined that the Corporation not being a citizen was incompetent to enforce the rights guaranteed by Art. 19. Nor has the judgment in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar and Ors. (1) any bearing on the question arising in these petitions. In a petition under Art. 32, of the Constitution filed by a Company challenging the levy of sales-tax by the State of Bihar, two shareholders were also impleaded as petitioners. It was urged on behalf of the shareholders that in substance the interests of the Company and of the shareholders were identical and the shareholders were entitled to maintain the petition. The Court rejected that contention, observing that what the Company could not achieve directly, it could not relying upon the "doctrine of lifting the veil" achieve indirectly. The petitioner seeks in this case to challenge the infringement of his own rights and not of the Banks of which he is a shareholder and a director and with which he has accounts-, current and fixed deposit.

It was urged that in any event the guarantee of freedom of trade does not occur in Part III of the Constitution, and the petitioner is not entitled to maintain a petition for breach of that guarantee in this Court. But the petitioner

does not seek by these petitions to enforce the guarantee of freedom of trade and commerce in Art 301: he claims that in enacting the Act the Parliament has violated a constitutional restriction imposed by Part XIII of its legislative power and in determining the extent to which his fundamental freedoms are impaired, the statute which the Parliament is incompetent to enact must be ignored.

It is not necessary to consider whether Art. 31 A (1) (d) of the Constitution bars the petitioner's claim to enforce his rights as a director. The Act prima facie does not (though the Ordinance purported to) seek to extinguish or modify the right of the petitioner as a director : it seeks to take away expressly the right of the named Banks to carry on banking business, while reserving their right to carry on business other than banking. Assuming that he is not entitled to set up his right to enforce his guaranteed rights as a director, the petition will not still fail. The preliminary objection raised by the Attorney-General against the maintainability of the petitions must fail.

I. Validity of Ordinance 8 of 1969-

Power to issue Ordinance is by Art. 123 of the Constitution vested in the President. Article 123 provides :

"(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that

(1) [1964] 6 S.C.R. 885.

559

circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament, but every such Ordinance-

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation.-Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void."

Under the Constitution, the President being the constitutional head, normally acts in all matters including the promulgation of an Ordinance on the advice of his Council of Ministers. Whether in a given case the President may decline to be guided by the advice of his Council of Ministers is a matter which need not detain us. The Ordinance is promulgated in the name of the President and in a constitutional sense on his satisfaction: it is in truth promulgated on the advice of his Council of Ministers and on their satisfaction. The President is under the Constitution not the repository of the legislative power of the Union, but with a view to meet extraordinary situations demanding immediate enactment of laws, provision is made in the Constitution investing the President with power to legislate by promulgating Ordinances.

Power to promulgate such Ordinance as the circumstances appear to the President to require is exercised-(a) when both Houses of Parliament are not in session; (b) the provision intended to be made is within the competence of

the Parliament to enact; and (c) the President is satisfied that circumstances exist which render it necessary for him to take immediate action. Exercise of the power is strictly conditioned. The clause relating to
560
the satisfaction is composite: the satisfaction relates to the existence of circumstances, as well as to the necessity to take immediate action on account of those circumstances. Determination by the. President of the existence of circumstances and the necessity to take immediate action on which the satisfaction depends, is not declared final.
The Attorney-General contended that the condition of satisfaction of the President in both the branches is purely subjective and the Union of India is under no obligation to disclose the existence of, or to justify the circumstances of the necessity to take immediate action. He relied upon the decisions of the Judicial Committee in Bhagat Singh v. The King Emperor(1); King Emperor v. Benoari Lal Sarma(2). and upon a decision of the Federal Court in Lakhi Narayan Das v. The Province of Bihar(2), which interpreted the analogous provisions of the Government of India Act, 1935, conferring upon the GovernorGeneral in the first two cases, and upon the Governor of a Province in the last case, power to issue Ordinances. He also relied upon the judgment of the, Judicial Committee in Hubli Electricity Co. Ltd. v. Province of Bombay(3).
The Attorney-General said that investment of legislative power upon the President being an incident of the division of sovereign functions of the Union and a "matter of high policy", the expression "the President is satisfied that circumstances exist which render it necessary for him to take immediate action" is incorporated as a guidance and not as a condition of the exercise of power. He invited our attention to the restraints inherent in the Constitution on the exercise of the power to promulgate Ordinance in cls. (1) & (2) of Art. 74; cls. (3) & (4) of Art. 75 and Art. 361, and submitted that the rule applicable to the interpretation of parliamentary statutes conferring authority upon officers of the State to act in a prescribed manner on being satisfied about the existence of certain circumstances is inept in determining the true perspective of the power of the head of the State in situations of emergency.
,On the other hand, Mr. Palkhivala contended that the President is not made by Art. 123 the final arbiter of the existence of the conditions on which the power to promulgate an Ordinance may be exercised. Power to promulgate an Ordinance being conditional, counsel urged, this Court in the absence of a provision-express or necessarily implicit in the Constitution-to the contrary, is competent to determine whether the power was exercised not for a collateral purpose, but on relevant circumstances
(1) L. R. 58 1. A. 169.
(2) L. R. 72 I. A. 57.
(3) [1949] F. C. R. 693.
(4) L. R. 76 I. A. 57.
561
which, prima facie, establish the necessity to take immediate action. Counsel submitted that the rules applicable to the interpretation of statutes conferring power exercisable on satisfaction of the specified circumstances upon the President and upon officers of the State, are not different. The nature of the power to perform an official act where the authority is of a certain opinion, or that in his view certain circumstances exist or that he has reasonable grounds to believe, or that he has

reasons to believe, or that he is satisfied, springing from a constitutional provision is in no manner different from a similar power under a parliamentary statute, and no greater sanctity may attach to the exercise of the power merely because the source of the power is in the Constitution and not in a parliamentary statute. There is, it was urged, nothing, in the constitutional scheme which supports the contention that the clause relating to satisfaction is not a condition of the exercise of the power.

Counsel relied upon the judgments of this Court in Barium Chemical Ltd. and Another v. The Company Law Board and Ors.(1) and Rohtas Industries Ltd. v. S. D. Agarwal and Anr;(2) upon the decisions of the House of Lords in Padfield & Others v. Minister of Agriculture, Fisheries and Food and Others (3) and of the Judicial Committee in Durayappah v. Fernando and Others(4); Nakkuda Ali v. M. F. De S. Jayaratne(5); RossClunis v. Papadopoullos(6), and contended that the decisions of the Judicial Committee in Bhagat Singh's case (7) and. Benoari Lal Sarma's case(8) interpreted a provision which was in substance different from the provision of Art. 123, that the decision in Lakhi Narayan Das's case(9) merely followed the two judgments of the Judicial Committee and since the status of the President under the Constitution qua the Parliament is not the same as the constitutional status of the Governor-General under the Government of India Act, 1935, the decisions cited have no bearing on the interpretation of Art. 123.

The Ordinance has been repealed by Act 22 of 1969, and the question of its validity is now academic. It may assume significance only if we hold that Act 22 of 1969 is valid. Since the Act is, in our view, invalid for reasons hereinafter stated, we accede to the submission of the Attorney-General that we need express no opinion in this case on the extent of the jurisdiction of the Court to examine whether the condition relating to satisfaction of the President was fulfilled.

1. [1966] Supp. S.C.R. 311.2.[1969] 3 S.C.R. 108.
3. [1968] 1 All E. R. 694.4. L.R. [1967] A.C. 337.
5. L.R. [1951] A.C. 66. 6. [1958] 2 All E.R. 23.
7. L.R. 58 I.A. 169. 8. L.R. 72 I.A. 57.
9. [1949] F.C.R. 693.

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562

II Authority of Parliament to enact Act 22 of 1969--

On behalf of the petitioner it is urged that the Act is not within the legislative power of the Parliament and that, in any event, to the extent to which it vests in the corresponding new banks the assets of business other than banking, it trenches upon the authority of the State Legislature, and is on that account void. The relevant legislative entries in the Seventh Schedule and the constitutional provisions which have a bearing on the question of acquisition and taking over of undertaking of a bank may first be read.

The Parliament has exclusive legislative power with respect to "Banking" Entry 45 List I; "Incorporation, regulation and winding up of trading Corporations including banking, insurance and financial corporations, but not including co-operative societies" : Entry 43 List I; and "Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including Universities" : Entry 44 List I.

The States have exclusive legislative authority with respect to the following subjects in List II :

Entry 26-"Trade and commerce within the Stale, subject to

the provisions of entry 33 of List III;"
Entry 30-"Money-lending and money-lenders; relief of agricultural indebtedness."
The Parliament and the States have concurrent legislative authority with respect to the following subjects in List III :
Entry 33-"Trade and commerce in, and the production, supply and distribution of,-
(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
(b) foodstuffs, including edible oil-seeds and oils;
(c) cattle fodder, including oilcakes and other con-centrates;
(d) raw cotton, whether ginned or unginned and cotton seed; and
(e) raw jute."
Entry 42-"Acquisition and requisition of property."
563
The argument raised 'by Mr. Setalvad, intervening on behalf of the State of Maharashtra and the State of Jammu and Kashmir, that the Parliament is competent to enact Act 22 of 1969, because the subject-matter of the Act is "with respect to" regulation of trading corporations and matters subsidiary and incidental thereto, and on that account is covered in its entirety by Entries 43 and 44 of List I of the Seventh Schedule cannot be upheld. Entry 43 deals with incorporation, regulation and winding up of trading corporations including banking companies. Law regulating the business of a corporation is not a law with respect to regulation of a corporation. In List I entries expressly relating to trade and commerce are Entries 41 & 42. Again several entries in List I relate to activities commercial in character. Entry 45 "Banking"; Entry 46 "Bills of exchange, cheques, promissory notes and other like instruments; Entry 47 "Insurance"; Entry 48 "Stock exchanges and future markets"; Entry 49 "Patents, inventions and designs". There are several entries relating to activities commercial as well as non-commercial in List II-Entry 21 "Fisheries". Entry 24 "Industries . . . ."; Entry 25 "Gas and Gas works": Entry 26 "Trade and commerce"; Entry 30 "Money lending and money-lenders"; Entry 31 "Inns and Inn-keeping"; Entry 33 "Theatres and dramatic performances, cinemas etc.". We are unable to accede to the argument that the State Legislatures are competent to legislate in respect of the subject-matter of those entries only when the commercial activities are carried on by Individuals and not when they are carried on by corporations.
The object of Act 22 of 1969 is to transfer the undertaking of each named bank and to vest it in the corresponding new bank set up with authority to carry on banking and other business. Each such corresponding new bank is controlled by the Central Government of which the entire capital is to stand vested in and allotted to the Central Government. The principal provisions of the Act which effectuate that object relate to-setting up of "corresponding new banks" as statutory corporations to carry on and transact the business of banking as defined in s. 5 (b) of the Banking Regulation Act, 1949, and one or more other forms of business specified in s. 6 (1) of that Act, with power to acquire and hold property for the purpose of the business, and to dispose of the same; administration of the corresponding pew banks as institutions carrying on banking and other business; the undertaking of each named bank in its entirety stands

transferred to and vested in a new corporation set up for that purpose; principles for determination of compensation and method of payment thereof to each named bank for transfer of its undertaking; and that the named bank may not carry on banking business, but may carry out business other than banking.

564

Mr. Palkhivala submitted that the Parliament may legislate in respect of the business of banking as defined in S. 5 (b) of the Banking Regulation Act, 1949, and matters incidental thereto, and also for acquisition of that part of the undertaking of each named bank which relates to the business of banking, but not in respect of any other business not incidental to banking in which the named bank was engaged prior to July 19, 1969, for the power to legislate in respect of such other business falls within Entry 26 of List II. As a corollary thereto, counsel submitted that power to legislate in respect of acquisition under Entry 42 of List III may be exercised by the Parliament only for effectuating legislation under a head falling in List I or List III of the Seventh Schedule.

It is necessary to determine the true scope of "banking" in Entry 45 List I, the meaning of the expression "property", and the limitations on the power of the Parliament to legislate in respect of acquisition of property in Entry, 42 List III. Matters not in contest may be eliminated. Power to legislate for setting up corporations to carry on banking and other business and to acquire, hold and dispose of property and to provide for administration of the corporations is conferred upon the Parliament by Entries 43, 44 and 45 of the first list. Power to enact that the named banks shall not carry on banking business (as defined ins. 5(b) of the Banking Regulation Act) is incidental to the power to legislate in respect of banking. Power to legislate for determination of compensation and method of payment of compensation for compulsory acquisition of the assets of the named banks, in so far as it relates to banking business is also within the power of the Parliament.

The expression "banking" is not defined in any Indian statute except the Banking Regulation Act, 1949. It may be recalled that by s. 5(b) of that Act "banking" means "the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise". The definition did not include other commercial activities which a banking institution may engage in.

In support of his contention Mr. Palkhivala relied upon the observation of Lord Porter in Commonwealth of Australia v. Bank of New South Wales(1)that banking consists of the creation and transfer of credit, the making of loans, purchase and disposal of investments and other kindred transactions; and upon the statement in Halsbury's Laws of England, 3rd Edn., Vol 2, Art. 270 at pp. 150 & 151 that :

(1) L.R. [1950] A. C. 235.

565

"A 'banker' is an individual partnership or corporation, whose sole or predominating business is banking, that is the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid by a customer",

and in the foot-note (g) at p. 151 that

"Numerous other functions are undertaken at the present day by banks such as the payment of domiciled bills, custody of valuables, discounting bills, executor and trustee business, or acting in relation to stock exchange transactions, and

banks have functions under certain financial legislation, ... These functions are not strictly banking business."

The Attorney-General said that the expression "banking" in Entry 45 List I means all forms of business which since the introduction of western methods of banking in India, banking institutions have been carrying on in addition to banking as defined in s. 5(b) of the Banking Regulation Act, and on that account all forms of business described in s. 6(1) of the Banking Regulation Act in cls. (a) to (n) are, if carried on in addition to the "hardcore of banking", banking, and the Parliament is competent to legislate in respect of that business under Entry 45 List I. In support of his contention that apart from the business of accepting money from the public for lending or investment, and with-drawable by cheque, draft or otherwise, banking includes many allied business activities which banking institutions engaged in, the Attorney-General invited our attention to cl. 21 of the Charter of the Bank of Bengal (Act VI of 1839) : s. 27 of Act 4 of 1862; to ss. 36 & 37 of the Presidency Banks Act XI of 1876; to s. 91(15) of the British North America Act; to Paget's Law of Banking, 7th Edn., at p. 5; to the standard form of memorandum of association of a Banking Company in Palmer's Company Precedents Form 138; and to the statement of objects and reasons in support of the Bill which was enacted as the Indian Companies (Amendment) Act, 1936.

The Charter of the Bank of Bengal, the Presidency Banks Act 4 of 1862, Ch. X-A of the Indian Companies Act, 1913, as incorporated by the Indian Companies (Amendment) Act, 1936, merely described the business which a banking institution could carry on. It was not intended thereby to include those activities within the expression "banking". The Acts enacted after the Banking Regulation Act, 1949, also support that inference. Under s. 33 of the State Bank of India Act, 1955, the State Bank is entitled to carry on diverse business activities beside banking. Similarly the Banks subsidiary to the State Bank were by s. 36

566

,of Act 38 of 1959 to act as agents of the State Bank, and also to carry on and transact business of banking as defined in S. 5(b) of the Banking Regulation Act, 1949, and were also competent to engage in such one or more other forms of business specified in s. 6 (1) of that Act. These provisions do not aid in construing the Entry "Banking" in Entry 45 List I.

In modern times in India as elsewhere, to attract business, banking establishments render, and compete in rendering, a variety of miscellaneous services for their constituents. If the test for determining what "banking" means in the constitutional entry is any commercial activity which bankers at a given time engage in, great obscurity will be introduced in the content of that expression. The coverage of constitutional entry in a Federal Constitution which carves out a field of legislation must depend upon a more satisfactory basis.

The legislative entry in List I of the ;Seventh Schedule is "Banking" and not "Banker" or "Banks". To include within the connotation of the expression "Banking" in Entry 45 List I, power to legislate in respect of-all commercial activities which a banker by the custom of bankers or authority of law engages in would result in re-writing the Constitution. Investment of power to legislate on a designated topic covers all matters incidental to the topic. A legislative entry being expressed in a broad designation

indicating the contour of plenary power must receive a meaning conducive to the widest amplitude, subject however to limitations inherent in the federal scheme which distributes legislative power between the Union and the constituent units. But the field of "banking" cannot be extended to, include trading activities which not being incidental to banking encroach upon the substance of the entry "trade and commerce" in List II.

Rejection of the argument of the Attorney-General does not lend any practical Support to the argument of Mr. Palkhivala that Act 22 of 1969, to the extent it makes provisions in respect of the undertaking of the named banks relating to non-banking business, is ultra vires the Parliament. In the first instance there is no evidence that the named banks were before July 19, 1969, carrying on non-banking business distinct and independent of the banking business, or that the banks held distinct assets for any non-banking business, apart from the assets of the banking business. Again by Act-22 of 1969 the corresponding banks are entitled to engage in business of banking and non-banking which the named banks were engaged in or competent to engage in prior to July 19, 1969, and the named banks are entitled to engage in business other than banking as di.-fined in s. 5(b) of the Banking Regulation Act, but not the business of banking. By enacting that the corresponding new banks may carry on business

567

specified in s. 6(1) of the Banking Regulation Act and that the named banks shall not carry on banking business as defined in s. 5 (b) of that Act, the impugned Act did not encroach upon any entry in the State List. By s. 15 (2) (e) of the impugned ,Act the named banks are expressly reserved the right to carry on business other than banking, and it is not claimed that thereby there is any encroachment upon the State List. Exercise of the power to legislate for acquisition of the undertaking of the named banks also does not trespass upon the State List.

Before the Constitution (Seventh Amendment) Act, Entry 33 List I invested the Parliament with power to enact laws with respect to acquisition or requisitioning for the purpose of the Union, and Entry 36 List II conferred upon the State Legislature the power to legislate with respect to acquisition or requisitioning for the remaining purposes. Those entries are now deleted, and a single Entry 42 List III invests the Parliament and the State Legislatures with power to legislate with respect to "acquisition and requisitioning" of property. By Entry 42 in the Concurrent List power \was conferred upon the Parliament and the State Legislatures to legislate with respect to "Principles on which compensation for property acquired or requisitioned for the purpose of the Union or for any other public purpose is to be determined, and the form in which such compensation is to be given". Power to legislate for acquisition of property is exercisable only under Entry 42 of List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists : Rajahmundry Electric Supply Corporation Ltd. v. The State of Andhra(1). Under that entry "property" can be compulsorily acquired. In its normal connotation "property" means the "highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy : it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in personam capable of transfer or transmission,

such as debts; and signifies a beneficial right to or a thing considered as having a money value, I especially with reference to transfer or succession, and to their capacity of being injured". The expression "undertaking" in s. 4 of Act 22 of 1969 clearly means a going concern with all its rights, liabilities and assets-as distinct from the various rights and assets which compose it. In Halsbury's Laws of England, 3rd Edn., Vol. 6, Art. 75 at p. 43, it is stated that "Although various ingredients go to make up an undertaking, the term describes not the ingredients but the completed work from which the earnings arise."

(1) [1954] S.C.R. 779 at p. 785.

568

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

The contention raised by Mr. Palkhivala that the Parliament is incompetent to legislate for acquisition of the named banks in so far as it relates to assets of the non-banking business fails for two reasons-(i) that there is no evidence that the named banks held, any assets for any distinct non-banking business; and (ii) that the acquisition is not shown to fall within an entry in List II of the Seventh Schedule.

III. Infringement of the fundamental rights of the petitioner-

Clauses (1) & (2) of Art. 31 subordinate the exercise of the power of the State to the basic concept of the rule of law. Deprivation of a person of his property and compulsory acquisition may be effectuated by the authority of law. It is superflous to add that the law limiting the authority of the State must be within the competence of the Legislature enacting it, and not violative of a constitutional prohibition, nor impairing the guarantee of a fundamental right. This Court held in Kavalappara Kottarathil Kochuni & Others v. The State of Madras and Others(1); Swami Motor Transport Company (P) Ltd. v. Sri Sankaraswamigal Mutt (2) and Maharana Shri Jayavantsingji v. The State of Gujarat (3) that a person may. be deprived of his property by authority of a statute only if it does not impair the fundamental

(1). [1960] 3 S.C.R. 887. (2) [1963] Supp. 1 S.C.R. 282.

(3) [1962] Supp. 2 S.C.R. 411, 433.

569

rights guaranteed to him. It is again not contested on

behalf of the Union that the law authorising acquisition of property must be within the competence of the law-making authority and must not violate a constitutional prohibition or impair the guarantee of any of the fundamental rights in Part 111. But it is claimed that since Art. 31(2) and Art. 19(1) (f) while operating on the same field of the right to property are mutually exclusive, a law directly providing for acquisition of property for a public purpose cannot be tested for its validity on the plea that it imposes limitations on the right to property which are not reasonable.

By Arts. 31 (1) & (2) the right to property of individuals is protected against specific invasions by State action. The function of the two clauses-cls. (1) & (2) of Art. 31-is to impose limitations on the power of the State and to declare the corresponding guarantee of the individual to his right to property. Limitation on the power of the State and the guarantee of right are plainly complementary. Protection of the guarantee is ensured by declaring that a person may be deprived of his property by "authority of law": Art. 31 (1 and that private property may be compulsorily acquired for a public purpose -and by the "authority of a law" containing provisions fixing or providing for determination and payment of compensation: Art. 31(2). Exercise of either power by State action results in abridgement-total or partial-of the right to property of the individual. Article 19(1) (f) is a positive declaration in the widest terms of the right to acquire, hold and dispose of property, subject to restrictions (which may assume the form of limitations or complete prohibition) imposed by law in the interests of the general public. The guarantee under Art. 19(1)(f) does not protect merely an abstract right to property: it extends to concrete rights to property as well Swami Motor Transport Co. (P) Ltd.'s case(1).

The constitutional scheme declares the right to property of the individual and then delimits it by two different provisions : Art. 19(5) authorizing the State to make -laws imposing reasonable restrictions on the exercise of that right, and cls. (1) & (2) of Art. 31 recognizing the authority of the State to make laws for taking the property. Limitations under Art. 19(5) and Art. 31 are not generically different, for the law authorizing the exercise of the power to take the property of an individual for a public purpose or to ensure the well-being of the community, and the law authorising the imposition of reasonable restrictions under Art. 19(5) are intended to advance the larger public interest. It is true that the guarantee against deprivation and compulsory acquisition operates in favour of all persons, citizens as well as noncitizens, whereas the positive declaration of the right to property

(1) [1963] Supp. 1 S.C.R. 282.

570

guarantees the right to citizens. But a wider operation of the guarantee under Art. 31 does not after the true character of the right it protects. Article 19(5) and Art. 31(1) & (2), in our judgment, operate to delimit the exercise of the right to hold property.

Under the Constitution, protection against impairment of the guarantee of fundamental rights is determined by the nature of the right, the interest of the aggrieved party and the degree of harm resulting from the State action. Impairment of the right of the individual and not the object of the State in taking the impugned action, is the measure of protection. To concentrate merely on power of the State and

the object of the State action in exercising that power is therefore to ignore the true intent of the Constitution. In this Court, there is, however, a body of authority that the nature and extent of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual, but by its object. Thereby the constitutional scheme which makes the guaranteed rights subject to the permissible restrictions within their allotted fields, fundamental, got blurred and gave impetus to a theory that certain Articles of the Constitutions enact a code dealing exclusively with matters dealt with therein, and the protection which an aggrieved person may claim is circumscribed by the object of the State action.

Protection of the right to property or personal freedom is most needed when there is an actual threat. To argue that State action which deprives a person permanently or temporarily of his right to property, or personal freedom, operates to extinguish the right or the remedy is to reduce the guarantee to an empty platitude. Again to hold that the extent of, and the circumstances in which, the guarantee of protection is available depends upon the object of the State action, is to seriously erode its effectiveness. Examining the problem not merely in semantics but in the broader and more appropriate context of the constitutional scheme which aims at affording the Individual the fullest protection of his basic rights and on that foundation to erect a structure of a truly democratic polity, the conclusion, in our judgment, is inevitable that the validity of the State action must be adjudged in the light of its operation upon the rights of the individual and groups of individuals in all their dimensions.

But this Court has held in some cases to be presently noticed that Art. 19 (1) (f) and Art. 31 (2) are mutually exclusive.

Early in the history of this Court the question of inter-relation between the diverse provisions affording the guarantee of fundamental rights in Part III fell to be determined. In A. K. Gopalan

571

v. The State of Madras(1) a person detained pursuant to an order made in exercise of the power conferred by the Preventive Detention Act 4 of 1950 applied to this Court for a writ of habeas ,corpus claiming that the Act contravened the guarantee under Arts. 19, 21 & 22 of the Constitution. The majority of the Court (Kania C.J., and Patanjali Sastri, Mahajan, Mukherjea & Das, JJ) held that Art. 22 being a complete code relating to preventive detention, the validity of an order of detention must be determined strictly according to the terms and "within the four comers of that Article". They held that a person detained may not claim that the freedom guaranteed under Art. 19(1)(d) was in-fringed by his detention, and that validity of the law providing for making orders of detention will not be tested in the light of the reasonableness of the restrictions imposed thereby on the freedom of movement, nor on the ground that his right to personal liberty is infringed otherwise than according to the procedure established by law. Fazl Ali, J., expressed a contrary view. This case has formed the nucleus of the theory that the protection of the guarantee of a fundamental freedom must be adjudged in the 'light of the object of State action in relation to the individual's right and not upon its influence upon the guarantee of the fundamental freedom. and as a corollary thereto, that the freedoms under Arts. 19, 21, 22 & 31 are exclusive-each article enacting a code relating to

protection of distinct rights.
Kania, C.J., proceeded on the theory that different articles guarantee distinct rights. He observed at p. 100
"..... it (Art. 19) .... means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression', or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, ... the question of the application of article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenue's life."
The learned Chief Justice also observed that Art. 19 (1) (d) had nothing to do with detention, preventive or punitive, and I the concept of personal liberty in Art. 21 being entirely different
(1) [1950] S.C.R. 88.
572
from the concept of the right to move freely throughout the territory of India, Art. 22 was a complete code dealing with preventive detention.
Patanjali Sastri, J., observed at p. 191
".... article 19 seems to pre-suppose that the citizens to whom the possession of these fundamental rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free, while articles 20-22 secure to all persons-citizens and non-citizens--certain constitutional guarantees in regard to punishment and prevention of crime."
Mahajan, J., was of the view that Art. 22 was " self-contained in respect of laws on the subject of preventive detention". Mukherjea, J., observed (at p. 254) that there was no conflict between Art. 19 (1) (d) and Art. 22, for the former did not contemplate freedom from detention either punitive or preventive, but speaks of a different aspect or phase of civil liberty. In his view Arts. 20 to 22 embodied the entire protection guaranteed by the Constitution in relation to deprivation of life and personal liberty with regard to substantive as well as procedural law. He proceeded to observe at p. 261 :
"....by reason of preventive detention, aman may be prevented from exercising the right offree movement within the territory of Indiabut that is merely incidental to or consequential uponloss of liberty resulting from the order of detention."
But the learned Judge observed at p. 263
" It may not, I think, be quite accurate to state that the operation of article 19 of the Constitution is limited to free citizens only and that the rights have been described in that article on the pre-supposition that the citizens are at liberty. The deprivation of personal liberty may entail as a consequence the loss or abridgement of many of the rights described in article 19, but that is because the -nature of these rights is such that free exercise of them is not possible in the absence of personal liberty.
Das, J. observed at p. 304 :
" Therefore, the conclusion is irresistible that the rights protected by article 19(1), in so far as they

573
relate to rights attached to the person, i.e., the rights referred to in sub-clauses (a) to (e) and (g), are rights which only a free citizen, who has the freedom of his person unimpaired, can exercise.

The learned Judge further observed

a lawful detention, whether punitive or preventive, does not offend against the protection confer red by article 19 (1) (a) to (e) and (g), for those rights must necessarily cease when the freedom of the person is lawfully taken away. In short, those rights end where the lawful detention begins. So construed, article 19 and article 21 may, therefore, easily go together and there is, in reality, no conflict between them."

Fazl Ali, J., struck a different note: he observed at p. 148:

rights does not contemplate ... that each article is a code by itself and is independent of the others..... The case of a person who is convicted of an offence will come under article 20 and 21 and also under article 22 so far as his arrest and detention in custody before trial are concerned. Preventive detention, which is dealt with in article 22, also amounts to deprivation of personal liberty which is referred to in article 21, and is a violation of the right of freedom of movement dealt with in article 19(1)

At p. 149 the learned Judge observed

" The words used in article 19 (1) (d) must be, construed as they stand, and we have to decide upon

the words themselves whether in the case preventive detention the right under article 19 (1) (d) is or is not infringed. But, . . ., however, literally we may construe the words used in article 19 (1) (d) and however restricted may be the meaning we may attribute to those words, there can be no escape from the conclusion that preventive detention is a direct infringement of the right guaranteed in article 19(1)(d)."

At p. 170 he observed :

" .... this article (Art. 22)

clude the operation of articles 19 and 21, and it must be read subject to those two articles, in the same way as articles 19 and 21 must be read subject to article 22. The correct position is that article 22 must prevail in

574

so far as there are specific provisions therein regarding preventive detention, but, where there are no such provisions in that article, the operation of articles 19 and 21 cannot be excluded. The mere fact that different aspects of the same right have been dealt with in three different articles will not make them mutually exclusive except to the extent I have indicated."

The view expressed in A. K. Gopalan's case(1) was reaffirmed in Ram Singh and Others v. The State of Delhi (2) .

The principle underlying the judgment of the majority was extended to the protection of the freedom in respect of property, and it was held that Art. 19 (1) (f) and Art. 31 (2) were. mutually exclusive in their operation. In A. K. Gopalan's case(3), Das, J., suggested that if the capacity to exercise the right to property was lost, because of lawful compulsory acquisition of the subject of that right, the owner ceased to have that right for the duration of the

incapacity. In Chiranjit Lai Chowduri's case(4), Das, J., observed at p. 919 :

"...the right to property guaranteed by Art. 19(1) (f) would .... continue until the owner was under Art. 31 deprived of such property by authority of law."

In The State of West Bengal v. Subodh Gopal(1) the same learned Judge observed that "Art. 19 (I) (f) read with Art. 19 (5) presupposes that the person to whom the fundamental right is guaranteed retains his property over or with respect to which alone that right may be exercised." The principle so stated was given a more concrete shape in a later decision : State of Bombay v. Bhanji Munji & Another 5 In Bhanji, Munji's case(1), speaking for a unanimous Court, Bose,, J., observed

" ..... it is enough to say that Art. 19 (I) (f) read with clause (5) postulates the existence of property which can be enjoyed, and over which rights can be exercised because otherwise -the reasonable restrictions contemplated by clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold or dispose it of, and as clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must

(1) [1950] S.C.R. 88. (2) [1951] S.C.R. 451. (3) [1950] S.C.R. 869. (4) [1954] S.C.R. 587.
(5) [1955] 1 S.C.R. 777.

575

follow that the Article postulates the existence of property over which the rights are to be exercised."

Bhanji Munji's case(1) was accepted without -any discussion in Babu Barkya Thakur v. The State of Bombay (2) ; Smt. Sitabati Debi and Anr. v. State of West Bengal and Another(3), and other cases.

In these cases it was held that the substantive provisions of a law relating to acquisition of property were not liable to be challenged on the ground that they imposed unreasonable restrictions on the right to hold property.

Bhanji Munji's, case, it must be remembered, arose under Art. 31 before it was amended by the Constitution (Fourth Amendment) Act. It was held by this Court that cls. (1) & (2) of Art. 31 as they then stood dealt with the same subjectmatter, i.e. compulsory acquisition of property;: see Subodh Gopal's case(3) and Dwarkadas Shriniwas's case(4). But since the amendment by the Constitution (Fourth Amendment) Act it has been held that cls. (1) & (2) dealt with different subjectmatters. In Kavalppara Kottarathil Kochuni's case(3), Subba Rao, J.delivering the judgment of the majority of the Court observed that cl. (2) of Art. 31 alone deals with compulsory acquisition of property by the State for a public purpose, and not Art. 31 (1), and he proceeded to hold that the expression "authority of law" means authority of a valid law, and on that account validity of the law seeking to deprive a person of his property is open to challenge on the ground that it infringes other fundamental rights, e.g., under Art. 19(1) (f). It was broadly observed that Bhanji Munji's case(1) after the Constitution (Fourth Amendment) Act "no longer holds the field". But Kavalappara Kottarathil Kachuni's case(6) did not deal with the validity of a law relating to compulsory acquisition. With the decision in Kavalappara Kottarathil Kochuni's case(1) there arose two divergent lines of

authority (1) "authority of law" in Art. 31 (1) is liable to be tested on the ground that it violates other fundamental rights and freedoms including the right to hold property guaranteed by Art. 19 (1) (f). and (2) "authority of a law" within the meaning of Art. 31 (2) is not liable to be, tested on the ground that it impairs the guarantee of Art. 19(1)(f) in so far as it imposes substantive restrictions- though it may be tested on the ground of impairment of other guarantees. The expression "law" in the two clauses had therefore different meanings. It was for the first time (obiter dicta apart) in The State of Madhya

(1) [1955] 1 S.C.R. 777. (2) [1961] 1 S.C.R. 128. (3) [1967] 2 S.C.R. 940. (4) [1954] S.C.R. 587.
(5) [1954] S.C.R. 674.
(6) [1960] 3 S.C.R. 887.

576

Pradesh v. Ranojirao Shinde(1) this Court opined that the validity of law in cl. (2) of Art. 31 may be adjudged in the light of Art. 19 (1) (f). But the Court in that case did not consider the previous catena of authorities which related to the inter-relation ,between Art. 31(2) and Art. 19(1) (f).

We have carefully considered the weighty pronouncements of the eminent Judges who gave shape to the concept that the extent of protection of important guarantees, such as the liberty of person, and right to property, depends upon the form and object of the State action, and not upon its direct operation upon the individual's freedom. But it is not the object of the authority making the law impairing the right of a citizen, nor the form of .action that determines the protection he can claim: it is the effect of the law and of the action upon the right which attract the jurisdiction of the Court to grant relief. If this be the true view, and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's rights.

We are of the view that the theory that the object and form of the, State action determine the extent of protection which the aggrieved party may claim is not consistent with the constitutional scheme. Each freedom has different dimensions. Article 19 (1) (f) enunciates the right to acquire, hold and dispose of property: cl. (5) of Art. 19 authorize imposition of restrictions upon the right. Article 31 assures the right to property and grants protection against the exercise of the authority of the State. Clause (5) of Art. 19 and cis. (1) & (2) of Art. 31 prescribe restrictions upon State action, subject to which the right to property may be exercised. Article 19(5) is a broad generalization dealing with the nature of limitations which may be placed by law on the right to property. The guarantees under Arts. 31 (1) & (2) arise out of the limitations imposed on the authority of the State by law to take over the individual's property. The true character of the limitations under the two provisions is not different. Clause (5) of Art. 19 and cls. (1) & (2) of Art. 31 are parts of a single pattern : Art. 19 (1) (f) enunciates the, basic right to property of the citizens and Art. 19(5) and cis. (1) & (2) of Art. 31 deal with limitations which may be placed by law, subject to which the rights may be exercised.

Limitations prescribed for ensuring due exercise of the authority of the State to deprive a person of his property

and of the
(1) [1968] 3S.C.R.489.
577
power to compulsorily acquire his property are, therefore, specific classes of limitations on the right to property falling within Art. 19(1) (f). Property may be compulsorily acquired only for a public purpose. Where the law provides for compulsory acquisition of property for a public purpose it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Art. 31(2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but enquiry into reasonableness of the procedural provisions will got be excluded. For instance if a tribunal is authorised by an Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Art. 19 (1) (f).
In dealing with the argument that Art. 31 (2) is a complete code relating to infringement of the right to property by compulsory acquisition, and the validity of the law is not liable to be tested in the light of the reasonableness of the restrictions imposed thereby, it is necessary to bear in mind the enunciation of the guarantee of fundamental rights which has taken different forms. In some cages it is an express declaration of a guaranteed right : Arts. 29(1), 30(1), 26, 25 & 32; in others to ensure protection of individual rights they take specific forms of restrictions on State action-legislative or executive--Arts. 14, 15, 16, 20, 21, 22(1), 27 and 28; in some others, it takes the form of a positive declaration and simultaneously enunciates the restriction there on : Arts. 19(1) and 19(2) to (6); in some cases, it arises as an implication from the delimitation of the authority of the State, e.g., Arts. 31(1) and 31(2); in still others, it takes the form of a general prohibition against the State as well as others : Arts. 17, 23 & 24. The enunciation of rights either express or by implication does not follow a uniform pattern. But one thread runs through them : they seek to protect the rights of the individual or groups of individuals against infringement -of those rights within specific limits. Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields: they do not -attempt to enunciate distinct rights.
We are therefore unable to hold that the challenge to the validity of the provision for acquisition is liable to be tested only on the ground of non-compliance with Art. 31(2). Article 31(2) requires that property must be acquired for a public purpose and that it must be acquired under a law with characteristics set out in that Article. Formal compliance with the conditions under
L8Sup.CI/70
578
Art. 31(2) is not sufficient to negative the protection of the guarantee of the right to property. Acquisition must be under the authority of a law and the expression "law" means a law which is within the competence of the Legislature, and does not impair the guarantee of the rights in Part Ill. We are unable, therefore, to agree that Arts. 19 (1) (f) and 31 (2) are mutually exclusive.
The area of protection afforded against State action by the freedom under Art. 19 (1) (f) and by the exercise of the

power of the State to acquire property of the individual without his consent must still be reconciled. If property is compulsorily acquired for a public purpose, and the law satisfies the requirements of Arts. 31(2) and 31 (2A), the Court may readily presume that by the acquisition a reasonable restriction on the exercise of the right to hold property is imposed in the interests of the general public. But that is not because the claim to plead infringement of the fundamental right under Art. 19 (1) (f) does not avail the owner; it is because the acquisition imposes a permissible restriction on the, right of the owner of the property compulsorily acquired.

We have found it necessary to examine the rationale of the two lines of authority and determine whether there is anything in the Constitution which justifies this apparently inconsistent development of the law. In our judgment, the assumption in A. K. Gopalan's case(1) that certain articles in the Constitution exclusively deal with specific matters and in determining whether there is infringement of the individual's guaranteed rights, the object and the form of the State action alone need be considered, and effect of the laws on fundamental rights of the individuals in general will be Ignored cannot be accepted as correct. We hold that the validity "of law" which authorises deprivation of property and "a law" which authorises compulsory acquisition of property for a public purpose must be adjudged by the application of the same tests. A citizen may claim in an appropriate case that the law authorising compulsory acquisition of property imposes fetters upon his right to hold property which are not reasonable restrictions in the interests of the general public. It is immaterial that the, scope for such challenge. may be attenuated because of the nature of the law of acquisition which providing as it does for expropriation of property of the individual for' public purpose may be presumed to impose reasonable restrictions in the interests of the general public.

Whether the provisions of ss. 4 & 5 of Act 22. of 1969 and the other related provisions of the Act impair the fundamental

(1) [1950] S.C.R. 88.

579

freedoms under Art. 19 (I) (f) & (g) now falls to, be considered By s. 4 the entire undertaking of each named bank vests in the Union, and the Bank is prohibited from engaging in the business of banking in India and even in a foreign country, except where by the laws of a foreign country banking business owned or controlled by Government cannot be carried on, the named bank will be entitled to continue the business in that country. The business which the named banks carried on was-(1) the business of banking as defined in s. 5 (b) of the Banking Regulation Act, 1949, and business incidental thereto; and (2) other business which by virtue of s. 6(1) they were not prohibited from carrying on, though not part of or incidental to the business of banking. It may be recalled that by Act 22 of 1969 the named banks cannot engage in business of banking as defined in s. 5(b) of the Banking Regulation Act, 1949, but may engage in other forms of business. By the Act, however, the entire undertaking of each named bank is vested in the new corporation set up with a name identical with the name of that Bank, and authorised to carry on banking business previously carried on by the named bank, and its managerial and other staff is transferred to the corresponding new bank. The newly constituted corresponding bank is entitled to engage in business described in s. 6 (1) of the Banking

Regulation Act, and for that purpose to utilize the assets, goodwill and business connections of the existing bank.
The named banks are declared entitled to engage in business other than banking : but they have no assets with which that business may be carried on, and since they are prohibited from carrying on banking business, by virtue of s. 7 of the Reserve Bank of India Act, they cannot use in their title the words "Bank" or "Bankine" and even engage in "non-banking. business" in their old names. A business organization deprived of its entire assets and undertaking, its managerial and other staff, its premises, and its name, even if it has a theoretical right to carry on non-banking business, would not be able to do so, especially when even the fraction of the value of its undertaking made payable to it as compensation, is not made immediately payable to it.
Validity of the provisions of the Act which transfer the undertaking of the named banks and prohibit those banks from carrying on business of banking and practically prohibit them from carrying on non-banking business falls to be considered in the light of Art. 19(1)(f) and Art. 19(1)(g) of the Constitution. By Art. 19(1)(f) right to acquire, hold and dispose of property is guaranteed to the citizens; and by Art. 19 (1) (g) the right to practise any profession, or to carry on any occupation, trade or business is guaranteed to the citizens. These rights are-
580
not absolute: they are subject to the restrictions prescribed in ;the appropriate clauses of Art. 19. By cl. (5) it is provided, inter alia, that nothing in sub-cl.(f) of cl. (1) shall affect the -operation of any existing law in so far as it imposes, or prevent -the State from making any law, imposing in the interests of the general public, reasonable restrictions on the exercise of the right ,conferred by that sub-clause either in the interests of the general public or for the protection of the interests of any Scheduled 'Tribe. Clause (6) as amended by the Constitution (First -Amendment) Act, 1951, reads
" Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making law relating to-
(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
(ii).the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."
Clause (6) of Art. 19 consists of two parts : (1) the right declared by sub-cl. (g) is not protected against the operation of any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by that sub-clause; and (2) in particular sub-cl. (g) does not affect the operation of any law relating, inter alia, to carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether or not such law provides for the exclusion, complete or partial, of citizens.
According to Mr. Palkhivala it was intended by the use of

the expression "in particular", to denote a special class of trade, business, industry or service out of the general class referred to in the first part, and on that account a law which relates to the ,carrying on by the State of any -particular business, industry 'or service, to the exclusion-complete or partial--of citizens or -otherwise, is also subject to the enquiry . whether it imposes
581
reasonable restrictions on the exercise of the right in the interests, of the general public. Counsel urged that the law imposing restrictions upon the exercise of the right to carry on any occupation, trade or business is subject to the test of reasonable restrictions imposed in the interests of the general public, likewise, the particular classes specified in the second part of the Article must also be regarded as liable to be tested in the light of the same limitations. Counsel strongly relied upon the decision of the House of Lords in Earl Fitzwilliam's Wentworth Estates Co. v. Minister of Housing and Local Government and Anr.(1) The House of Lords in that case did not lay down any general proposition. They were only dealing with the meaning of the words "in particular" in the context in which they occurred, and it was held that the expression "in particular" was not intended to confer a separate and distinct power wholly independent of that contained in the first limb. It cannot be said that the expression "in particular" used in Art,. 19(1)(g) is intended either to particularise or to illustrate the general law set out in the first limb.
It was observed in Saghir Ahmad v. The State of U.P. and' Others (2) by Mukherjea, J. at p. 727 :
"The new clause-Art. 19(6)--has no doubt been introduced with a view to provide that a State can create a monopoly in its own favour in respect of any trade or business; but the amendment does not make the establishment of such monopoly a reasonable restriction within the meaning of the first clause of Art. 19(6). The result of the amendment is that the State would not have to justify such action as reason-able at all in a court of law, and no objection could be taken to it on the ground that it is an infringement of the rights guaranteed under Art. 19 (1) (g) of the Constitution."
In dealing with the validity of a law creating a State mono-poly in Akadasi Padhan v. State of Orissa, (3) this Court unanimously held, that the validity of a law creating a State monopoly which "indirectly impinges on any other right" cannot be challenged on the, -round that it imposes restrictions which are not reasonable restrictions in the interests of the general' public. But if the law contains other incidental provisions, which do not constitute an essential and integral part of the monopoly created by it, the validity of those provisios is liable to be tested under the first part of Art. 19(6) If they directly,
(1) [1952] 1 All E.R. 509.
(2) [1955] 1 S.C.R. 707, 727.
(3) [1963] Supp. 2 S.C.R. 691.
582
impair any other fundamental right guaranteed by Art. 19(1), the validity of those provisions will be tested by reference to the corresponding clauses of Art. 19. The Court also observed that the essential attributes of the law creating a monopoly will vary with the nature of the trade or business in which the monopoly is created. They will depend upon the nature of the commodity, the nature of trade in which it is involved and other Circumstances. At p. 707, Gajendragadkar, J. speaking for the Court, observed :

.lm15
" 'A law relating to' a State monopoly cannot, in the, context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. In our opinion, the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State, monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Art. 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the first part of Art. 19(6).
-He also observed at p. 705 :
that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of general public, so far as Art. 19 (1) (g) is concerned."
This was reiterated in Rasbihari Panda and Others v. The State of Orissa;(1) M/s. Vrajlal Manilal & Co. and Another-v. The State of Madhya Pradesh & Others;(2) and Municipal Committee, Amritsar and Others v. State of Punjab and Others.(3) These ,cases dealt with the validity of laws creating monopolies in the State. Clause (6) is however not restricted to laws creating State monopolies, and the rule enunciated in Akadasi Padhan's case(4) applies to all laws relating to the carrying on by the State of any trade, business, industry or service. By Art. 298 the State is authorized to carry on trade which is competitive, or excludes the citizens from that trade completely or partially.
(1) [1969] 3 S.C.R. 374.
(2) [1970] 1 S.C.R. 400.
(3) [1969] 3 S.C.R, 447.
(4) [1963] Supp. 2 S.C.R. 691.
583
The "basic and essential" provisions of law which are "integrally and essentially connected" with the carrying on of a trade by the State will not be exposed - to the challenge that they impair the guarantee under Art. 19(1)(g), whether the citizens are excluded completely or partially from carrying on that trade, -or the trade is competitive. Imposition of restrictions which are incidental or subsidiary to the carrying on of trade by the State whether to the exclusion of the citizens or not must, however, satisfy the test of the main limb.
The law which prohibits after July 19, 1969, the named banks from carrying on banking business, being a necessary incident of the right assumed by the Union, is not liable to be challenged because of Art' 19 (6) (ii) in so far as it affects the right to carry on business.
There is no satisfactory proof in support of the plea that the enactment of Act 22 of 1969 was not in the larger interest of the nation, but to serve political ends, i.e. not with the object to ensure better banking facilities, or to make them available to a wider public, but only to take control over the deposits of the public with the major banks, and to use them as a political lever against industrialists who had built up industries by decades of industrial planning and careful management. It is true that social control legislation enacted by the Banking Laws (Amendment) Act 58 of 1968 was in operation and the named banks were subject to rigorous control which the Reserve Bank was competent to. exercise and did in fact exercise.

Granting that the objectives laid down by the Reserve Bank were being carried out, it cannot be said that the Act was enacted in abuse of legislative power. Our attention was invited to a mass of evidence from the speeches of the Deputy Prime Minister, and of the Governor and the Deputy Governor of the Reserve Bank, and also extracts from the Reserve Bank Bulletins issued from time to time and other statistical information collected from official sources in support of thesis of the petitioner that the performance of the named banks exceeded the targets laid down by the Reserve Bank in its directives; that the named banks had effectively complied with the requirements of the law; that they had served the diverse interests including small-scale sector, and had been instrumental in bringing about an increasing tempo of industrial and commercial activity; that they had discouraged speculative holding of commodities, and had followed essential priorities in the economic development of the nation coupled with a vigorous programme of branch development in the rural sector, bringing about a considerable expansion in deposits, and large advances to the small-scale business and industry. Mr. Palkhivala urged that under the scheme of social control the
584
commercial banks had achieved impressive results comparing favourably with the performance of the State Bank of India and its subsidiaries in the public sector, and that the performance of the named banks could not be belittled by referring to the banking structure and development in highly developed countries like Canada, Japan, France, United States and the United Kingdom. On the other hand, the Attorney-General said that the commercial banks followed a conservative policy because they had to look- primarily to the interests of the shareholders, and on that account could not adopt bold policies or schemes for financing the needy and worthy causes; that if the resources of the banking industry are properly utilised for the weaker sections of the people economic regeneration of the nation may be speedily achieved, that 28% of the towns in India were not served by commercial banks; that there had been unequal development of facilities in different parts of the country and deserving sections were deprived of the benefit of an important national resource resulting in economic disparities, especially because the major banks catered to the large-scale industries. ,

This Court is not the forum in which these conflicting claims may be debated. Whether there is a genuine need for banking facility in the rural areas, whether certain classes of the community are deprived of the benefit of the resources of the banking industry, whether administration by the Government of the commercial banking sector will not prove beneficial to the community and will lead to rigidity in the administration, whether the Government administration will eschew the profit-motive, and -even if it be eschewed, there will accrue substantial benefits to the public, whether an undue accent on banking as a means of social regeneration, especially in the, backward areas, is a doctrinaire approach to a rational order of priorities -for attaining the national objectives enshrined in our Constitution, and whether the policy followed by the Government in office or the policy propounded by its opponents may reasonably attain the national objectives are matters which have little relevance in determining the legality of the measure. It is again not for this Court to consider the relative merits of the different political theories or economic policies. The Parliament has under

Entry 45 List I the power to legislate in respect of banking and other commercial activities of the named banks necessarily incidental thereto; it has the power to legislate for acquiring the undertaking of the named banks under Entry 42 List III. Whether by the exercise of the power vested in the Reserve Bank under the preexisting laws, results could be achieved which it is the object of the Act to achieve,. is. in our judgment, not relevant in considering whether the Act amounts to abuse of legislative power.

585

This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law. The Court cannot find fault with the Act merely on the ground that it is inadvisable to take over the undertaking of banks which, it is said by the petitioner, by thrift and efficient management had set up an impressive and efficient business organization serving. large sectors of industry.

By s. 15 (2) (e) of the Act the Banks are entitled to engage in business other than banking. But by the provisions of the Act they are rendered practically incapable of engaging in any business. By the provisions of the Act, a named bank cannot even use its name, and the compensation which is to be given will, in the absence of agreement, be determined by the Tribunal and paid in securities which will mature not before ten years. A named bank may if it agrees to distribute among the shareholders the compensation which it may receive, be paid in securities an amount equal to, half the paid-up share capital, but obviously the fund will not be available to the, Bank. It is true that under s. 15(3) of the Act the Central Government may authorise the corresponding new banks to make advances to the named banks for any of the purposes mentioned in s. 15(2). But that is a matter which rests only upon the will of the Central Government and no right can be founded upon it.

Where restrictions imposed upon the carrying on of a business are so stringent that the business cannot in practice be carried on, the Court will regard the imposition of the restrictions as unreasonable.. In Mohammad Yasin v. The Town Area Committee, Jalalabad and Another(1) this Court -observed that under Art. 19(1)(g) of the Constitution a citizen has the right to carry on any occupation, trade or business and the only restriction on 'this right is the authority of the State to make a law relating to the carrying on of such occupation, trade or business as mentioned in cl. (6) of that Article as amended by the Constitution (First Amendment) Act, 1951. In Mohammad Yasin's case by the, bye--laws of the Municipal Committee, it was provided that no person shall sell or purchase any vegetables or fruit within the limits of the municipal area of Jalalabad, wholesale or by auction, without paying the prescribed fee. It was urged on behalf of a wholesale dealer 'in vegetables that although there was no prohibition against carrying on business, in vegetables by anybody, in effect the bye-laws brought about a total stoppage of the wholesaler's business in a commercial sense, for, he had to pay prescribed fee to the contractor, and under the bye-laws the wholesale dealer could not charge a

(1) [1952] S.C.R. 572.

586

higher rate of commission than the contractor. The wholesale ,dealer, therefore, could charge the growers of vegetables and fruit only the commission permissible under the bye-laws, and he had to make over the entire commission

to the contractor without retaining any part thereof. The wholesale dealer was -thereby converted into a mere tax-collector for the contractor or the Town Area Committee without any remuneration The bye-laws in this situation were struck down as impairing the freedom to carry on business.
In Dwarkadas Shrinivas's(1) case the Sholapur Spinning and Weaving Company " (Emergency Provisions) Ordinance 11 of 1950 and Act 28 of 1950 passed by the Parliament to replace the Ordinance were challenged. Under the Ordinance the managing agent and the elected directors were dismissed and new directors were appointed by the State. The Company was denuded of possession of its property and all that was left to the Company was a bare legal title. In an appeal arising out of a suit challenging the validity of the Ordinance and the Act which replaced it, this Court held that the Ordinance and the Act violated the fundamental rights of the Company and of the plaintiff a preference shareholder upon whom a demand was made for payment of unpaid calls. This Court held that the Ordinance and the Act in effect deprived the Company of its property within the meaning of Art. 31 without compensation. It was observed by Mahajan, J., that practically all incidents of ownership were taken over by the State and nothing was left with the Company but the mere husk of title, and on that account the impugned statute' had overstepped the limits of legitimate social control legislation.
If compensation paid is in a form that it is not immediately available for restarting any business, declaration of the -right to carry on business other than banking becomes an empty formality, when the entire undertaking of the named banks is transferred to and vests in the new banks, together with the premises and the names of the banks, and the named banks are deprived of the services of its administrative and other staff.
The restriction imposed upon the right of the named banks to carry on "non-banking" business is' in our judgment, plainly unreasonable. No attempt is made to Support the Act which while theoretically declaring the right of the named banks to carry on "non-banking" business makes it impossible in a commercial sense for the banks to carry on any business,
(1) [1954] S.C.R. 674.
587
Protection of Art. 14--
By Art. 14 of the Constitution the State is enjoined not to deny any person equality before the law or the equal protection of the laws within the territory of India. The Article forbids class legislation, 'but not reasonable classification in making laws. The test of permissible classification under an Act lies in two cumulative conditions : (i) classification under the Act must be founded on an intelligible differentia distinguishing persons, transactions or things grouped together from others left out of the group; and (ii) the differentia has a rational relation to the object sought to be achieved by the Act : there must be a nexus between the basis of classification and the object of the Act : Chiranjit Lal Chowduri's case(1); The State of Bombay v. F. N. Balsara(2); The State of West Bengal v. Anwar Ali Sarar(3); Budhan Choudhry and Others v. The State of Bihar(1); Shri Ram Kishan Dalmia v. Shri Justice S. R. Tendolkar and Others,(2); and State of Rajasthan v. Mukandchand & Ors.
The Courts recognize in the Legislature some degree of elas-ticity in the matter of making a classification between persons, objects and transactions. Provided the classification is based on some intelligible ground, the

Courts will not strike down that classification, 'because in the view of the Court it should have proceeded on some other ground or should have included in the class selected for special treatment some other persons, objects or transactions which are not included by the Legislature. The Legislature is free to recognize the degree of harm and to restrict the operation of a law only to those cases where the need is the clearest. The Legislature need not extend the regulation of a law to all cases it may possibly reach, and may make a classification founded on practical grounds of convenience. Classification to be valid must, however, disclose a rational nexus with the object sought to be achieved by the law which makes the classification. Validity of a classification will be upheld only if that test is independently satisfied. The Court in examining the validity of a statute challenged as infringing the equality clause makes an assumption that there is a reasonable classification and that the classification has a rational relation to the object sought to be achieved by the statute. By the definition of "existing bank" in s. 2(d) of the Act, fourteen named banks in the First Schedule are, out of many commercial banks engaged in the 'business of 'banking, selected for special treatment, in that the undertaking of the named banks is taken over, they -are prevented from carrying on in India and

(1) [1950] S.C.R. 869. (2) [1951] S.C.R. 682.
(3) [1952] S.C.R. 284. (4) [1955] I S.C.R. 1045.
(5) [1959] S.C.R. 279, 300.(6) [1964] 6 S.C.R. 903, 910.

588

abroad banking business and the Act operates in practice to prevent those banks engaging in business other than banking. By reason of the transfer of the undertaking of the named banks, the interests of the banks and the shareholders are vitally affected. Investment in bank-shares is regarded in India, especially in the shares of larger banks, as a safe investment on attractive terms with a steady return and fluidity of conversion. Mr. Palkhivala has handed in a statement setting out the percentage return of dividend on market-rates in 1968. The rate works out at more than, 10% in the case of. the shares of Bank of Baroda, Central Bank of India, Dena Bank, Indian Bank, United Bank and United Commercial Bank; and at more than 9% in the case of shares of Bank of India, Bank of Maharashtra, Canara Bank, Indian Bank, Indian Overseas Bank and United Bank of India. In the case of Allahabad Bank it worked out at 5%, and in the case of shares of Punjab National Bank and Syndicate Bank the rates are not available. This statement is not challenged. Since the taking over of the undertaking, there has resulted a steep fall in the ruling market quotations of the shares of a majority of the named banks. The market quotations have slumped to less than 50% in the case of Bank of India, Central Bank, Bank of Baroda and even at the quoted rates probably there are no transactions. Dividend may no longer be distributed, for the banks have no liquid assets and they are not engaged in any commercial activity. It may take many years before the compensation payable to the banks may even be finalized, and be available to the named banks for utilising it in any commercial venture open to the banks under the Act. Under the scheme of determination of compensation, the total amount payable to the banks will be a fraction of the value of their net assets, and that compensation will not be available to the banks immediately. The ground for select-ion of the 14 banks is that those banks held deposits, as shown in the return as on the last Friday of June 1969 furnished to the Reserve Bank under s.

27 of the Banking Regulation Act, 1949, of not less than rupees fifty crores.

The object of Act 22 of 1969 is according to the long title to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with the national policy and objectives and for matters connected therewith or incidental thereto. The national policy may reasonably be taken to be the policy contained in the directive principles of State policy, especially Arts. 38 & 39 of the Constitution. For achieving the need s of a developing economy in conformity with

589

the national policy and objectives, the resources of all banks foreign as well as Indian-are inadequate. of the total deposits with commercial banks 27% are with the State Bank of India and its subsidiaries : the named commercial banks of which the undertaking is taken over hold approximately 56% of the deposits. The remaining 17% of the deposits are shared by the foreign banks and the other scheduled and non-scheduled commercial banks. 83% of the total resources may obviously not meet wholly or even substantially the needs of development of the, economy.

In support of the plea that there is a reasonable relation between the differentia-ground for making the distinction between the named banks and the other banks Indian and foreign-and the object of the Act, it is urged that the policy of the Union is to control the concentration of private economic resources to ensure achievement of the directive principles of State policy, and for that purpose, selection has been made "with an eye, inter alia, to the magnitude and concentration of the economic resources of such enterprises for inclusion in such law as would be essential or- substantially conducive to the achievement of the national objectives and policy". it is apparently claimed that the object of the Government-not of statute-is to acquire ultimately all banking institutions, but the 14 named banks are selected for acquisition because they have "larger business and wider coverage" in comparison with other banks not selected, and had also larger organization, better managerial resources and employees better trained and equipped. These are primarily grounds for classification and not for explaining the relation between the classification and the object of the Act. But in the absence of any reliable data, we do not think it necessary to express an opinion on the question whether selection of the undertaking of some out of many banking institutions, for compulsory acquisition, is liable to be struck down as hostile discrimination, on the ground that there is no reasonable relation between the differentia and the object of the Act which cannot be substantially served even by the acquisition of the undertakings of all the banks out of which the selection is made.

It is claimed that the depositors with the named banks have also a grievance. Those -depositors who had made long-term deposits, taking into account the confidence they had in the management of the banks and the- service they rendered, are now called upon to trust the management of a statutory corporation not selected by them, without an opportunity of being placed in the same position in which they would have been if they were permitted to transfer their deposits elsewhere. The

590

argument is based on several imponderables and does not require any detailed consideration.

But two other grounds in support of the plea of impairment of the guarantee of equality clause require to be noticed. The fourteen named banks are prohibited from carrying on banking business--a disability for which there is no rational explanation. Banks other than the named banks may carry on banking business in India and abroad : new banks may be floated for carrying on banking business, but the named banks are prohibited from carrying on banking business. Each named bank had, even as claimed on behalf of the Union, by its superior management established an extensive business organization, and each bank had deposits exceeding Rs. 50 crores. The undertakings of the banks are taken over and they are prohibited from doing banking business. In the affidavit filed on behalf of the Union no serious attempt is made to explain why the named banks should be specially selected for being subjected to this disability.

The petitioner also contended that the classification is made on a wholly irrational ground, viz., penalizing efficiency and good management, for the major fourteen banks had made a sustained effort an had exceeded the Reserve Bank target and had fully complied with the directives under the social control legislation. This, it is said, is a reversal of the policy underlying s. 36AE of the Banking Regulation Act under which inefficient and recalcitrant banks are contemplated to be taken over by the Government. We need express no opinion on this part of the argument. But the petitioner is on a firm ground in contending that when after acquiring the assets, undertaking, organization, goodwill and the names of the named Banks they are prohibited from carrying on banking business, whereas other banks-Indian as well as foreign-are permitted to carry on banking business, a flagrantly hostile discrimination is practised. Section 15(2) of the Act which by the clearest implication prohibits the named banks from carrying on banking business is, therefore, liable to be struck down. It is immaterial whether the entire sub-s. (2) is struck down, or as suggested by the Attorney-General that only the 'words "other than the business of banking" in s. 15(2)(e) be struck down. Again, in considering the validity of s. 15 (2) (e) in its relation to the guarantee of freedom to carry on business other than banking, we have already pointed out that the named banks are also, (though theoretically, competent) in substance prohibited from carrying on non-banking business. For reasons set out by us for holding that the restriction is unreasonable, it must also be held that the guarantee of equality is impaired by

591

preventing the named banks carrying on the non-banking business.

Protection of the guarantee under Art. 31(2)-

The guarantee under Art. 31(2) arises directly out of -the restrictions imposed upon the power of the State to acquire private property, without the consent of the owner for a public purpose. Upon the exercise of the power to acquire or requisition property, by cl. 2) two restrictions are placed : (a) power to acquire shall not be exercised save for a public purpose; and (b) that it shall not be exercised save by authority of a law which provides for compensation for the property acquired or requisitioned, and fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. Sub-clause (2A) in substance provides a definition of "compulsory acquisition or requisitioning of property". Existence of a public purpose and provision for

giving compensation for compulsory acquisition of property of an individual are conditions of the exercise of the power. If either condition be absent, the guarantee under Art. 31(2) is impaired, and the law providing for acquisition will be invalid. But jurisdiction of the Court to question the law on the ground that compensation provided thereby is not (adequate is expressly excluded.

In the case before us we need not express any opinion on the question whether a composite undertaking of two or more distinct lines of business -may be acquired where, there is a public purpose for acquisition of the assets of one or more lines of business, but not in respect of all the lines of business. As we have already observed, there is no evidence that the named banks carried on non-banking business, distinct from banking business, and in respect of such non-banking -business the banks owned distinct assets apart from the assets of the banking business.

The law providing for acquisition must again either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given. The owner whose Property is compulsorily acquired is 'guaranteed the right to receive compensation and the amount of compensation must either be fixed by the law or be determined according to the principles and in the manner specified by the law. The law which does not ensure the guarantee will, except where the grievance only is that the compensation provide the law is inadequate, be declared void.

592

The petitioner says that the expression "compensation" means a "just equivalent" in -money of the property acquired and that the law providing for compulsory acquisition must "aim" at a just equivalent to the expropriated owner : if the law so aims at, it will not be deemed to impair the guarantee merely on the ,ground that the compensation paid to the owner is inadequate. The Attorney-General on the other hand says that "compensation" in Art. 31(2) does not mean a just equivalent, and it is not predicated of the validity of a law relating to compulsory ,acquisition that it must aim at awarding a just equivalent, for, if the law is not confiscatory, or the principles for determination ,of compensation are not irrelevant, "the Courts cannot go 'into the propriety of such principles or adequacy or reasonableness of the compensation".

Two questions immediately arise for determination. What is the true meaning of the expression "compensation" as used in Art. 31(2), and what is the extent of the, jurisdiction of the Court when the validity of a law providing for compulsory acquisition of property for a public purpose is challenged ?

In -its dictionary meaning "compensation" means anything given to make things equal in value : anything given as an equivalent, to make amends for loss or damage. In all States where the rule of law prevails, the right to compensation is guaranteed by the Constitution or regarded as inextricably involved in the right to property.

By the 5th Amendment in the Constitution of the U.S.A. the right of eminent domain is expressly circumscribed by providing "Nor shall private property be taken for public use, without just, compensation". Such a provision is to be found also in every State Constitution in the United States : Lewis Eminent Domain, 3rd Edn., (pp. 28-50). The Japanese Constitution, 1946, by Art. 25 provides a similar guarantee. Under the Commonwealth of Australia Constitution, 1900, the Commonwealth Parliament is invested with the power of

acquisition of property on "just terms" : s. 57 (XXXI).
Under the Common Law of England, principles for payment of compensation for acquisition of property by the State are stated by Blackstone in his "Commentaries on the-Laws of England", 4th Edn., Vol. I, at p. 109
"So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community..... Besides, the public good is in nothing moire essentially interested, than in
593
the protection of. every individual's private rights, as modelled by the municipal law. In this and similar cases the legislature alone can, and indeed frequently does, interpose, and compel the individual to, acquiesce. But how does it interpose and compel ? Not by absolutely stripping the subject of his property in an arbitrary manner; but giving him a full indemnification and equivalent for the injury thereby sustained The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does, is to oblige the owner to alienate his possession for a reasonable price....."
The British Parliament is supreme and its powers are not subject to any constitutional limitations. But the British Parliament has rarely, if at all, exercised power to take property without payment of the cash value of the property taken. In AttorneyGeneral v. De Keyser's Royal Hotel(1) the House of Lords held that the Crown is not entitled as of right either by virtue of its prerogative or under any statute, to take possession of the land or building of a subject for administrative purposes in connection with the defence of the realm, without compensation for their use and occupation.
Under the Government of India Act, 1935, by s. 299(2) it was enacted that :
"Neither the Federal or' a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined."
Article 31(2) before it was amended by the Constitution (Fourth Amendment) Act, 1955, followed substantially the same pattern.
Prior to the amendment of Art. 31(2) this Court interpreted the expression "compensation" as meaning "full indemnification". Patanjali Sastri, C.J., in The State of West Bengal v. Mrs. Bela Banerjee & Others (2) in interpreting the guarantee under Art. 31(2), speaking on behalf of the Court, observed :
" While it is true that the legislature is given the discretionary power of laying " down the principles
(1) L.R. [1920] A.C. 508.
(2) [1954] S. C. R. 558.
L8Sup CI/70-8
594
which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated

owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make 'up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court."

In the view of the learned Chief Justice the expression "just equivalent" meant "full indemnification" and the expropriated owner was on that account entitled to the market value of the property on the date of deprivation of the property. This case was decided under a statute enacted before the Constitution (Fourth Amendment) Act, 1955. The principle of that case was approved in N. B.Jeejeebhoy v. Assistant Collector, Thalia Prant, Thana(1) - a case under the Land Acquisition (Bombay Amendment) Act, 1948, and invoking the guarantee under s. 299(2) of the Government of India Act, 1935; in Union of India v. Kamlabai Harjiwandas Parekh & Others (2) -a case under the Requisitioning and Acquisition of Immovable Property Act, 1952; and in State of Madras v. D. Namasivaya Mudaliar(3) - a case arising under the Madras Lignite Acquisition of Land Act, 1953.

Article 31(2) was amended with effect from April 27, 1955, by the Constitution (Fourth Amendment) Act, 1955. By sub-cl. (2A) a definition of acquisition or requisitioning of properties was supplied and certain other formal changes were also made, with the important reservation that " no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate". In cases arising under statutes enacted after April 27, 1955, this Court held that the expression "compensation" in Art. 31(2) as amended continued to mean "just equivalent" as under the unamended clause: P. Vajravelu Mudaliar v. Special Deputy Collector, Madras & Another(4) under the Land Acquisition (Madras Amendment) Act 23 of 1961; Union of India V. The Metal Cor-

(1) [1965] 1 S.C.R. 636.
(2) [1968] 1 S.C.R. 463.
(3) [1964] 6 S.C.R. 936.
(4) [1965] 1 S.C.R. 614.

595

poration of India Ltd. & Another(1) under the Metal Corporation of India (Acquisition of Under-takings Act 44 of 1955; Lachhman Dass and Others v. Municipal Committee, Jalalabad(2) under s. 20B of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, as amended by Act 2 of 1960. In Ranojirao Shinde's case(1) dealing with a case under the Madhya Pradesh Abolition of Cash Grants Act 16 of 1963 it was observed that the compensation referred to in Art. 31 (2) is a just equivalent of the value of the property taken. But this Court in State of Gujarat v. Shantilal Mangaldas and Others(1) observed that compensation payable for compulsory acquisition of property is not, by the application of any principles, determinable as a precise sum, and by calling it a "just" or "fair" equivalent, no definiteness could be attached thereto; that valuation of lands, buildings and incorporeal rights has to be made on the application of different principles, e.g. capitalization of net income at appropriate rates, reinstatement, determination of original value reduced by depreciation, break-up value of properties which had outgrown their utility; that the rules relating to determination of value of lands, buildings, machinery and other classes of property differ, and the application of several methods or principles lead to widely divergent amounts, and since compensation is

not capable of precise determination by the application of recognized rules, by qualifying the expression "compensation" by the adjective "just", the determination was made more controversial. It was observed that the Parliament amended the Constitution by the Fourth Amendment Act declaring that adequacy of compensation fixed by the Legislature as amended according to the principles specified by the Legislature for determination will not be justiciable. It was then observed that

"The right declared by the Constitute guarantees that compensation shall be given before a person is compulsorily expropriated of his property for a public purpose. What is fixed as compensation by statute, or by the application of principles specified for determination of compensation is guaranteed : it does not mean however that something fixed or determined by the application of specified principles which is illusory or can in no sense be regarded as compensation must be upheld by the Courts, for, to do so, would be to grant a charter of arbitrariness, and permit a device to defeat the constitutional guarantee. But compensation fixed or determined on principles specified by the Legislature cannot be permitted to be challenged on the somewhat indefinite -plea that it is not a just or fair equi-

(1) [1967] 1 S.C.R. 255.
(2) A.I.R. [1969] S.C. 1126.
(3) [1968] 3 S.C.R. 489.
(4) [1969] 3 S.C.R. 341.

596

valent. Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. A challenge to a statute that the principles specified by it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable."

This Court held in Mrs. Bela Banerjee's case(1) that by the guarantee of the right to compensation for compulsory acquisition under Art. 31(2), before it was amended by the Constitution (Fourth Amendment) Act, the owner was entitled to receive a "just equivalent" or "full indemnification". In P. Vajravelu Mudaliar's case(2) this Court held that notwthstanding the amendment of Art. 31(2) by the Constitution (Fourth Amendment) Act, and even after the addition of the words "and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate", the expression "compensation" occuring in Art. 31 (2) after the Constitution (Fourth Amendment) Act continued to have the same meaning as it had in S. 299(2) of the Government of India Act, 1935, and Art. 31(2) before it was amended, viz. "just equivalent" or "full indemnifications.

There was apparently no dispute that Art. 31(2) before and after it was amended guaranteed a right to compensation for compulsory acquisition of property and that by giving to the owner, for compulsory acquisition of his property, compensation which was illusory, or determined by the application of principles which were irrelevant, the constitutional guarantee of compensation was not complied with. There was difference of opinion on one matter between the decisions in P. Vajravelu Mudaliar's case(1) and Shantilal Mangaldas's case(2). In the former case it was observed that the constitutional guarantee was satisfied only if a just equivalent of the property was given to the

owner : in the latter case it was held that "compensation" being itself incapable of any precise determination, no definite connotation could be attached thereto by calling it "just equivalent" or "full indemnification", and under Acts enacted after the amendment of Art. 31 (2) it is not open to the Court to call in question the law providing for compensation on the ground that it is inadequate, whether the amount of compensation is fixed by the law or is to be determined according to principles specified therein. It was observed in the judgment in Shantilal Mangaldas's case(3):

(1) [1954] S.C.R. 558. (2) [1965] 1 S.C.R. 614.
(3) [1969] 3 S.C.R. 341. at p. 368.

597

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"Whatever may have been the meaning of the expression "compensation" under the unamended Article 31(2), when the Parliament has expressly enacted under the amended clause that "no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate", it was intended clearly to exclude from the jurisdiction of the court an enquiry that what is fixed or determined by the application of the principles specified as compensation does not award to the owner a just equivalent of what he is deprived."

In P. Vajravelu Mudaliar's case(1) again the Court in dealing with the effect of the amendment observed (at p. 627)

"Therefore, a more reasonable interpretation is that neither the principles prescribing the "just equivalent" nor the "just equivalent" can be questioned by the court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. To illustrate : a law is made to acquire a house; its value at the time of acquisition has to be fixed; there are many modes of valuation, namely, estimate by an engineer, value reflected by comparable sales, capitalisation of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value. But nonetheless they are principles on which and the manner in which compensation is determined. The Court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired(or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31 (2) of the Constitution."

The Court then applied that principle to the facts of the case and held that the Land Acquisition (Madras Amendment) Act, 1961, which provided that-(i) the owner of land acquired for housing shall get only the value of the land at the date of the notification under s. 4(1) of the Land Acquisition Act, 1894, or an amount equivalent to the average market value of the land during the last five years immediately preceding such date, whichever was less; (ii) the owner shall get a solatium of only 5% and not 15% and (iii) in valuing the land acquired any increase in its suitabili-

1. [1965] 1 S.C.R. 614.

598

ty or adaptability for any use other than the use to which the land was put at the date of the notification under s. 4(1) of the Land Acquisition Act, 1894, shall not be taken

into consideration, did not impair the right to receive compensation. The Court observed at p. 631 :
"In awarding compensation if the potential value of the land is excluded, it cannot be said that the compensation awarded is the just equivalent of what the owner has been deprived of. But such an exclusion only pertains to the method of ascertaining the compensation. One of the elements that should properly be taken into account in fixing the compensation is omitted : it results in the adequacy of the compensation, ... We, therefore, hold that the Amending Act does not offend Art. 31 (2) of the Constitution."
The compensation provided by the Madras Act, according to the principles specified, was not the full market value at the date of acquisition. It did not amount to "full indemnification" of the owner : the Court still held that the law did not offend the guarantee under Art. 31(2) as amended, because the objection was only as to the adequacy of compensation. In Shantilal Mangaldas's case(1), the Court held that the Constitution (Fourth Amendment) Act, Art. 31(2) guarantees a right to receive compensation for loss of property compulsorily acquired, but compensation does not mean a just equivalent of the property. If compensation is provided by law to be paid and the compensation is not illusory or is not determinable by the application of irrelevant principles, the law is not open to challenge on the ground that compensation fixed or determined to be paid is inadequate.
Both the lines of thought which converge in the ultimate re-sult, support the view that the principle specified by the law for determination of compensation is beyond the pale of challenge, if it is relevant to the determination of compensation and is a recognized principle applicable in the determination of compensation for property compulsorily acquired and the principle is appropriate in determining the value of the class of property sought to be -acquired. On the application of the view expressed in P. Vajravelu Mudaliar's case(1) or in Shantilal Mangal's case("') the Act, in our judgment, is liable to be struck down as it fails to provide to the expropriated banks compensation determined according to relevant principles. Section 4 of the Act transfers the undertaking of every named bank to and vests it in the corresponding new bank. Section 6(1) provides for payment of compensation for acquisition of the undertaking, and the compensa-
(1) [1959] 3 S.C.R. 341.
(2) [1965] 1 S.C.R. 614.
599
tion is to be determined in accordance with the principles specified in the Second Schedule. Section 6(2) then provides that though separate valuations are made in respect of the several matters specified in Sch. II of the_Act, the amount of compensation shall be deemed to be a single compensation. Compensation being the equivalent in terms of money of the property compulsorily acquired, the principle for determination of compensation is intended to award to the expropriated owner the value of the property acquired. The science of valuation of property recognizes several principles or methods for determining the value to be paid as compensation to the owner for loss of his property : there are different methods applicable to different classes of property in the determination of the value to be paid as recompense for loss of his property. A method appropriate to the determination of value of one class of property may be wholly inappropriate in determining the -value of another

class of property. If an appropriate method or principle for determination of compensation is applied, the fact that by the application of another, principle which is also appropriate, a different value is reached, the Court will not be justified in entertaining the contention that out of the two appropriate methods, one more generous to the owner should have been applied by the Legislature.

We are unable to hold that a principle specified by the Parliament for determining compensation of the property to be acquired is conclusive. If that view be accepted, the Parliament will be invested with a charter of arbitrariness and by abuse of legislative process, the constitutional guarantee of the right to compensation may be severely impaired. The principle specified must be appropriate to the determination of compensation for the particular class of property sought to be acquired. If several principles are appropriate and one is selected for determination of the value of the property to be acquired, selection of that principle to the exclusion of other principles is not open to challenge, for the selection must be left to the wisdom of the Parliament.

The broad object underlying the principle of valuation is to award to the owner, the equivalent of his property with its existing advantages and its potentialities. Where there is an established market for the property acquired, the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with 'the property, and the benefit which the acquirer is likely to obtain by the acquisition. Under the Land Acquisition Acts compensation paid is the value to the owner together with all

600

its potentialities and its special adaptability if the land is peculiarly suitable for a particular use, if it gives an enhanced value at the date of acquisition.

The important methods of determination of compensation are -(i) market value determined from sales of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase; (ii) capitalization of the, net annual profit out of the property at a rate equal in normal cases to the return from gilt-edged securities. Ordinarily value of the property may be determined by capitalizing the net annual value obtainable in the market at the date of the notice of acquisition; (iii) where the property is a house, expenditure likely to be incurred for constructing a similar house, and reduced by the depreciation for the number of years since it was constructed; (iv) principle of reinstatement, where it is satisfactorily established that reinstatement in some other place is bona fide intended, there being no general market for the property for the purpose for which it is devoted (the purpose being a public purpose) and would have continued to be devoted, but for compulsory acquisition. Here compensation will be assessed on the basis of reasonable cost of reinstatement; (v) when the property has outgrown its utility and it is reasonably incapable of economic use, it may be valued as land plus the break-up

value of the structure. But the fact that the acquirer does not intend to use the property for which it is used at the time of acquisition and desires to demolish it or use it for other purpose is irrelevant; and (vi) the property to be acquired has ordinarily to be valued as a unit. Normally an aggregate of the value of different components will not be the value of the unit.

These are, however, not the only methods. The method of determining the value of property by the application of an appropriate multiplier to the net annual income or profit is a satisfactory method of valuation of lands with buildings,' only if the land is fully developed, i.e., it has been put to full use legally permissible and economically justifiable, and the income out of the property is the normal commercial and not a controlled return, or a return depreciated on account of special circumstances. It the property is not fully developed, or the return is not commercial the- method may yield a misleading result.

The expression "property" in Art. 31(2) as in Entry 42 of List II is wide enough to include an undertaking, and an undertaking subject to obligations may be compulsorily acquired under

601

a law made in exercise of power under Entry 42 List III. The language of the amended clause (2) of Art. 31 compared with the language of the clause before it was amended by the Constitution (Fourth Amendment) Act leaves no room for doubt. Before it was amended, the guarantee covered the acquisition of "property movable or immovable including, any interest in, or in any company owning any commercial or industrial undertaking". In the amended clause only the word "property" is used, deleting the expressions which did not add to its connotation. But when an undertaking is acquired as a unit the principles for determination of compensation must be relevant and also appropriate to the acquisition of the entire undertaking. In determining the appropriate rate of the net profits the return from gilt-edged securities may, unless it is otherwise found unsuitable, be adopted.

Compensation to be determined under the Act is for acquisition of the undertaking, but the Act instead of providing forvaluing the entire undertaking as a unit provides for determining the value of some only of the components, which constitute the undertaking, and reduced by the liabilities. It also provides different methods of determining compensation in respect of each, such component. This method for determination of compensation is prima facie not a method relevant to the determination of compensation for acquisition of the undertaking. Aggregate of the value of components is not necessarily the value of the entirety of a unit of property acquired, especially when the property is, a going concern, with an organized business. On that ground alone, acquisition of the undertaking is liable to be declared invalid, for it impairs the constitutional guarantee for payment of compensation for acquisition of property by law. Even if it be, assumed that the aggregate value of the different components will be equal to the value of the undertaking of the named bank as a going concern the principles specified, in our judgment, do, not give a true recompense to the banks for the loss of the under-taking. Schedule 11 by cl. (1) provides

> "The compensation . . . in respect of the acquisition of the undertaking thereof shall be an amount equal to the sum total of the value of the assets of the existing bank as on

the commencement of this Act, calculated in accordance with the provisions of Part 1, less the sum-total of the liabilities computed and obligations of the existing bank calculated in accordance with the provisions of Part IT."

For the purpose of Part 1 "assets" mean the total of the heads(a) to (h) and the expression "liabilities" is defined as meaning the total amount of all outside liabilities existing at the commence-

602

ment of the Act and contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources. Compensation payable to the named banks is accordingly the aggregate of some of the components of the undertaking, reduced by the aggregate of liabilities determined in the manner provided in the Schedule. It appears clear that in determining the compensation for undertaking-(i) certain important classes of assets are omitted from the heads (a) to (h); (ii) the method specified for valuation of lands and buildings is not relevant to determination of compensation, and the Value determined thereby in certain circumstances is illusory as compensation; and (iii) the principle for determination of the aggregate value of liabilities is also irrelevant.

The undertaking of a banking company taken over as a going concern would ordinarily include the goodwill and the value of the unexpired period of long-term leases in the prevailing conditions in urban areas. But goodwill of the banks is not one of the items in the assets in the Schedule, and in cl. (f) though provision is made for including a part of the premium paid in respect of leasehold properties proportionate to the unexpired period, no value of the leasehold interest for the unexpired period is given.

Goodwill of a business is an intangible asset : it is the whole advantage of the reputation and connections formed with the customers together with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern lo earn profits over a course of years or in excess of normal amounts because of its reputation, location and other features : Trego v. Hunt(’). Goodwill of an undertaking therefore is the value of the attraction to customers arising from the name, and reputation for skill, integrity, efficient business management, or efficient service.

Business of banking thrives on its reputation for probity of its ,dealings, efficiency of the service it provides, courtesy and promptness of the staff, and above-all the confidence it inspires among the customers for the) safety of the funds entrusted. The Reserve Bank, it is true, exercises stringent control over the transactions which banks carry on in India. Existence of these powers and exercise thereof may and do ensure to a certain extent the safety of the funds entrusted to the Banks. But the business which a bank attracts still depends upon the confidence which the depositor reposes in the management. A bank is not like a grocer’s shop : a customer does not extend his patronage to a

(1) L.R. [1896] A.C. 7.

603

bank merely because it has a branch easily accessible to him. Outside the public sector, there are 50 Indian -scheduled banks, 13 foreign banks, beside 16 non-scheduled banks. The deposits in the banks not taken over under the Act range between Rs. 400 crores and a few lakhs of rupees.

Deposits attracted by the major private commercial banks are attributable largely to the personal goodwill of the management. The regulatory provisions of the Banking Companies Act and the control which the Reserve Bank exercises over the banks may to a certain extent reduce the chance of the resources of the banks being misused, but a banking company for its business still largely depends upon the reputation of its management. We are unable to agree with the contention raised in the Union's affidavit that a banking establishment has no goodwill, not are we able to accept the plea raised by the Attorney-General that the value of the goodwill of a bank is insignificant and it may be ignored in valuing the undertaking as a going concern.

Under cl. (f) of Sch. II provision is made for valuing a proportionate part of the premium paid in respect of all leasehold properties to the unexpired duration of the leases, but there is no provision made for payment of compensation for the unexpired period of the leases. Having regard to the present-day conditions it is clear that with rent control on leases operating in various States the unexpired period of lease has also a substantial value.

The value determined by excluding important components of the undertaking, such as the goodwill and value of the unexpired period of leases, will not, in our judgment, be compensation for the undertaking.

The other defects in the method of valuation, it was claimed by Mr. Palkhivala, are the inclusion of certain assets such as cash, choses in action and similar assets, which under the law are not regarded as capable of being acquired as property. This inclusion, it is contended, vitiates the scheme of acquisition. Under cl. (a) of Part 1-Assets-the amount of cash in hand and with the Reserve Bank and the State Bank of India (including foreign currency notes which shall be converted at the market rate of exchange) are liable to be included. Cash in hand is not an item which is capable of being compulsorily acquired, not because it is not property, but because taking over the cash and providing for acquisition thereof, compensation payable at some future date amounts to levying a "forced loan" in the guise of acquisition. This Court in State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors.(1) held that cash and choses in action are not capable of compulsory acquisition. That

(1) [1952] S.C.R. 889.

604

view was repeated by this Court in Bombay Dyeing & Manufacturing Cc,. Ltd. v. State of Bombay(') and Ranojirao Shinde's case(') We do not propose to express our opinion on the question whether in adopting the method of determination of compensation, by aggregating the value of assets which constitute the undertaking, the rule that cash and choses in action are incapable of compulsory acquisition may be applied.

Under item (e) the value of any land or buildings is one of the assets. The first Explanation provides that for the purpose of this clause (cl. (e)) "value" shall be deemed to be the market value of the land or buildings, but where such market value exceeds the "ascertained value" determined in the manner specified in Explanation 2, the value shall be deemed to mean such " ascertained value". The value of the land and buildings is therefore the market value or the "ascertained value" whichever is less. Under Explanation 2, cl. (1) "ascertained value" in respect of buildings which are wholly occupied on the date of the commencement of the Act is twelve times the amount of the annual rent or the

rent for which the building may reasonably be expected to be let from year to year reduced by certain specific items. This provision, in our judgment, does not Jay down a relevant principle of value of buildings. In the first place, making a provision for payment of capitalised annual rental at..... twelve times the amount of rent cannot reasonably be regarded as payment of compensation having regard to the conditions prevailing in the money market. Capitalization of annual rent which is generally based on controlled rent under some State Acts at rates pegged down to the rates prevailing in 1940 and on the footing that investment in buildings yields 8-1/3% return furnishes a wholly misleading result which cannot be called compensation. Value of immovable property has spiralled during the last few years and the rental which is mostly controlled does not bear any reasonable relation to the economic return from property. If the building is partly occupied by the Bank itself and partly by a tenant, the ascertained value will be twelve times the annual rental received, and the rent for which the remaining part occupied by the Bank may reasonably be expected to be let out. By the Act the corresponding new banks take over vacant possession of the lands and buildings belonging to the named banks. There is in the present conditions considerable value attached to vacant business premises in urban areas. True compensation for vacant premises can be ascertained by finding out the market value of comparable premises at or about the time of the vesting of the undertaking and not by capitalising the rental-actual or estimated. Vacant premises, have a considerably larger value than

(1) [1958] S.C.R. 1122.
(2) [1968] 3 S.C.R. 489.

605

business premises which are occupied by tenants. The Act instead' of taking into account the value of the premises as vacant premises adopted a method which cannot be regarded is relevant. Prima facie, this would not give any reliable basis for determining the compensation for the land and buildings..

Again in determining the compensation under cl. (e), the annual rent is reduced by several outgoings and the balance is capitalized. The first item of deduction is one-sixth of the amount thereof on account of maintenance and repairs. Whether the building is old or new, whether it requires or does not require maintenance or repairs 16-2/3% of the total amount of rent is liable to be deducted towards maintenance and repairs. The vice of items (v) & (vi) of cl. (1) of Explanation 2 is that they provide for deduction, of a capital charge out of the annual rental which according to no rational system of valuing property by capitalization of the rental method is admissible. Under item (v) where the building is subject to a mortgage or other capital charge, the amount of interest on such mortgage or charge, and under item (vi) where the building has been acquired, constructed, repaired, renewed or re-constructed with borrowed capital, the amount of any interest payable on such capital, are liable to be deducted from the annual rental for determining the ascertained value. These encumbrances are also liable to be deducted under the head "liabilities". A simple illustration may suffice to pinpoint the inequity of the method. In respect of a building owned by a bank of the value of Rs. 10 lakhs and mortgaged for say Rs. 7,50,000 interest at the rate of 8% (which may be regarded as the current commercial rate) would amount to Rs. 60,000. The estimated annual rental which would ordinarily not exceed

Rs. 60,000 has under cl. (e) to be reduced in the first instance by other outgoing. The assets would show a minus figure as value of the building, and on the liabilities side the entire amount of mortgage liability would be debited. The method provided by the Act permits the annual interest on the amount of the encumbrance to be deducted before capitalization, and the capitalized value is again reduced by the amount of the encumbrance. In effect, a single debt is, in determining the compensation debited twice, first, in computing the value of assets, and again, in computing the liabilities.

We are unable to accept the argument raised by the AttorneyGeneral that under the head "liabilities" in Part II only those mortgages or capital charges in respect of which the amount has fallen due are liable to be included on the liabilities side. Under the head "liabilities" the total amount of all outside liabilities existing at the commencement of the Act, and all contingent liabilities which the corresponding new bank may reasonably be expected
606
to be required to meet out of its own resources on or after the date of commencement of the Act will have to be included. When even contingent liabilities are included in the total amount of all outside liabilities, a mortgage debt or capital charge must be taken into account in determining the liabilities by which the aggregate of the value of assets is to be reduced, even if the period of the mortgage or capital charge has not expired. The liability under a mortgage or capital charge exists whether the period stipulated under the deed creating the encumbrance has expired or not.

Under cl. (2) of Explanation 2, it. is provided that buildings which are partly occupied, the valuation shall be made on the basis of the "plinth area" occupied and multiplying it by the proportion which that area bears to the total plinth area of the buildings. The use of the expression "plinth area" appears to be unfortunate. What was intended is "floor area". If the expression "plinth area" is understood to mean "floor area", no fault may be found with the principle underlying cl. (2) of Explanation 2.

Under cl. (3) of Explanation 2, where there is open land which has no building erected thereon, or which is not appurtenant to any building, the value is to be determined "with reference to the prices at which sales or purchases of similar or comparable lands have been made during the period of three years immediately preceding the date of the commencement of" the Act. Whereas the value of the open land is to be the market value, the value of the land with buildings to be taken into account is the value determined by the method of capitalization of annual rent or market value whichever is less. The Explanation does not take into account whether the construction on the land fully develops the land, and the rental is economic.

We are, therefore, unable to hold that item (e) specifies a relevant principle for determination of compensation for lands and buildings. It is not disputed that the major Banks occupy their own buildings in important towns, and investments in buildings constitute a part of the assets of the Bank which cannot be treated as negligible. By providing a method of valuation of buildings which is not relevant the amount determined cannot be regarded as compensation.

We have already referred to item (f) under which a proportionate part of the premium paid is liable to be included in

the assets but not the value for the unexpired period of the leases. Item (h) provides for the inclusion of the market or realizable value, as may be appropriate, of other assets appearing on
607
the books of the bank, no value being allowed for capitalized expenses, such as share-selling commission, organizational expenses and brokerage, losses incurred and similar other items.

Mr. Palkhivala urged that certain assets which do not appear in the books of account still have substantial value, and they are omitted from consideration in computing the aggregate of the value of assets. Counsel said that every bank is permitted to have secret reserve and those secret reserves may not appear in the books of account of the banks. We are unable to accept that contention. A banking company is entitled to withhold from the balance-sheet its secret reserve, but there must be some account in respect of those secret reserves. The expression "books of the Bank" may not be equated with the balancesheets or the books of account only.

The expression "liabilities" existing at the commencement of the Act includes "all debts due or to become due." Under the head "liabilities" contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources on or after the date of commencement of the Act are to be debited. The clause is badly drafted. The present value of the contingent liabilities at the date of the acquisition and not the total contingent liabilities may on any rational system of accounting be debited against the aggregate value of the assets. For instance, if a banking company is liable to pay to its emlpoyees gratuity, the present value of the liability to pay gratuity at the date of the acquisition made on acturial calculation may alone be debited, and not the total face-value of the liability.

The Attorney-General contended that even if the goodwill of a banking company is of substantial value, and inclusion of the goodwill is not provided for, or the value of buildings and lands is not the market value, or that there is a departure from recognized principles for determination of compensation, the deficiencies in the Act result merely in inadequate compensation within the meaning of Art. 31(2) of the Constitution and the Act cannot on, that account be challenged as invalid. We are unable to agree with that contention. The Constitution guarantees a right to compensation-an equivalent in money of the property compulsorily acquired. That is the basic guarantee. The law must therefore provide compensation, and for determining compensation relevant principles must be specified : if the principles are not relevant the ultimate value determined is not compensation.

The Attorney-General also contended ’that if in consequence of the adoption of the method of valuation, an amount determined
608
as compensation is not illusory, the Courts have no jurisdiction to question the validity of the law, unless the law is expropriatory, for, in the ultimate analysis the grievance relates to the adequacy of compensation. He contended that the exclusion of one of the elements in fixing the compensation, or application of a principle which is not a recognized principle, results in inadequate price, and is not open to challenge, and relied in support upon the observations made in P. Vajravelu Mudaliar’s case(’), (at p.

631), which we have already quoted in another context in relation to the challenge to the validity of the Land Acquisition (Madras Amendment) Act, 1961, which excluded in determining compensation, the potential value of the land. The Court held that exclusion of potential value amounted to giving inadequate compensation and was not a fraud on power. The principle of that case has no application when valuation of a undertaking is sought, to be made by breaking it up into several heads of assets, and important -heads are excluded and others valued by the application of irrelevant principles, or principles of which the only claim for acceptance is their novelty. The Constitution guarantees that the expropriated owner must be given the value of his property, i.e., what may be regarded reasonably as compensation for loss of the property and that such compensation should not be illusory and not reached by the application of irrelevant principles. In our view, determination of compensation to be paid fox the acquisition of an undertaking as a unit after awarding compensation for some items which go to make up the undertaking and omitting important items amounts to adopting an irrelevant principle in the determination of the value of the undertaking, and does not furnish compensation to the expropriated owner.

The Attorney-General contended that the total value of the undertaking of the named banks even calculated according to the method provided in Sch. II exceeded the total market value of the shares, and on that account there is no ground for holding that the law providing for compensation denies to the shareholders the guarantee of the right to compensation under Art. 31(2). But there is no evidence on this part of the case.

Compensation may be provided under a statute, otherwise than in the form of money : it may be given as equivalent of money, i.e. a bond. But in judging whether the law provides for compensation, the money value at the date of expropriation of what is given as compensation, must be considered. If the rate of interest compared with the ruling commercial rate is low, it will reduce the present value of the bond. The Constitution guarantees a right to compensation-an equivalent of the property

(1) [1965] 1 S.C.R 614.

609

expropriated and the right to compensation cannot be converted into a loan on terms which do not fairly compare with the prevailing commercial terms. If the statute in providing for compensation devises a scheme for payment of compensation by giving it in the form of bonds, and the present value of what is determined to be given is thereby substantially reduced, the statute impairs the guarantee of compensation.

A scheme for payment of compensation may take many forms. If the present value of what is given reasonably approximates to what is determined as compensation according to the principles provided by the statute, no fault may be found. But if the law seeks to convert the compensation determined into a forced loan, or to give compensation in the form of a bond of which the market value at the date of expropriation does not approximate the amount determined as compensation, the Court must consider whether what is given is in truth compensation which is inadequate, or that it is not compensation at all. Since we are of the view that the scheme in Sch. 11 of the Act suffers from the vice that it does not award compensation according to any recognized principles, we need not dilate upon this matter further. We need only observe that by giving to the expropriated owner

compensation in bonds of the face-,value of the amount determined maturing -after many years and carrying a certain rate of interest, the constitutional guarantee is not necessarily complied with. If the market value of the bonds is not approximately equal to the face-value, the expropriated owner may raise a grievance that the guarantee under Art. 31(2) is impaired.

We are of the view that by the method adopted for valuation of the undertaking, important items of assets have been excluded, and principles some of which are irrelevant and some not recognised are adopted. What is determined by the adoption of the method adopted in Sch. 11 does not award to the named banks compensation for loss of their undertaking. The ultimate result substantially impairs the guarantee of compensation, and on that account the Act is liable to be struck down.

IV. Infringement of the guarantee of freedom of trade, commerce and intercourse under Art. 301--

in the view we have taken the provisions relating to determination and payment of compensation for compulsory acquisition of the undertaking of the named banks impair the guarantee under Art. 31(2) of the Constitution, we do not deem it necessary to decide whether Act 22 of 1969 violates the guarantee of freedom of trade, commerce and intercourse in respect of the (1) agency business; (2) business of guarantee and indemnity carried on by the- named banks.

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610

V. Validity of the retrospective operation given to Act 22 of 1969 by s. 1(2) and S. 27-

The argument raised by Mr. Palkhivala that, even if the Act is within the competence of the Parliament and does not impair the fundamental rights under Arts. 14, 19(1)(f) & (g), and 31(2) in their prospective operation, S. 1(2) and S. 27(2), (3) & (4) which give, retrospective operation as from July 19, 1969, are invalid, need not also be considered.

Nor does the argument about the validity of sub-ss. (1) & (2) of S. II and S. 26 of the Act survive for consideration.

Accordingly we hold that-

(a) the Act is within the legislative competence of the Parliament; but

(b) it makes hostile discrimination against the named banks in that it prohibits the named banks from carrying on banking business, whereas other Banks-Indian and Foreign-are permitted to carry on banking business, and even new Banks may be formed which may engage in banking business;

(c) it in reality restricts the named banks from carrying on business other than banking as defined in s. 5(b) of the Banking Regulation Act, 1949; and

(d) that the Act violates the guarantee of compensation under Art. 31(2) in that it provides for giving certain amounts determined according to principles which are not relevant in the determination of compensation of the undertaking of the named banks and by the method prescribed the amounts so declared can-not be regarded as compensation.

Section 4 of the Act is a kingpin in the mechanism of the Act. Section 4, 5 and 6 read with Sch. II provide for the statutory transfer and vesting of the undertaking of the named banks in the corresponding new banks and prescribe the

method of determining compensation for expropriation of the undertaking. Those provisions are, in our judgment, void as they impair the fundamental guarantee under Art. 31(2). Sections 4, 5 & 6 and Sch. II are not severable from -the rest of the Act. The Act must, in its entirety, be declared void.

Petitions Nos. 300 and 298 of 1969 are therefore allowed, and it is declared that the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969 is invalid and the action

611

taken or deemed to be taken in exercise of the powers under the Act is declared unauthorised. Petition No. 222 of 1969 is dismissed. There will be no order as to costs in these three petitions.

Ray, J.There are 89 commercial banks operating in India. Of these 89 banks 73 are Scheduled and 16 are non-Scheduled banks. The 73 Scheduled banks comprise State Banks with 7 subsidiaries aggregating 8, 15 foreign banks, 14 banks which -are the subject matter of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance No. 8 of 1969 (hereinafter referred to for the sake of brevity as the 1969 Ordinance) and the Banking Companies (Acquisition and Transfer of Undertakings) Act No. 22 of 1969 (hereinafter referred to for the sake of brevity as the 1969 Act) and 36 banks which are outside the scope of the 1969 Act. The State Banks have 27 per cent of the aggregate deposit of all commercial banks and 32 per cent of the credit of all commercial banks. The State Bank and its 7 subsidiaries have Rs. 1239 crores including current account in the total deposit and the total credit of the State Bank and its subsidiaries is Rs. 1186 crores. The 14 Scheduled Banks each of which has over Rs. 500 crores of deposit which are the subject matter of the 1969 Ordinance and the 1969 Act (hereinafter referred to for the, sake of brevity as the 14 banks) and have Rs. 2632 crores of deposit and the credit amounts to Rs. 1829 crores. In other words, these 14 banks have 56 per cent of the total deposit and little over 50 per cent of the total credit of the commercial banks. The36 scheduled banks which are 'outside the 1969 Ordinance and the 1969 Act have Rs. 296 crores of deposit, viz., 6.3 per centof the aggregate deposit and the credit is Rs. 197 crores, or in other words, 4.5 per cent of the total credit of the commercial banks. The 15 foreign banks have 10 per cent of the credit and 10 per cent of the deposit. These foreign banks have Rs. 478 crores of deposit and the credit is Rs. 385 crores. The 16 nonscheduled banks have Rs. 28 crores of deposit and the credit is about Rs. 16 crores. The non-scheduled banks have less than 1 per cent of the total credit and of the deposit. The aggregate deposits of the State Bank of India and its 7 subsidiaries and of the 14 banks is 82.8 per cent (26.5 % + 56.3 %) of the total deposits of 89 commercial banks and the aggregate credit of the said banks is 83.4 per cent (32.8% + 50.6%) of the total credit of the 89 commercial banks.

Of the 89 commercial banks the State Banks have 2454 branches, namely, 30 per cent of the branch offices. The 15 foreign banks have 138 branch offices including branches. The 36 scheduled banks which are outside the 1969 Ordinance and the 1969 Act have 1324 offices. The 16 non-scheduled banks have 216

612

offices. The 14 banks have 4130 offices which represent about little over 50 per cent of the offices. The aggregate of the number of offices of the State Bank and its 7

subsidiaries and the 14 banks is 6584 being 79.8 per cent of the total number of branch offices of the 89 commercial banks.

On 19 July, 1969 Ordinance No. 8 of 1969 called the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance. 1969 was promulgated by the Vice-President acting as President. It was an Ordinance to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto. The Ordinance came into force on 19 July, 1969. The Ordinance was repealed on 9 August, 1969 by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 which came into force on 9 August, 1969. The object of the Act was similar to that of the Ordinance. There are some differences between the Ordinance and the Act but it is not necessary for the purpose of the present matter to refer to the same.

Broadly stated, as a result of the 1969 Act the undertaking of every existing bank was transferred to and vested in the corresponding new batik on the commencement of the Act. The existing banks mean the 14 banks. The corresponding new banks mean the banks mentioned in the First Schedule to the 1969 Act in which is vested the undertakings of the existing banks. Section 5 of the 1969 Act deals with the effect of vesting. First, the undertaking shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable or immovable, cash balances, reserve funds, investments and all other rights and interests arising out of such property as were immediately before the commencement of the Act in the; ownership, possession, power or control of the existing banks in relation to the under'taking, whether within or without India, and all books of accounts, registers, records and all other documents of whatever nature relating thereto. Secondly, the undertaking shall also be deemed to include all borrowings, liabilities (including contingent liabilities) and obligations of whatever kind then subsisting of the existing bank in relation to the undertaking. Thirdly, if according to the laws of any country outside India, the provisions of the 1969 Act by themselves are not effective to transfer or vest any asset or liability situated in that country which forms part of the undertaking of an existing bank to, or in, the corresponding new bank, the affairs of the existing bank in relation to such asset or liability shall, on and from the commencement of this Act, stand entrusted to the chief executive officer for the time

613

being of the corresponding new bank who will take all steps as required by the laws of the foreign country for the purpose of affecting such transfer or vesting. Fourthly, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature, subsisting or having effect immediately before the commencement of the 1969 Act and to which the existing bank is a party -and which are in favour of the existing bank shall be of as full force and effect against or in favour of the corresponding new bank and may be enforced or acted upon as fully and effectually as if in the place ,of the existing bank the corresponding new bank had been a party thereto or as if they had been issued in favour of the corresponding new bank. Fifthly, there are provisions that suits, appeals, or other proceedings pending

by or against the existing bank be continued, prosecuted and enforced by or against the corresponding new bank.

Section 6 of the 1969 Act provides for payment of compensation and the second Schedule to the Act sets out the principles of determination of compensation by excluding liabilities from assets. Section 11 of the Act enacts that the corresponding new bank shall be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give, and if any question arises whether a direction relates to a matter of policy involving public interest, it shall be referred to the Central Government and the decision of the Central Government thereon shall be final. Section 12 provides for appointment of an Advisory Board to advise the custodian of the corresponding new bank. The custodian is the chief executive officer of the corresponding new bank. The Chairman of the existing bank holding office before the commencement of the-Act becomes a custodian of the corresponding new bank. The custodian is to hold office during the pleasure of the Central Government. Section 13 of the Act provides power of the Central Government to make scheme. Section 15 is an important provision in the Act. Under that section a Chairman, managing or whole-time director of an existing bank shall, on the commencement of the Act, be deemed to have vacated office and every other director of Such bank shall, until directors are duly elected by such existing bank, be deemed to continue to hold such office. 'The said Board may transact all or any of the various kinds of business mentioned in section 15. The other provision in section 15 is that the existing bank may carry on any business other than banking.

The Act of 1969 by reason of section 1(2) thereof is deemed to have come into force on 19 July, 1969. Section 27 of the Act contains four sub-sections providing for the repeal of the

614

Ordinance and enacting first, that notwithstanding the repeal of the Ordinance, anything done or any action taken including any order made, notification issued or direction given, under the said Ordinance shall be deemed to have been done, taken, made, issued or given, as the case may be, under the corresponding provisions of this Act; secondly, that no action or thing done under the said Ordinance shall, if it is inconsistent with the provisions of this Act, be of any force or effect and thirdly notwithstanding anything contained in the Ordinance no right, privilege, obligation or liability shall be deemed to have been acquired, accrued or incurred thereunder.

The petitioner Rustom Cavasjee Cooper is a share-holder of the Central Bank of India Ltd. and of 3 other existing banks and has current and fixed deposit accounts with these banks and is also a director of the Central Bank of India. The petitioner has challenged the validity of the 1969 Ordinance and the 1969 Act and has contended that his fundamental rights under Articles 14, 19 and 31 have been infringed by these measures.

Mr. Palkhivala, counsel for the petitioner, contended that the Act of 1969 was effective only from 9 August, 1.969 and could not have any effect on or from 19 July, 1969 until 9 August, 1969 because there could not be any retrospective effect given to any piece of legislation which affected the fundamental right to property. It was said that the validation would be effective as from the date when the law was actually passed and any retrospective effect would

offend Article 31(2) of the Constitution. It was said that acquisition under Article 31(2) could only be by authority of law and authority of law could only mean a law in force at the date of the taking. It was emphasised that the law must be in existence at the material time and there was no difference between a law under Article 20(1) and law in relation to Article 31(1) or Article 31(2) of the Constitution.

The Attorney General on the other hand contended that the validity of any law either prospective or retrospective affecting all or any of the fundamental rights under Article 19 has to be judged by the requirement laid down in Article 19 and the validity of a law either prospective or retrospective acquiring property has to be judged by the requirements laid down in Article 31(2).

This Court dealt with retrospective legislations in the cases of M/s. West Ramnad Electric Distribution Company Ltd. v. State of Madras(1) and State of Mysore v. Achiah Chetty (2). In the case of M/s. West Ramnad Electric Distribution Company Ltd.(') this Court held that there was difference between the provisions

(1) [1963] 2 S.C.R. 747.
(2) A.1.R. [1969] S.C. 477.
615

contained in Article 20(1) and Article 31(2) of the Constitution. Article 20(1) refers to law in force at the time of the commission of the act- charged as an offence whereas Article 31(2) does not contain any such word of limitation as to law being in force at the time but speaks only of authority of a law. This vital distinction between Article 20(1) and Article 31(2) is to be kept in the forefront in appreciating the soundness of the proposition that retrospective legislation as to acquisition of property does not violate Article 31(2).

In the case of M/s. West Ramnad Electric Distribution Company(1) the 1954 Madras Act incorporated the main provisions of the earlier Madras Act of 1949 in validating actions taken under the earlier 1949 Act. The 1949 Act had been challenged in earlier proceedings when this Court held the 1949 Act to be ultra vires. Section 24 of the 1954 Madras Act was intended to validate a notification of acquisition of undertaking issued on 21 September, 1951 under the, 1949 Act by providing that orders made, decisions or directions given, notifications, issued, if they would have been validly made under the 1949 Act were declared to have been validly made except the extent to which the order was repugnant to the provisions of the later 1954 Act. In the Madras case it was contended that the notification under the 1949 Act in the year 1951 was not supported by any authority or any pre-existing law because there was no valid law. That contention was repelled by Gajendragadkar, J. who spoke for the Court, "If the Act is retrospective in operation and section 24 has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier Act, it must follow by the very retrospective operation of the relevant provisions that at the time when the impugned notification was issued, these provisions were in existence. That is the plain and obvious effect of the retrospective operation of the statute. Therefore in considering whether Article 31(1) has been complied with or not, we must assume that before the notification was issued, the relevant provisions of the Act were in existence and so, Article 3 1 (1) must be held to have been complied with in that sense".

Article 20(1) cannot by its own terms have any

retrospective operation whereas Article 31(2) can and that is a vital distinction between the two Articles. That is why there cannot be a retrospective legislation with regard to creation of an offence. If people at the time of the commission of an act did not know that it was an' offence retrospective creation of a new offence in regard to such an act would put people to new peril which was not in existence at the time of the commission of the act. Counsel for the petitioner contended that retrospective validation of acquisition fell within the mischief of the decision of Punjab Province v. Dau-

(1) [1963] 2 S.C.R. 747.

616

lat Singh & Others(') where the Judicial Committee dealing with section 5 of the Punjab Alienation Act which provided for the avoidance of benami transactions as therein specified which were entered into either before or after the commencement of the Act of 1938 held that the same was ultra vires the Provincial Legislature because it would operate as a prohibition to affect the past transactions. The retrospective element however was severed in that case by the deletion of the words "either before or" in the section and the rest of the provisions were left to operate prospectively and validly. The ratio of the decision is that past transactions which had been closed and title which had been acquired were sought to be reopened or set aside and the same could not be within the legislative competence of section 298 of the Government of India Act, 1935 which conferred power to prohibit the sale or mortgage of transactions. The words 'prohibit sale or mortgage' in section 298 of the Government of India Act, 1935 were construed to mean prospective or future prohibition as the words used plainly refer to things or transactions in future.

The decisions of this Court in M/s. West Ramnad Electric Distribution Company (2) and State of Mysore v. Achiah Chetty(3) are ample authorities for the proposition that there can be retrospective legislation affecting acquisition of property and such retrospective operation and validation of actions with regard to acquisition does not offend Article 31 (2) of the Constitution. In State of Mysore and Anr. v. D. Achiah Chetty etc.(') Hidayatullah, C.J. considered the Bangalore Acquisition of Lands Act, 1962 which consisted of two sections whereof the second was in relation to validation of certain acquisition of lands and orders connected therewith. In short that section provided that all acquisition, proceedings, notifications or orders were validly made, held or issued with the result that the Act validated all past actions notwithstanding any breach of City of Bangalore Improvement Act, 1945. Hidayatullah, C.J. said "What the legislation has done, is to make retrospectively a single law for the acquisition of these properties. The legislature could always have repealed retrospectively the Improvement Act rendering all acquisitions to be -governed by the Mysore Land Acquisition Act alone. This power of the legislature is not denied. The resulting position after the Validating Act is not different. By the non-obstante clause the Improvement Act is put out of the way and by the operative part the proceedings for acquisition are wholly brought under the Mysore Land Acquisition Act to be continued only under that Act. The

(1) 73 1. A. 59.

(3) [1969] 3 S.C.R. 55

(2) [1963] 2 S.C.R. 747.

617
Validating Act removes altogether from consideration any implication arising from Chapter III or section 52 of the Improvement Act in much the same way as if that Act had been passed". The correct legal position on the authority of these decisions of this Court is that a legislation which has retrospective effect affecting acquisition or requisition of property is not unconstitutional and is valid. The Act of 1969 which is retrospective in operation does not violate Article 31(2) because it speaks of authority of a law without any words of limitation or restriction as to law being in force at the time.

Counsel for the petitioner next contended that the expression "authority of a law" in Article 31(2) would have the same meaning as the expression "authority of law" in Article 31(1) and therefore a law acquiring property would have to satisfy the tests required in Article 19(1)(f) of the Constitution. Both Article 31(2) and 19(1)(f) relate to property. Both appear in Part III of the Constitution under fundamental rights. The Attorney General contended that Article 31(2) and 31(2A) constituted a self contained code relating to acquisition and requisition of property, and once a property had been acquired by a law in compliance with the requirements of Article 31(2) there would not be any right left under Article 19(1)(f) and the validity of such a law of acquisition of property for public purpose could not be examined again by the requirements of Article 19(5) which is a relaxation of Article 19(1)(f).

The two requirements of a law relating to acquisition or requisition of property under Article 31(2) are : first, that the acquisition or requisition of property can' be made only for a public purpose, and secondly, it can only be by authority of a law which provides for compensation. Article 31(2A) further enacts that where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property.

The question for interpretation of Article 22 of the Constitution in the light of Article 19 came up for consideration in the case of A. K. Gopalan v. State of Madras('), Kania, C.J., Patanjali Sastri, Mahajan, Mukherjea and Das, JJ. expressed the opinion that Article 19 of the Constitution had no application to a law which related directly to preventive detention even though as a result of an order of detention, the rights referred to in sub-,clauses (a) to (e) and (g) in general and sub-clause (d) in particular, of clause (1) of Article 19 might be restricted or abridged.

(1) [1950] S.C.R. 88.

618
Fazl Ali, J. however expressed a contrary opinion. The consensus of opinion in Gopalan's case(') was that so far as substantive law was concerned, Article 22 of the Constitution gave a clear authority to the legislature to take away fundamental rights relating to arrest and detention which were secured by the first two clauses of that Article. Mukherjea, J. said about preventive detention in relation to right of freedom under Article 19. ','Any legislation on the subject would only have to conform to the requirements of clauses (4) to (7) and provided that is done, there is nothing in the language employed nor in the context in which it appears which affords any ground for suggestion that such law must be reasonable in its character

and that it would be reviewable by the Court on that ground. Both Articles 19 and 22 occur in the same Part of the Constitution and both of them support to lay down the fundamental rights which the Constitution guarantees. It is well settled that the Constitution must be interpreted in a broad and liberal manner giving effect to all its parts and the presumption would be that no conflict or repugnance was intended by its framers".

I shall now deal with some decisions of this Court as to whether a law acquiring property under Article 31(2) will have to comply with Article 19 (1) (f) or in other words whether such law of acquisition of property for public purpose must also according to Article 19(5) be a reasonable restriction on the right to hold property in the interests of the general public. There are decisions of this Court to the effect that acquisition of property under Article 31(2) as it stood prior to amendment in 1955 is an instance of deprivation of property mentioned in Article 31(1) and the two clauses of Article 31 are to be read together with the result that Article 19(1)(f) has no application where a law amounts to acquisition or requisition of property for a public purpose under Article 31(2). When Article 31(2) was amended by the Constitution Fourth Amendment Act, 1955, the decisions of this Court on that Article held that Article 19(1)(f) applies only to a deprivation of property under Article 31(1) but not to a law of acquisition of property for public purpose under Article 31(2). I shall now refer to these decisions.

In the case of State of West Bengal v. Subodh Gopal Bose(') the majority view of this Court was that clauses (1) and (2) of Article 31 as these stood before the Constitution Fourth Amendment Act, 1955 are not mutually exclusive in scope and content but are to be read together and understood as dealing with the same subject, namely, the protection of the right to property by means of limitations on the power of the State and the deprivation contemplated in clause (1) was held to be no other than the

(1) [1950] S C.R. 88.
(2) [1954] S.C.R. 587.

619

acquisition or taking possession of the property referred to in clause (2).

The view in Gopalan's case(') was again applied by this Court in State of Bombay v. Banji Munji and Anr. (2) also a pre-Amendment case-where it was contended that Article 31(2) did not exclude the operation of Article 19(1)(f) in relation to Bombay Land Acquisition Act, 1940. In dealing with the contention as to whether the Bombay Act was hit by Article 19(1)(f) on the --round of unreasonable restriction having been imposed on the right of the respondent to acquire, hold and dispose of property Bose, J. said at page 780 of the Report "It is enough to say that Article 19(1)(f) read with clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the, right to acquire, hold or dispose of it, and as clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that Article postulates the existence of property over which these rights can be exercised". Bose, J. thereafter said that when every form of enjoyment of and interest in property is taken away leaving the mere husk of title Article 19(1)(f) is not

attracted.

The principle laid down in Bhanji Munji's case (2) was considered in the case of Kavalappara Kottarathil Kochuni and Ors. v. The State of Madras and Ors.(3). In that case a question arose whether the Madras Marumakkathayam (Removal of Doubts) Act, 1955 infringed the provisions of the Constitution. The Act was passed after the Privy Council had declared the properties in possession of the Sthanee to be; Sthanam properties in which the members of the tarwad had no interest. The Madras Act, 1955 declared that "notwithstanding any decision of Court, any stanam under certain conditions mentioned in the sections shall be deemed to be and shall be deemed always to have been a Marumakkathayam tarwad and the properties appertaining to such a sthanam shall be deemed to be and shall be deemed always to have been properties belonging to the tarwad". Subba Rao, J. speaking for the majority view on the question as to whether Article 3 1 (1) had to be read along with Article 19(1)(f) said "that Legislation in a welfare State could be achieved only within the framework of the Constitution and that is why reasonable restrictions in the interest of the general public on the fundamental rights were recognised in Article 19". In that context this Court

(1) [1950] S.C.R. 88.
(3) [1960] 3 S.C.R. 887.
(2) [1955] 1 S.C.R. 777.

620

held that a law made depriving a citizen of his property shall be void, unless the law so made complied with the provisions of cl. (5) On Article 19 of the Constitution. At page 916 of the Report Subba Rao, J. said that the observations in Gopalan's case(') would have no bearing on Article 31(1) of the Constitution after clause (2) of Article 31 had been amended and clause (2A) had been inserted in that Article by the Constitution Fourth Amendment Act, 1955. Before the Constitution Fourth Amend-ment Act this Court held that clauses (1) and (2) of Article 31 were not mutually exclusive- in scope and content but were to be read together, namely, that the words "-acquisition or taking possession" referred to in clause (2) of Article 31 prior to the Amendment in 1955 were to be read as an instance of deprivation of property within the meaning of Article 31 (1) and therefore the same was not subject to Article 19. This is how the decision in Bhanji Munji's case(2) was explained by Subba Rao, J. in Kochuni's case(3) with the observation that "the decision in Bhanji Munji's case(') no longer holds the held after the Constitution Fourth Amendment Act, 1955". It may be stated here that Kochuni's case(') was decided after the amendment of Article 31 and that was emphasised by Subba Rao, J. to establish that Article 3 1 (1) which dealt with deprivation of property other than by way of acquisition by the State was to be a valid law or in compliance with limitations imposed in Article 19(1) (f) and (5).

The question whether Article 19(1) (f) is to be, read alongwith Article 31 (1) again raised its head in the case of Smt. Sitabati Devi' and Anr. v. State of West Bengal and Anr.(4) Kochuni's case(')was decided on 4 May, 1960 and Smt. Sitabati's case(') was decided on 1 December, 1961 though it was reported much later in the Supreme Court Reports. In Smt. Sitabati's case(') the question for consideration was the validity of the West Bengal Land (Requisition and Acquisition) Act, 1948. The Act provided for requisition and also for acquisition of land by the State Government for maintaining supplies and services essential to the life of

the community and for other purposes mentioned therein. The Act also provided for payment of compensation in respect of requisition and acquisition. In Smt. Sitabati's case(\') it was contended that the Act offended Article 19(1) (f) of the Constitution as it put unreasonable restrictions on the right to hold property. The High Court held that the Act providing for acquisition of property by the State could not be attacked for the reason that it -offended Article 19(1) (f) on the authority of the decision in Bhanji Munji v. State of Bombay('). The High Court further held that the-decision in Kochuni's case (3) did not hold that Article 31 (2)

(1) [1950] S.C.R. 88.
(3) [1960] 3 S.C.R. 887.
(2) [1955] 1 S. C.R. 777.
(4) [1967] 2 S.C.R. 949.

621

of the Constitution did not exclude the applicability of Article 19(1)(f). Sarkar, J. speaking for the Court said that the High Court was right on both these points. Sarkar, J. pointed out that Kochuni's case(') dealt with Article 31 (1) and it was not a case of acquisition or requisition of property by the State but was concerned with the law by which deprivation of property was brought about in other ways and there Article 19 of the Constitution had to be complied with. In Smt. Sitabati's case(') it was said that the observation in Kochuni's case(') that Bhanji Munji's case(') "no longer holds the field" was to be understood as meaning that it no longer governed the case of deprivation of property by means other than requisition and acquisition by the State. To my mind it appears that the view of this Court in Kochuni's case(') and Smt. Sitabati's case(') is that Article 31(2) after the Constitution Fourth Amendment Act. 1955 relates entirely to acquisition or requisition of property by the State and is totally distinct from the scope and content of Article 31(1) with the result that Article 19(1)(f) will not enter the arena of acquisition' or requisition of property by the State.

This Court in the recent decision of State of Gujarat v. Shantilal Mangaldas and others(3) again considered the applicability of Article 19(1)(f) in relation to acquisition or requisition of property under the authority of a law mentioned in Article 31(2). The Bombay Town Planning Act of 1955 was challenged as unreasonable and a violation of Article 19(1)(f) and (5). Shah, J. speaking for. the Court considered Article 31(2) as it stood after the Constitution Fourth Amendment Act, 1955 and said "clause (1) operates as a protection against deprivation of property save by authority of law which it is beyond question, must be a valid law, i.e. it must be within the legislative competence of the State legislature and must not infringe any other fundamental right. Clause (2) Guarantees that property shall not be acquired or requisitioned [except in cases provided by clause (5)] save by authority of law providing for compulsory acquisition or requisition and further providing for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which, and the manner in which the compensation is to be determined or given". Thereafter Shah, J. speaking for the Court said in repelling the contention advanced that the impugned statute was unreasonable. "This Court however held in Smt. Sitabati Devi v. State of West Bengal (1) that a law made under clause (2) of Article 31 is not liable to be challenged on the ground that it imposes unreasonable restrictions upon

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(1) [1960] 3 S.C.R. 887.
(3) [1955] 1 S.C.R. 777.
(2) [1967] 2 S.C.R. 949.
(4) [1969] 3 S.C.R. 341.
622
right to hold or dispose of property within the meaning of Article 19(1) (f) of the Constitution. In Smt. Sitabati Devi's case(') an owner of land whose property was requisitioned under the West Bengal Land (Requisition and Acquisition) Act, 1948 questioned the validity of the Act by a writ petition filed in the High Court of Calcutta on the plea that it offended Article 19(1)(f) of the Constitution. This Court unanimously held that the validity of the Act relating to acquisition and requisition cannot be questioned on the ground that it offended Article 19(1)(f) and cannot be decided by the criterion under Article 19(5)".

In my opinion Article 19(1)(f) does not have any application to acquisition or requisition of property for a public purpose under authority of a law which provides for compensation as mentioned in Article 31(2) for these reasons. First, the provisions of the Constitution are to be interpreted in a harmonious manner. No provision of the Constitution is superfluous or redundant. (See Gopalan'scase(2) at page 252 per Mukherjea,J.). It cannot be suggested that acquisition of property for public purpose is not of the same content as acquisition for public interest or in the interest of the public. It will be pedantry to say that acquisition for public purpose is not in the interest of the public. Secondly, the contention on behalf of the petitioner that Article.31(2) will have to be read along with Article 19(1)(f) for the purpose of deciding the piece of legislation on the anvil of reasonableness of restrictions in the interest of the general public will mean that acquisition or requisition for a public purpose under Article 31 (2) is embraced within Article 19 (5). That would be not only depriving the provisions of the Constitution of harmony but also making Article 31(2) otiose and a dead letter. By harmonising is meant that each provision is rendered free to ,operate with full vigour in its own legitimate field. If acquisition or requisition of property for a public purpose has to satisfy again the test of reasonable restriction in the interest of the general public then harmony is repelled and Article 31(2) becomes a mere repetition and meaningless. It could not be said that when Article 31(2) was specifically enacted to deal with a case of acquisition or requisition of property for a public purpose the framers of the Constitution were not aware that it was a form of public deprivation of property. That is why it is important to notice the distinction between deprivation of property under Article 3 1 (1) which will relate to all kinds of deprivation of property other than acquisition or requisition by the State and Article 31(2) which deals only with such acquisition or requisition of property. Thirdly, Article 31(2) and 31(2A) is a self contained code because (a) it provides for acquisition or requisition with authority
(1) [1967] 2 S.C.R. 949.
(2) [1950] S.C.R. 88.
623
of a law, (b) the acquisition or requisition is to be for a public purpose, (c) the law should provide for compensation by fixing the amount of compensation or specifying the principles on which, and the manner in which, the compensation is to be determined and given and (d) finally,

it enacts that adequacy of compensation is not to be questioned. In the case of acquisition or requisition of property for public purpose with the authority of a law providing for compensation there is nothing more to guide and govern the law for acquisition or requisition than those crucial words occurring in clause (2). Finally, the amendment of Article 31 indicates in bold relief the separate and distinctive field of law for acquisition and requisition by the State of property for public purpose.

Mahajan, J. in the case of State of Bihar v. Maharaja Darbhanga(1) spoke of public purpose in the background of Article 39 which speaks of the Directive Principles. Article 39 enacts that the State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. In the Darbhanga case(') land which was in the hands of few individuals was to be made available to the public. The purpose behind the Bihar Land Reform Act was to bring general benefit to the community. Mahajan, J. said that "legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute is in accordance with the letter of the Constitution of India, It is fallacious to contend that the object of the Act is to ruin 5 1/2 million people in Bihar..... It is difficult to hold in the present day conditions of the world that the measures adopted for the welfare of the community and sought to be achieved by process of legislation so far as to carry on the policy of nationalization of land can fall on the ground of public purpose. The phrase "public purpose" has to be construed according to the spirit of the times in which particular legislation is enacted and so constructed, the acquisition of the estates has to be held to have been made for public purpose". The meaning of the phrase 'public purpose' is predominantly a purpose for the welfare of the general public. These 14 banks are acquired for the purpose of developing the national economy. It is intended to confer benefit on weaker sections and sectors. It is not that the legislation win have; the effect of denuding the depositors in the 14 banks of their deposits. The

(1) [1952] S.C.R. 889.

624

deposits will all be there. The object of the Act according to the legislation is to use the deposits in wider public interest. What was true of public purpose when the Constitution was ushered in the mid-century is a greater truth after two decades. One cannot be guided either by passion for property on the one hand or prejudice against deprivation on the other. Public purpose steers clear of both passion and prejudice.

In regard to property rights the State generally has power to take away property and justify such deprivation on the ground of reasonable restriction in the interest of the general public, but in case of deprivation of property by acquisition or requisition the Constitution has conferred power when the law passed provides compensation for the property acquired by the State. Therefore the acquisition or requisition for public purpose is a restriction recognised by the Constitution in regard to property rights. In Kochuni's case(') this Court approved the observation of

Harries, C.J. in the case of Iswari Prosad v. N. R.Sen (2) that the phrase 'in the interest of the general public' means nothing more than 'in the public interest'. A public purpose is a purpose affecting the interest of the general public and therefore the Welfare State is given of guarantee, giving of indemnity and underwriting and (4) busiprinciple as to what the legitimate business of a bank is.

Counsel for the petitioner contended that the word 'banking' would have the same meaning as the definition of 'banking' occurring in section 5(b) of the Banking Regulation Act of 1949 hereinafter referred to for the sake of brevity as the 1949 Act. This contention was amplified to exclude four types of business from the banking business and therefore, the Act of 1969 was said to be not within the legislative competence of banking under Entry 45 in List 1. These four types of business are : (1) the receiving of scrips or other valuables on deposit or for safe custody and providing of safe deposit vaults, (2) agency business, (3) business of. guarantee, giving of indemnity and underwriting and (4) business of acting as executors and trustees. 'Banking' was defined for the first time in the 1949 Act as meaning the acceptance for the purpose of lending or investments of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft or otherwise. In England there is no statutory definition of banking but the Courts have evolved a meaning and principle as to what the legitimate business of a bank is.

In the case of Tennant, v. The Union Bank of Canada(') question' arose as to whether warehouse receipts taken in security

(1) [1960] 3 S.C.R. 887.
(3) [1894] A.C. 51.
(2) A.T.R 1952 Cal. 273.

625

by a bank in the course of business of banking, are matters coming within the class of subjects described in section 91, sub-section. 15 of the British North America Act, namely, 'banking, incorporation of Banks, and the issue of paper money'. Lord Watson said that the word 'banking' comprehends an expression which is, wide enough to embrace every transaction coming within the legitimate business of a banker. In Palmer's Company Precedents, 17th Ed. page 317 form No. 98 will be found the usual memorandum of object of a bank. These objects comprise business of banking in all branches including the receiving. of money and valuables on deposit or for safe custody, or otherwise, the collecting and transmitting money and securities and transacting all kinds of agency business commonly transacted by bankers. The other objects in the form are to undertake and execute any trusts the undertaking whereof may seem desirable, and also to undertake the office of executor, administrator, receiver, treasurer, registrar or auditor. In Banbury v. Bank of Montreal(') the House of Lords considered the authority of the bank to give advice as to investments and Lord Finday, L.C. said that "the limits of banker's business cannot be laid down as a matter of law. The nature of business is a question of fact, on which the jury are entitled to have-regard to thier own knowledge of business and it is in this context that the present case must be considered. It cannot be treated as if it was a matter of Pure law".

In India, the Negotiable Instruments Act, 1881, Stamp Act, 1889 and Bankers Book Evidence Act, 1891 refer to the expression banking without a definition. In the Indian

Companies Act. 1913 for the first time in 1936 provisions were introduced to govern banking companies. Entry 38 in List 1 of the Government of India Act, 1935 used the words "banking that is to say the conduct of banking business of a Corporation carried on only in that State". It must be observed that Entry 45 in List 1 of the 7th Schedule to the Constitution is only 'banking' and it does not contain any qualifying words like the conduct of business occurring in Entry 38 of the Government of India Act, 1935. The Indian Companies Act, 1913 in section 277 however defined 'banking company' but not 'banking' by reference to the principal business and other businesses usually undertaken by reputable bankers. Section 277G of the Indian Companies Act prescribes that the memorandum must be limited to the activities mentioned in section 277F. Section 277M of the Indian Companies Act, 1913 contained provisions similar to section 19 of the Act of 1949, namely, that a banking company could not form any subsidiary contained provisions similar to section 19 of the Act of 1949, ,the following purposes, namely, the undertaking and executing of

(1) [1918] A.C. 624.

3Sup Cl/70-10

626

trusts, the undertaking of the administration of estates as executors, trustees or otherwise, the providing of safe deposit vaults or, with the previous permission in writing of the Reserve Bank carrying on such other purposes as are incidental to the business of banking. It will appear from the Select Committee Report which was prepared for the introduction of the Indian Companies Amendment Act in 1936 that the list of business mentioned in section 277F which included the principal business and other business undertaken by reputable bankers was inserted to escape the danger ,of hampering a company in the performance of any form of business undertaken by reputable bankers.

It is in this background that the 1949 Banking Regulation Act was enacted. 'Banking' is defined in section 5(b) of the 1949 Act as meaning the acceptance for the purpose of lending or investment of deposits of money from the public repayable on demand .or otherwise and withdrawable by cheque, draft order or otherwise. Section 6 of the 1949 Act contains two sub-sections. In .sub-section (1) it is enacted that in addition to the business of banking, a banking company may engage in one or more of the forms of businesses mentioned therein. In sub-section (1) there are clauses marked (a) to (o). In sub-section (2) of section 6 of the 1949 Act it is encated that no banking company shall engage in any business other than those referred to in sub-section (1). Clause (a) of section 6(1) enumerates the various forms of business, inter alia, the borrowing, raising or taking up of money, the lending or advancing of money either upon or without security, the drawing, making, accepting, discounting, buying, selling collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scripts and other instruments and securities whether transferable or negotiable or not, the granting and issuing of letters of credit, traveller's cheques and circular notes, the buying, selling and dealing in bullion and specie, the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise, the providing of safe deposit vaults, the collecting and transmitting of money and securities. Clause (b) speaks of acting as agents for any Goverment or local authority or any other person or persons;

the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of the customers, but excluding the business of a company. Clause (h) speaks of undertaking and executing trusts. Clause (i) speaks of undertaking the administration of estates as executor, trustee or otherwise. It will, therefore, appear that under section 6(1) of the 1949 Act the four types of business disputed by counsel for the petitioner

627

not to be within the businesses of a bank are recognised by the statute as letigimate forms of business of a banking company.

Keeping valuables for safe custody, the providing of safe deposit vaults occur in clause (a) of section 6(1) along with various types of business like borrowing, raising or taking up of money, or lending or advancing of money. It will appear from clause (n) of section 6(1) of the 1949 Act that in addition to the forms of business mentioned in clauses (a) to (in) a banking company may engage in "doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company". The words 'other things' appearing in clause (n) after enumeration of the various types of business in clauses (a) to (m) point to one inescapable conclusion that the businesses mentioned in clauses (a) to (in) are all incidental or conducive to the promotion or advancement of the business of the company. Therefore these businesses are not only legitimate businesses of the banks but these also come within the normal business activities of commercial banks of repute. Entry 45 in List 1 of the 7th Schedule of the Constitution, namely, 'banking' will therefore have the wide meaning to include all legitimate businesses of a banking company referred to in section 5(b) as well as in section 6(1) of the 1949 Act. The contention on behalf of the petitioner that the four disputed businesses are not banking businesses is not supportable either on logic or on principle when businesses mentioned in the sub-clauses of section 6(1) of the 1949 Act are recognised to be legitimate business activities of a banking company by statute and practice and usage fully supports that view.

Clause (o) of section 6 (1) of the 1949 Act contemplates that .the Central Government might by notification specify any other form of business and therefore the Government could ask a banking company to engage' in a form of business which is not a usual type of business done by a banking company. In the first place, it would not be reasonable to think that the Government would ask a bank to do business of that type. Secondly, even if a bank were asked to do so that would not. rob the other permissible and legitimate forms of business mentioned in section 6(1) of the Act of their true character. Section 6(2) of the 1949 Act provides that no banking company shall engage in any form of business other titan those referred to in sub-section (1). The restriction contained in sub-section (2) establishes that the various types of business mentioned in sub-section (1) are normal recognised legitimate businesses and a banking company is therefore not entitled to participate in any other form of business.

628

In the case of Commonwealth of Australia and others v. Bank of New South Wales and others('), the Judicial Committee in hearing the appeal from the High Court of Australia considered the meaning and content of banking.

The question for consideration was the effect of the Australian Banking Act, 1947 and section 46 thereof. At page 303 of the Report the Judicial Committee said "the business of banking, Consisting of the creation and transfer of credit, the making of loans, the purchase and disposal of investments and other kindred activities is a part of the trade, commerce and intercourse of a modern society and. in so far as it is carried on by means of inter-State transactions, is within the ambit of section 92". The business of a bank will therefore consist not only of the hard core of banking business defined in the 1949 Act but also of the diverse kinds of lawful business which have grown to be inextricably bound up in the form of chain or string transactions. The words 'banker' 'banking' have different shades of meaning at different periods of history and their meaning may not be uniform today in countries of different habits of life and different degrees of civilisation. See Bank of Chettinad v. T. C. of Colombo(2) and United Dominions Trust Ltd. v. Kirkwood(3).

At this stage reference may be made to various statutes starting from Act 6 of 1839 Bank of Bengal's Third Charter and ending with the State Bank of India Act, 1955 to show the meaning and content of the word 'banking'. The Bank of Bengal's Third Charter of 1839 empowered the Bank of Bengal in clauses 25 to 33 to do business as mentioned therein which included receiving deposits of goods and safe keeping of the same. Thereafter the Bank of Bengal Charter was repealed by Act 4 of 1862 which by clause 27 empowered the bank to transact pecuniary business of agency on commission. The Presidency Banks Act, 1876 by section 36 thereof empowered the Presidency Banks. inter alia, to do business of receiving of deposits, agency business, acceptance of valuables, jewels. Section 37 of the Act of 1876 forbade the bank to do any business or loan or advance on mortgage or in other manner upon the security of any immovable property, or the documents of title relating thereto. The Imperial Bank of India Act, 1920 in Schedule 1 as mentioned in section 8 of the Act authorised the bank to carry on several kinds of business including receiving of deposits, keeping cash accounts, the acceptance of the charge and management of plate, jewels, title deeds or other valuable goods on terms, transacting Of pecuniary agency business on commission and the entering into Of contracts of indemnity, suretyship or guarantee with specific

(1) [1950] A.C. 235.
(2) [1948] A.C. 378 P.C.
(3) [1966] 1 Q. B. 783.

629

security or otherwise, the administration of estates for any purpose whether as an executor, trustee or otherwise, and the acting, as agent on commission in the transaction of various kinds of business mentioned therein.

The Indian Companies Act, 1913 did not define banking company or banking business though various sections, namely, 4, 133, 136, 138 and 145 and Schedule Form G referred to banking companies. The Indian Companies Amendment Act in 1936 for the first time defined a banking company in section 277F as a company which carried on the principal business of accepting of deposits on current account or otherwise, notwithstanding that it engaged in any one or more of the businesses as mentioned in clauses (1) to (17) thereof. It may be stated here that clauses (1) to (17) in section 277F of the Indian Companies Act, 1913 are similar to the various forms of business mentioned in section 6(1) of the 1949 Banking Regulation Act. In 1942, the Indian Companies Act,

1913 was amended by Act 21 of 1942 and it will appear from the statement of objects and reasons there that the definition of banking companies in section 277F of the Indian Companies Act created difficulties in deciding whether a company was a banking company or not. The chief difficulty arose out of the use of the term 'principal business' in section 277F. With the object of removing these difficulties a proposal was made that any company which used as part of its name the word 'bank', 'banker' or 'banking' shall be deemed to be a banking company irrespective of whether the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or order was its principal business or not. In that context Ordinance No. 4 of 1946 was promulgated under section 72 of the Govt. of India Act, 1935 empowering the Reserve Bank to cause inspection of any banking company and to do various other things by way of prohibiting a banking company from receiving deposits. Thereafter came the Banking Companies Restriction of Branches Act, 1946. There a banking company was defined as a banking company defined in section 277F of the Indian Companies Act, 1913. There was restriction on opening and removal of branches and the Reserve Bank was permitted to cause inspection, of banks. It is in this context that Ordinance No. 25 of 1948 was promulgated conferring power on the Reserve Bank to control advances given by the banking companies. In 1948 a confidential note on the banking companies Bill was prepared. The necessity of legislation was felt because there were insufficient paid up capital and reserve and insufficient liquidity of funds, unrestricted loans to directors. In that confidential note it was said that it was difficult to evolve any satisfactory definition of
630
banking and difficulties arose because of the incorporation of the, words 'Principal business' in relation to banks in section 277F of the Indian Companies Act, 1913.

In this background the Banking Regulation Act, 1949 was enacted. I have already referred to the provisions of sections 5 and 6 of the 1949 Act and the businesses mentioned in section 6(1) and the definition of banking business in section 5(b). A most noticeable feature with regard to all these types of business of a banking company is that- a banking company engages not only in the banking business but other businesses mentioned in section 6 of the 1949 Act with depositors' money. The entire business is one integrated whole. The provisions contained in section 6 (1) of the 1949 Act are the statutory restatement of the gradual evolution over a century of the various kinds of business of banking companies which are similar to those to be found in the State Bank of India Act, 1955 hereinafter called the State Bank Act. The business with regard' to deposit of valuables and safe deposit vaults is to be found in section 3(viii) of the State Bank Act, the agency business is mentioned in section 33(xii) of the State Bank Act. The business of guarantee, underwriting and indemnity is found in section 33(xi)(xii)(a) of the State Bank Act and the business of trusteeship and executorship is specifically found in the Banking Regulation Act, 1949 and in the previous Acts referred to hereinbefore.

It was suggested by counsel for the petitioner that by banking business is meant only the hard core of banking as defined in section 5(b) of the 1949 Act. It is unthinkable that the business of banks is only confined to that aspect and not to the various forms of business mentioned in

section 6(1) of the 1949 Act. Receiving valuables on deposit or for safe custody and providing for safe deposit vaults which are contemplated in clause (a) of section 6(1) of the 1949 Act cannot be dissociated from other forms of unchallenged business of a bank mentioned in that clause because any such severance would be illogical particularly when deposit for safe custody and safe deposit vaults are mentioned in the long catalogue of businesses in clause (a). The agency business which is mentioned in clause (b) of section 6(1) is one of the recognised forms of business of commercial banks with regard to mercantile transactions and payment or collection of price. Agency is after all a comprehensive word to describe the relationship of appointment of the bank as the constituent's representative. The forms of agency transactions may be varied.- It may be acting as collecting agent or disbursing agent or as depository of parties. The categories of agency can be multiplied in terms of transactions. That is why the business of agency mentioned in clause (b) is first in the general form of acting as an agent for
631
any Government or local authority, secondly carrying on of agency business of any description including the clearing and forwarding of goods and thirdly acting as attorney on behalf of the customers. The business of guarantee is in the modern commercial word practically indissolubly connected with a bank and forms a part of the business of the bank. It is almost commonplace for Courts to insist on bank guarantee in regard to furnishing of security. There may be so many instances of guarantee. As to the business of trusteeship and executorship it may be said that this is the wish of the settler who happens to be a constituent of the bank appointing the bank as executor or trustee because of the utmost faith and confidence that the constituent has in the solvency and stability of the bank and also to preserve the continuity of the trustee or the executor irrespective of any change by reason of death or any other incapacity. It is needless to state that these four disputed forms of business all spring out of the relation between the bank on the one hand and the customer on the other and the bank earns commission on these transactions or charges fees for the services rendered. Although trust accounts may be kept in a separate account all moneys arising out of the trust money go to the general pool of the bank and the bank utilises the money and very often trust moneys may be kept in fixed deposit with the trustee bank and expenses on account of the trust are met out of the general funds of the trustee bank. Payments to beneficiaries are made by crediting the beneficiaries' accounts in the trustee bank and if they are not constituents other modes of payment through other banks are adopted. The position of the banks as executor is similar to that of a trustee. Whatever moneys the bank may spent are recouped by the bank out of the accounts of the trust estate.

After the definition of banking company had been introduced for the first time in 1936 in the Indian Companies Act, 1913 it appeared that the banks were not being managed proprely and the definition of a banking company gave rise to administrative difficulties in determining whether a company was as banking company or not. A number of banking and loan companies particularly in Bengal claimed that they were not banking companies within the scope of the definition given in section 277F of the companies Act and in some cases their contention was upheld

by the Court. The failure of the Travancore National & Quilon Bank Ltd. in 1938 and the subsequent banking crisis in South India posed a big question as to the desirability of better legislation. An attempt was made to prescribe certain minimum capital, the amount of capital depending upon the area of them operation of the bank. The banks were also asked to maintain a percentage of their assets in cash or approved securities, Thereafter
632
the Indian Companies (Amendment) Act was passed in 1942 by which a proviso I was added to section 277F. to the effect that ;any ,company which used as part of its name the word 'bank', 'banker' or 'banking' shall be deemed to be a banking company notwithstanding the fact that the acceptance of deposits on current account subject to withdrawal by cheque is not the principal business of the company. In the mid-forties it became desirable that steps should be taken to safeguard the banking structure against possible repercussion in the post war period and it was considered necessary that comprehensive banking legislation should be introduced.

There are various provisions in the 1949 Act to indicate that a banking company cannot carry on business of a managing agent ,or Secretary and treasurer of a company and that it cannot acquire, construct, maintain, alter any building or works other than those necessary or convenient for the purpose of the company. A banking company cannot acquire or undertake the whole or any portion of any business unless such business is of one of these enumerated in section 6(1) of the 1949 Act. A bank cannot deal in buying or selling or bartering of goods except in connection with certain purposes related to some of the businesses enumerated in the aforesaid section 6(1). These provisions also establish that businesses mentioned in section 6 of the 1949 Act are incidental and conducive to banking business. A bank cannot employ any person whose remuneration is in the form of a commission or a share in the profits of the banking company or whose remuneration is in the opinion of the Reserve Bank excessive. One of the most important provisions in section 35 of 1949 Act, which states that the Reserve Bank at any time may and on being directed so to do by the Central Government cause an inspection to be made by one or more of its officers of the books of account and to report to the Central Government on any inspection and the Central Government thereafter if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may prohibit the banking ,company from receiving fresh deposits or direct the Reserve Bank to apply under section 38 of the winding up of the banking company. Another important provision in the 1949 Act is found in section 27 which provides for monthly returns in the prescribed form and manner showing assets and liabilities. The power of the Reserve Bank under sections 27 and 35 of the 1949 Act relates to the affairs of the banking company which comprehend the various forms of business of the bank mentioned in sectiotn 6 of the 1949 Act. Then again section 29 of the 1949 Act contemplates accounts relating to accounts of all business transacted by the bank. Section -35-A of the 1949 Act confers power on the Reserve Bank to give
633
directions with regard to the affairs of a bank. These provisions indicate beyond any measure of doubt that all forms of business mentioned in section 6(1) of the 1949 Act

are lawful, legitimate businesses of a bank as these have grown along with increase of trade and commerce. The word 'banking' has never had any static meaning and the only meaning will be the common understanding of men and the established practice in relation to banking. That is why all these disputed forms of business come within the legitimate business of a bank.

The next question is the legislative competence in regard to the Act of 1969. Counsol for the petitioner contended that the Act was for nationalisation of banks and there was no legislative entry regarding nationalisation and therefore that was incompetent. There is no merit in that contention. The Act is for acquisition of property; the undertaking of a banking company is acquired. The legislative competence is under Entry 42 in List III of the 7th Schedule and also under Entry 45 in List 1 of the 7th Schedule. Entry 42 in List III is acquisition and requisitioning of property. Entry 45 in List 1 is 'banking'. The Act of 1969 is valid under these entries. A question arose whether the Act. of 1969 pertains to Entry 43 in List 1 which deals with incorporation, regulation and winding up of trading corporations including banks. It is not necessary to deal with that entry because of my conclusion as to enrties No. 42 in List III and No. 45 in List 1. Counsel for the petitioner contended that the Act of 1969 trenched upon Entry 26 in List 11, namely, trade and commerce within the State. I am unable to accept that contention for the obvious reason that the legislation is for acquisition of undertakings of banking companies. The pith and substance of the legislation is to be found out and meaning is to be given to the entries 'banking' and acquisition of property. In the case of United Provinces v. Mst. Atiqa Begum and others(1) Gwyer, C.J. said that it would be practically impossible to define each item in the provincial legislation as to make it exclusive of every other item in that list and Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. The doctrine of pith and substance used in Union Colliery Company of British Columbia when the legislation is referable to one or more entries the Courts try to find out what the pith and substance of the legislation is. In the present case the Act is beyond any doubt one for acquisition of property and is also in relation to banking. The legislation

(1) [1940] F.C.R. 110.
(2) [1899] A. C. 580.

634

is valid with reference to the entries, namely, Entry 42 (Requisition) in List 111, Entry 45 (Banking) in List 1.

Counsel for the petitioner contended that undertaking of banking companies could not be the subject matter of acquisition and acquisition of all properties in the undertaking must satisfy public purpose as contemplated in Article 31(2). This contention was amplified to mean that undertaking was not property capable of being acquired and some assets like cash money could not be the subject matter of acquisition. The Attorney General on the other hand contended first that undertaking is property within the meaning of Article 31(2), secondly, undertaking in its normal meaning refers to a going concern and thirdly it is a complete unit as distinct from the ingredients composing it and therefore it could not be said that acquisition of the undertaking was an infraction of any constitutional provision. The term ,undertaking' is explained in

Halsbury's Laws of England, 3rd Ed. Vol. 6 paragraph 75 at page 43 to mean not the various ingredients which go to make up an undertaking but the completed work from which the earnings arise. As an illustration reference is made to mortgage of the undertaking of a company.

In Gardner v. London Chatham and Dover Railway Co.(') the undertaking of a railway company which was pledged was held to be a railway which was to be made and maintained, by which tolls and profits were to be earned, which was to be worked and managed by a company, according to certain rules of management, and under a certain responsibility. In an undertaking there will be money for the working of the undertaking and money will be earned thereby. Again in Re: Panama, New Zealand and Australian Royal Mail Company the undertaking of a steamship company was explained to have reference not only to all the property of the company which existed at the date of the debenture but which might become the, property of the company and further that the word 'undertaking' referred to the application of funds which came into the hands of the company in the usual course of business. Undertaking will therefore relate to the entire business although there may be separate ingredients or items of work or assets in the undertaking. The undertaking is a going concern and it cannot be broken up into pieces to create a security over the undertaking. (See Re : Portsmouth (Kingston, Fratton and Southsea) Tramway Co.(') and H. H. Vivian and Company Ltd. (3).

(1) (1867-8) Vol.II, Chancery Appeals 201.
(2) (1892) 2 Ch. 362.
(3) [1900] 2 Ch. 654.

635

The word 'undertaking' is used in various statutes of ourcountry, viz ; the Indian Electricity Act, 1910, (sections 6, 7, 7A), Indian Companies Act (Sections 125(4)(f), 293 and 394), Banking Regulation Act, 1949 (section 14A), Cotton Textiles Companies (Management. of Undertaking, Liquidation and Reconstruction) Act, 1967 (sections 4 (1), 5 (1) (2). By the word 'undertaking is meant the entire Organisation. These provisions, indicate that the company whether it has a plant or whether it has an Organisation is considered as one whole unit and the entire business of the going concern is embraced within the word 'undertaking'. In the case of sale of an undertaking as happened in Doughty v. Lomagunda Reefs, Ltd.(') the purchaser was required to pay all debts due by and to perform outstanding contracts comprised in the entire undertaking. The word 'undertaking' is used in the Indian Electricity Act, the Air Corporation Act, 1953, the Imperial Bank of India Act, 1920 (sections 3, 4, 6 and 7), the State Bank of India Act, 1955 [Section 6(1)(g)], the State Bank Subsidiaries Banks Act, 1959 [Section 10(1)], the Banking Regulation Act, 1949 [section 36AE(1)] and there have been legislative provisions for acquisition of some of these undertakings.

Under section 5 of the Act of 1969 the undertaking of each existing bank shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests arising out of such property as were immediately before the commencement of this Act in the ownership, possession, power or control of the existing bank in relation to the undertaking. This Court accepted the meaning of property given by Rich, J. in the Minister for State for the Army v. Dalziel(2) to be a bundle of rights which the owner has over or in respect of a

thing, tangible or intangible, or the word 'property' may mean the thing itself over or in respect of which the owner may exercise those rights. In the case of Commissioner,, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt("), this Court again gave wide meaning to the word 'property' and Mukherjea, J. said that there is no reason why the word 'property' as used in Article 19(1)(f) of the Constitution should not be given a liberal and wide connotation and would not be extended to those well recognised types of interest which have the insignia or characteristics of proprietary Tight. In the case of J. K. Trust, Bombay M. The Commissioner of Income Tax Excess Profits Tax, Bombay (4) this Court held the managing agency business to be a property. The undertaking of a bank will therefore be the entire integrated Organisation consisting of all property, movable or immovable

(1) (1902) 2Ch.d.837. (2) 68 C.L.R. 261.
(3) [1954] S.C.R. 1005. (4) [1958] S.C.R. 65.
636

and the totality of undertaking is one concept which is not divisible into components or ingredients. That is why in relation to a company the word 'undertaking' is used in various statutes in order to reach every corner of property, right, title and interest therein. The decision in State of Madhya Pradesh v. Ranojirao Shinde & Anr.(1) is an authority for the proposition that money cannot be acquired under Article 31(2). The impugned Act in Ranojirao Shinde's case(') abolished cash grants which the respondents were entitled to receive from the Government of Madhya Pradesh, but provided for the payment of certain compensation to the grantees. Ranojirao Shinde's(1) case did not deal with the case of an undertaking and has therefore no application to the present case. The undertaking is an amalgam of all ingredients of property and is not capable of being dismembered. That would destroy the essence and innate character of the undertaking. In reality the undertaking is a complete and complex weft and the various types of business and assets are threads which cannot be taken apart from the weft. I am, therefore, of opinion that undertaking of a banking corn any is property which can be ,validly acquired under Article 31(2) of the Constitution.

The next question for consideration is whether Article 19(6) of the Constitution is attracted. Counsel for the petitioner contended that as a result of the Constitution First Amendment Act. 1951 Article 19(6) was clarified to the effect that the word 'restrictions' would include prohibition or exclusion which was dealt with the second limb of Article 19(6). It may be stated here that prior to the amendment of Article 19(6) the second limb spoke only of law prescribing qualifications for practising any profession or carrying on any occupation, trade or business. As a result of the amendment of the second limb of Article 19(6) consisted of two sub-articles the first sub-,article relating to qualifications for practising profession or carrying on any occupation, trade or business and the second sub-article relating to carrying on by the State of trade, business industry to the exclusion 'complete or partial of citizens or otherwise. The second sub-article was really an enlargement of clause (6) of Article 19 as a result of the amendment. The main contention of counsel for -the petitioner was that the second limb of Article 19(6) after the expression 'in particular' must also satisfy the test of reasonable restriction contained in the first limb of Article 19(6) and emphasis was placed on the word 'in

particular' to show that it -indicated that the second limb was only an instance of the first limb of the Article. The Constitution First Amendment Act -of 1951 was enacted really to enable the State to carry on busi-
(1) [1968] 3 S.C.R. 489.
637
ness to the exclusion, complete or partial of citizens or otherwise as will appear from the amendment of Article 19(6).

In the case of Akadasi Padhan v. State of Orissa(') this Court considered the Orissa Kendu Leaves (Control of Trade) Act, 1961 by which the State acquired monopoly in the trade of Kendu leaves and put restrict-ions on the fundamental rights of the petitioner. In that case, Gajendragadkar, J. speaking for the Court referred to the decision of the Allahabad High Court in Motilal v. Government of State of Uttar pradesh (2) where a monopoly of transport sought to be created by the U.P. Government in favour of the State operated Bus Service known as the'Government Roadways' was struck down as unconstitutional because such a monopoly totally deprived the citizens of their rights and that is why Article 19(6) came to be amended. The necessity of the amendment of Article 19(6) was explained in the case of Akadasi Padhan(1). The view expressed by this Court in, that case is that the two sub-articles of the second limb deal with two different forms of legislation. The first sub-article deals with restrictions on the exercise of the right to practise any profession or to carry on any trade, occupation or business. The second sub-article deals with carrying on by the State of any trade, business or industry to the exclusion, complete or partial of citizens or otherwise. The effect of the amendment was stated by Gajen-dragadkar, J. to be that a State monopoly in respect of any trade or business must be presumed to be reasonable and in the interest of the general public so far Article 19(1')(g) is concerned'. The words 'in particular' in that case in Article 19(6) were held to indicate that restrictions imposed on the fundamental rights guaranteed by Art. 19(1)(g) which are reasonable and which are in the interest of the general public are saved by Article 19(6) as it originally stood and the validity of the. laws covered by the amendment would no longer be left to be tried in courts.

Counsel for the petitioner relied on the decision of the House of Lords in the case of Earl Fitzwilliam's Wentworth Estates Co.v.Minister of Housing and Local Government and another(3) in support of the proposition that the words 'in particular' in Article 19(6) were used to place the accent on reasonable restrictions in that clause as the saving feature of a law affecting Article 19(1)(g). Section 43(1) of the Town and Country Planning Act, 1947 which was considered was as follows :"
(1) The Central Land Board may,with the approval of the Minister, by agreement acquire land for any
(1) [1963] Supp. 2 S.C.R. 691.
(3) (1952] A. C. 362.
(2) I.L.R. [1951] 1 All. 269.
638

> purpose connected with the performance of their functions under the following provisions of this Act, and in particular may so acquire any land for the purpose of disposing of it for development for which permission has been granted under Part III of this Act on terms inclusive of any development charge payable under those provisions in respect of that

development".

It was held that the sub-section conferred a single power on the Central Land Board and not two powers, viz., that the boards have. power to acquire land for the purpose connected with the ,performance of their functions and the words in the second limb ,of the section were no more than a particular instance of that which the legislature regarded as part of the Board's functions. The purpose referred to in the second part of the sub-section there introduced by the words 'in particular' was held to be a purpose connected with the performance of the function within the meaning of the first part of the sub-section. The language of the sub-section in the case before the House of Lords is entirely different from the language in Article 19(6). Article 19(6) in the two limbs and in the two sub-articles of the second limb deals with separate matters and in any event State monopoly in respect of -trade or business is not open to be reviewed in Courts on the ,-round of reasonableness. This Court in the case of Municipal Committee of Amritsar v. State of Punjab(') held that so far as monopoly business by the State was concerned under Article 19(6) it was not open to challenge.

The four businesses which were disputed by counsel for the petitioner to be within the business of banking were contended to be not only acquisition of property in violation of Article 19 (1) (f) but also not to be reasonable restriction in the interest of the general public under Article 19(5) or under Article 19(6). Emphasis was placed on section 15(2) of the Act of 1969 to contend ,that after the acquisition of the undertaking of the bank the, pro.Vision permitting the banks to carry on business other than banking would be empty and really amount to prohibition of carrying ,on of the business because the assets pertaining to the four disputed businesses with which the business could be carried on had been taken away. I have already expressed my opinion that the four disputed businesses are the legitimate businesses of a banking company as mentioned in section 6(1) of the 1949 Act and are ,comprised in the undertaking of the banking and Article 10(1) (f) not attracted in case of acquisition or requisition of property dealt 'With by Article 31(2). 1 have also held that Article 19(6) confers

(1) [1969] 3 S.C.R. 447

639

power on the State to have a valid monopoly business. Section 15(2) of the 1969 Act allows the existing banks to carry on business other than banking. If as a result of acquisition, the bank will complain of lack of immediate resources to carry on these businesses the Act provides compensation and the existing bank will devise ways and means for carrying on the businesses. Constitutionality of the Act cannot be impeached on the ground of lack of immediate resources to carry on business. In the present case, the acquisition is not unconstitutional and the bank is free to carry on all businesses other than banking. It cannot be suggested that. after compensation has been provided for the State will have to provide moneys to enable the existing bank to carry on these businesses. That would be asking for something beyond the limits of the Constitution. If the entire undertaking of a banking company is taken by way of acquisition the assets cannot be separated to distinguish those belonging to banking business from others belonging to "non-banking business" because assets are not in fact divided on any such basis. Furthermore that would be striking at the root of

acquisition of the entire undertaking. It would be strange to hold in the teeth of express provisions in the Act of 1969 permitting the banks to carry on business other than banking that the same will amount to a prohibition on the bank to carry on those businesses. I find it difficult to comprehend the contention of the petitioner that a permissive provision allowing the banks to carry on these businesses other than banking becomes unreasonable. If that provision was not-there the businesses could be carried on and the argument would not be available at all. The express making of the provision obviously for greater safety cannot change the position. The petitioner's contention on Article 19(6) therefore fails.

Counsel for the petitioner contended that section 11 of the 1969 Act suffered from the vice of excessive delegation and there were no guidelines for reaching the objectives set out in the Preamble of the Act and the decision of Government regarding policy involving public interest was made final and therefore it was unconstitutional. Sect-ion 11 of the Act of 1969 is in two subsections. The first sub-section enacts that corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give. The second sub-section enacts that if any question arises whether a direction relates to a matter of policy involving public interest, it shall be referred to the Central Government and the decision of the Central Government thereon shall be final. Section 25(1)(c) of the Act of 1969 provides that the words 'corresponding new bank constituted under

640

section 3 of the 1969 Act "or any other banking institution notified by the Central Government" shall be substituted for the words " or any other banking institution notified by the Central Government in this behalf", in section 51 of the 1949 Act. Sections 7, 17(15A) of the Reserve(Bank Act of 1934 contain similar powers on the part of the Central Government to give directions to the Reserve Bank in regard to management and exercise of powers and functions in performance of duties entrusted to the bank under the Reserve Bank Act. A statute of this nature whereby the controlling interest of the business of banks is acquired renders it not only necessary but also desirable that policy involving -public interest should be left to the Government.

The Act of 1969 contains enough guidance. First, the Government may give directions only in regard to policy involving public interest; secondly, directions can only be given by the Central Government and no one else; thirdly, these directions can only be given by the Central Government after consultation with the Governor of the Reserve Bank; fourthly, directions given by the Government are in regard to matters involving public interest which means that this is objective and subject to judicial scrutiny and both the Central Government and the Governor of Reserve Bank are high authorities.

As a result of section 25(1) (c) of the Act of 1969, 14 banks will be subject to the provisions of the 1949 Act enumerated in sections 15, 17, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 34, 35, 35A, 36 and 48. These sections principally deal with restrictions as to payment of dividend, prohibition of floating charge on assets, creation of reserve fund, restrictions on subsidiary company, restrictions on loans and advances, power of the Reserve Bank to control -advances by banking companies, restrictions

on the opening of new places of business, maintenance of percentage of assets, return of unclaimed deposits, furnishing of returns to the Reserve Bank, publication of information by the Reserve Bank, submission of accounts and balance sheet to the Reserve Bank, inspection by the Reserve Bank, power of the Reserve Bank to give directions with regard to management, and imposition of penalties for contravention of the provisions of the Act.

There are other statutes which provide powers of the Central Government to give directions. I have already referred to the Reserve Bank of India Act, 1934. There are similar statutes conferring, powers on the Government to give directions, namely, State Bank of India Act, 1955, State Financial Corporation Act, 1951, University Grants Commission Act, 1956 Life Insurance Act, 1956, Deposit Insurance Act, 1961, National Cooperative Development Corporation Act, .1962, Agricultural Refinance
641
Corporation Act, 1963 and State Agricultural Credit Corporations Act, 1968. There are English statutes which contain similar provisions of exercise of power or directions by the Government in regard to the affairs of the undertakings covered by the statutes.' These are the Bank of England Act, 1946, Cotton (Centralised Buying) Act, 1947, Coal Industry Nationalisation Act, 1946, Civil Aviation Act, 1946, Electricity Act, 1947, Gas Act, 1948, Iron and Steel Act, 1949 and Air Corporations Act, 1949. It is explicable that where the Government acquires undertakings of industries, the matters of policy involving public interest or national interest should be left to be decided by the Government. There is nothing unconstitutional in such provisions.

The Preamble to the Act of 1969 states that the object of the Act is "to serve better the needs of the development of the economy in conformity with national policy and objectives." National policy and objectives are in accordance with the Directive Principles in Part IV of the Constitution. It is stated by the respondents in their affidavits that there are needs of the development of the economy in conformity with the Directive Principles and these are to be achieved by a mobilisation of the savings of the community and employing the large resources of the 14 banks to develop national economy in several spheres of activity by a more equitable distribution of economic resources, particularly, where there are large credit gaps. In the case of Harishankar Bagla and Anr. v. The State of Madhya Pradesh('), Mahajan, C.J. at pages 388-89 of the report said "The Preamble and the body, of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy". It is manifest that in working the Act of 1969 directions from the Central Government are necessary to deal with policy and other matters to serve the needs of national economy.

Counsel on behalf of the petitioner next contended that acquisition of the 14 banks and the prohibition of banking business by the existing banks violated Article 301 and was not saved by Article 302 because it is not required in the public interest, As to the four disputed businesses which the existing banks can under the Act carry on, it was said that the same was an infraction of Article 301. Article 305 to my mind directly applies to a law relating to bank and all businesses necessarily incidental to it carried

on by the State to the complete or partial exclusion of 14 banks. Article 302 can have no application in such a case. An individual cannot complain of violation of Article 301.
(1) [1955] 1 S.C.R. 380.
L8 Sup. CI(NP)/70-11
642

Article 305 applied in the present case and therefore neither Article 301 nor Article 302 will apply. Article 302 is an enabling provision and it has to be read in relation to Article 301. Acquisition of property by itself cannot viol-ate Article 301 which relates to free trade, commerce throughout India. The object of acquisition is that the State shall carry on business to the exclusion, complete or partial, of the 14 banks.

Counsel for the-petitioner contended that the 1969 Act violated the provisions of Article 14 on these grounds : First, the Act discriminated against 14 banks as against other Indian scheduled banks, secondly, the selection of 14 banks has no reasonable connection to the objects of the Act; thirdly, banks which may be described to be inefficient and which are liable to, be acquired under section 36AE of the 1949 Act are not acquired whereas 14 banks who have carried on their affairs with efficiency are acquired; fourthly under section 15 (2) (d) (e) of the 1969 Act the 14 banks cannot do any banking business whereas other Indian scheduled banks or any other new banking company can do banking business.

In other to appreciate these contentions it is necessary to remember the background of growth of Indian banks. At the beginning I referred to the position that State Bank of India and its several subsidiaries and the 14 banks occupy today in contrast with foreign banks and other scheduled or non-scheduled Indian banks. These 14 banks are not in the same class as other scheduled banks. The classification is on the basis of the 14 banks having deposit of Rs. 50 crores and over. The object of the Act is to control the deposit resources for developing national economy and as such the selection of 14 banks having regard to their larger resources, their greater coverage, their managerial -and personnel resources and the administrative and organisational factors involved in expansion is both intelligible and related to the object of the Act. There is no evidence to show that the 14 banks are more efficient than the others as counsel for the petitioner contended. Section 15 (2) (d) (e) of the 1969 Act states that these 14 banks after acquisition are not to carry on any banking business for the obvious reason that these 14 banks are not in the same class as the other Indian banks. Besides, it is also reasonable that the 14 banks should not be permitted to carry on banking business as the corresponding new banks. Therefore the classification of -the' 14 banks is also a rational and intelligible classification for the purposes of the Act. The object of the 1969 Act was to meet credit gaps and to have a wider distribution of economic resources among the weaker sections of the economy, namely, agriculture, small scale industry and retail trade.
643

The Act of 1969 is for development of national economy with the aid of banks. There are needs of various sectors. The legislature is the best judge of what should subserve public interest. The relative need is a matter of legislative judgment. The legislature found 14 banks to have special features, namely, large resources and credit structure and good administration. The categorisation of Rs. 50 crores and over vis-a-vis other banks with less than

Rs. 50 crores is not only intelligible but is also a sound classification. From the point of view of resources these 14 banks are better suited than others and therefore speed and efficiency which are necessary for implementing the objectives of the Act can be ensured by such classification.

In the case of Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar & Others(’), it was said that the Court would take into consideration the history of the times and could also assume the state of facts existing at the time of legislation. A presumption also arises in regard to constitutionality of -a piece of legislation. In the case of P. V. Sivarajan v. The Union of India & Anr. (2) the Coir Industry Act was considered in relation to registration of dealers for export. The Act provided minimum quantity of export preceding 12 months the commencement of the Act as one of the qualifying terms for registration. This quantitative test was held good. The legislative policy as to the necessity is a matter of legislative judgment and the Court will not examine the propriety of it. The legislation need not be all embracing and it is for the legislature to determine what categories will be embraced. In Dalmia’s case(’) it was said that the two tests of classification were first that there should be an intelligible differentia which distinguished persons or things grouped from others left out and secondly the differentia must have a rational relation to the object sought to be achieved by the statute. There has to. be a line of demarcation somewhere and it is reasonable that these 14 banks which are in a class by themselves because of their special features in regard to deposit, credit, administration, Organisation should be prohibited from carrying on banking business. These special circumstances are the reasons for classification. This distinction between the 14 banks and others reasonably justified different treatment. An absolute symmetry or an accurate classification is not possible to be achieved in the task of acquisition of undertakings Of banking companies. It cannot, therefore, be said that companies -whose deposits were in the range of Rs. 45 to Rs. 50 crores should have been taken.

In Kathi Raning Rawat v. State of Saurashtra(3) this Court said that the necessity for judicial enquiries would arise when there

(1) [1959] S.C.R. 279.
(3) [1952] S.C.R 435.
(2) [1959] 1 Supp. S.C.R. 779.
644

was an abuse of power and the differences would have no relation to the object. In the case of The Board of Trustees Ayurvedic and Unani Tibia College, Delhi v. The State of Delhi and Anr. (1) the Court supported legislation on a reasonable ground that the case of Tibia College(’) had exceptional features which were not found in others. In Dalmia’s case(.’) the legislature was said to be free to recognise the degrees of harm -and to confine its restriction to those cases where the need was deemed to be the greatest. It is in this sense that usefulness to society was found to form a basis of classification in the case of Mohd. Hanif Quareshi v. State of Bihar(’). In the case of Harnam Singh and Ors. v. Regional Transport Authority, Calcutta and Ors.(4) Mahajan, J. said that in considering Article 14 the Court should not adopt an attitude which might well choke all beneficial legislation and legislation which was based on a rational classification was permissible. It will not be sound to suggest that there are other banks which can be acquired and these 14 banks should

be spared. There is always possibility of discerning some kind of inequality and therefore grouping has to be made. where the legislature finds that public need is great and these 14 banks will be able to supply that need for the development of national economy classification is reasonable and not arbitrary and is based on practical grounds and consideration supported by the large resources of over Rs. 50 crores of each of these 14 banks and their -administration and management. I am, therefore, of opinion that the acquisition of the undertakings does not offend Article 14 because of intelligible differentia and their rational relation to the object to be achieved by the Act of 1969 and it follows that these banks cannot therefore be allowed to carry on banking business to nullify the very object of the Act.

Counsel for the petitioner contended that the Act of 1.969 infringed Article 31(2) because there was no just compensation. It was said that compensation in Article 31 (2) meant just compensation and it the 1969 Act did not -aim at just compensation, it would be unconstitutional. It was contended that cash could not be taken and further that the four disputed businesses could not be acquired. I have already expressed my view that the Act required the entire undertaking of the banks, and, therefore, there is no question of taking of cash. I have also expressed my view that the four disputed businesses are all within the business of bank, and, therefore, the Act is valid.

It was said by counsel for the petitioner that the word compensation in Article 31(2) was given the meaning of just equivalent in earlier decisions of this Court and since the word

(1) [1962] Supp. 1 S.C.R. 156.
(3) [1959] S.C.R. 628.
(2) [1959] S.C.R. 279.
(4) [1954] S.C.R. 371.

645

compensation' was retained in Article 3 1 (2) after the Constitution Fourth Amendment Act, 1955 there was no change in the meaning of the expression 'compensation' and it would have the same meaning of just equivalent. In view of the fact that after the Constitution Fourth Amendment Act the question of adequacy of compensation is not justiciable it was said by counsel for the petitioner that the only question for Courts is whether the law aimed at just equivalent. Counsel for the petitioner relied on the decision of this Court in Vajravelu Mudaliar v. Special Deputy Collector, Madras& Anr. (1) and submitted that the decision in Shantilal Mangaldas v. State of Gujarat (2) was a wrong interpretation of Article 3 1 (2).

The Attorney General on the other hand contended first that after the Constitution Fourth Amendment Act Article 3 1 (2) enacted that no law shall be called in question on the ground that the compensation provided by that law is not adequate and therefore compensation in that Article could not mean just equivalent. It was also said that Article 31(2) refers to a law which provides for compensation and not to a law which aims at just equivalent. Secondly, it was said that the whole, of Article 31(2) had to be read and the meaning of the word 'compensation' in the first limb was to be understood by reference to the second limb and if the petitioner's arguments were accepted the Constitution would read that unless law provided for a just equivalent it shall be called in question. It was, therefore, said by the Attorney-General that if just equivalent was to be aimed at the second limb of Article 31(2), namely, that inadequacy

would not be questioned would become redunant and meaningless. If the law enjoined that there was to be compensation and either principle for determination of compensation or -amount of compensation was fixed the Court could not go into the question of adequacy or reasonableness of compensation and the Court could not also go into the question of result of -application propriety of principle or reasonableness of the compensation.

In Vajravelu Mudaliar's case(1) this Court referred to the decision of Bela Banerjee's case(3) where it was held that compensation in Article 31(2) meant just equivalent or full indemnification. In Vajravelu Mudaliar's case(') it was contended that the Land Acquisition Madras Amendment Act, 1961 had provided for acquisition of land for housing schemes and laid down principles for compensation different from those prescribed in the Land Acquisition Act, 1894 and thereby Article 31-(2) was infringed because the Act did not provide for payment of compensation within the meaning of Article 31 (2). Subba Rao, J. speaking for the Court said that if the term 'compensation' had received judicial

(1) [1965] 1 S.C.R. 614.
(2) [1969] 3 S.C.R. 341.
(3) [1954] S.C.R. 558.

646

interpretation it must be assumed that the term was used in the sense in which it had been judicially interpreted unless a contrary intention appeared. That is how reference was made to the decision of this Court in Bela Banerjee's case(') to emphasise that a law for requisition or acquisition should provide for a just equivalent of what the owner has been deprived of. Subba Rao, J. then dealt with the clause excluding the jurisdiction of the Court where the word 'compensation' was used and said at page 627. of the Report "The argument that the word "compensation" means 'just equivalent' for the property acquired, and, therefore, the Court can ascertain whether it is just equivalent or not makes the amendment of the Constitution nugatory. It will be arguing in a circle. Therefore, a more reasonable interpretation is that neither the principles prescribing the "just equivalent" nor the "just equivalent" can be questioned by the Court on the ground of inadequacy of compensation fixed or arrived at by the working of the principles".

This Court then said that when value of a house at the time of acquisition had to be fixed there could be several methods of valuation, namely, estimate by engineer or value reflected by comparable sales or capitalisation of rent and similar others with the result that the adoption of one principle might give a higher value but they would nevertheless be principles of the manner in which the compensation has to be determined -and the Court could not say that the Act should have adopted one principle and not the other because it would relate to the question of adequacy. In that case it was said that if a law lays down principles for determining compensation which are not relevant to the property acquired or to the value of the property at or about the time it is acquired it might be said that these are not principles contemplated by Article 31 (2). This was illustrated by saying that if a law says that though a house is acquired it would be valued as an agricultural land or though it is acquired in 1950 its value in 1930 should be given and though 100 acres are acquired only 50 acres will be paid for, these would not enter the question or area of adequacy of compensation. Another rule which was laid down in Vajravelu Mudaliar's case(') is that

the law may prescribe compensation which is illusory. To illustrate, a property worth a lakh of rupees might be paid for at the sum of Rs. 100 and the question in that context would not relate to the adequacy of compensation because there was no compensation at all.

Two broad propositions which were laid down in Vajravelu Mudaliar's case (2) are these. First, if principles are not relevant to the property acquired or not relevant to the value of the property at or about the time it is acquired, these are not relevant principles.

(1) [1954] S.C.R. 558.
(2) [1965] 1 S.C.R. 614.

647

The second proposition is that if a law prescribes a compensation which is illusory the Court could question it on the ground that it is not compensation at all.

In the case of Shantilal Mangaldas(1) the Bombay Town Planning Act of 1950 which was repealed by the Bombay Town Planning Act of 1955 came up for consideration. There was a challenge to the Bombay Act of 1955 on the ground of infringement of Article 31(2) of the Constitution. Section 53 of the Bombay Act contemplated transfer of ownership by law from private owners to the local authority. It was -argued that under section 53 of the Bombay Act when a plot was reconstituted and out of that plot a smaller area was given to the owner and the remaining area was utilised for public purpose the area so utilised vested in the local authority for a public purpose, but the Act did not provide for giving compensation which was a just equivalent of the land expropriated at the date of extinction of interest and therefore Article 31(2) was infringed. It was also -argued that when the final scheme was framed in lieu of the ownership of the original plot and compensation in money was determined in respect of the land appropriated to public purpose such a scheme for compensation violated Article 31(2) because compensation for the entire land was not provided and secondly payment of compensation in money was not provided in respect of the land appropriated to public use.

Shah, J. speaking for the Court in the case of Shantilal Mangaldas(1) said that the decision of this Court in the cases of Bela Banerjee(2) and Subodh Gopal Bose(3) "raised more problems than they solved", because the Court did not indicate the meaning of just equivalent and "it was easier to state what was not just equivalent than to define what a just equivalent was". In this state of law Article 31 was amended by Constitution Fourth Amendment Act, 1955. Shah, J. said first that adequacy of compensation fixed by the legislature or awarded according to principles specified by the legislature is not justiciable and secondly if 'I 'the amount of compensation is fixed it cannot be challenged apart from a plea of abuse of legislative power because otherwise it would be a challenge to the adequacy of compensation. In Shantilal Mangaldas's case(') Shah, J. also said that the compensation fixed or determined on principles specified by the legislature cannot be challenged on the indefinite plea that it is not a just or fair equivalent. Shah, J. further said that principles of compensation could not be challenged on the plea that what was awarded as a result

(1) [1969] 3 S.C.R. 341.
(2) [1954] S.C.R. 558.
(3) [1954] S.C.R. 587.

648

of the application of those principles was not just or fair

compensation.

If the quantum of compensation fixed by the legislature is not liable to be challenged before the Court on- the ground that it is not a just equivalent the principles specified for determination of compensation will also not be open to challenge on the plea that the compensation determined by the application of these principles is not a just equivalent. The right declared by the Constitution guarantees compensation before a person is compulsorily expropriated of the property for public purpose. Principles may be challenged on the ground that they are not relevant to the property acquired or the time of acquisition of the property but not on the plea that the principles are not relevant to the determination of a fair or just equivalent of the property acquired. A challenge to the statute that a principle specified by it does not provide or award a just equivalent will be a clear violation of the constitutional declaration that inadequacy of compensation provided for is not justiciable.

Shah, J. referred to the decision of this Court in the case of Union of India v. The Metal Corporation of India Ltd. & Anr. (1) and expressed disagreement with the following view "pressed in the Metal Corporation case(') "the law to justify itself has to provide a payment of just equivalent to the land acquired or lay down principles which will lead to that result. If the principles laid down are relevant to the-- fixation of compensation and are not arbitrary the adequacy of the resultant product cannot be questioned in the court of law. The validity of the principles judged by the above tests falls within judicial scrutiny and if they stand the test the adequacy of the product falls outside justification". In Metal Corporation case(') compensation was to be equated to the cost price in the case of unused machinery in good condition and written down value as understood in income-tax law was to be the value of the used machinery and both were said to be irrelevant to the fixation of the value of machinery as on the date of acquisition. Shah, J. speaking for the Court expressed inability to agree with the part of the judgment and then said "the Parliament has specified the principles for determining compensation of undertaking of the company. The principles expressly related to the determination of compensation payable in respect of unused machinery in good condition and used machinery. The principles were not irrelevant to the determination of compensation and the com- pensation was not illusory". If what is specified is a principle for determination of compensation the challenge to that principle on the ground that a 'just equivalent is not reached is barred by the plain words of Article 31(2) of the Constitution.

(1) [1967] 1 S.C.R. 255.

649

These two decisions have one feature in common, namely, that if compensation is illusory the Court will be able to go into it. By the word 'illusory' is meant something which is obvious, patent and shocking. If for a property worth Rs. 1 lakh compensation is fixed at Rs. 100 that would be illusory. One need not be astute to find out as to what would be -at sight illusory. Furthermore, illusoriness must be in respect of the whole property and there cannot be illusoriness as to part in regard to the amount fixed or the result of application of principles laid down.

When principles are laid down in a statute for determination of compensation all that the Court will see is whether those principles are relevant for determination of

compensation. The relevancy is to compensation and not to adequacy. I am unable to hold that when the relevant principle set out is ascertained value the petitioner could yet contend that market value should be the principle. It would really be going into adequacy of compensation by preferring the merits of the principle, to those of the other for the oblique purpose of arriving at what is suggested to be just equivalent. To my mind it is unthinkable that the legislature after the Constitution Fourth Amendment Act intended that the word 'compensation' would mean just equivalent when the legislature put a bar on challenge to the adequacy of compensation. Just compensation cannot be inadequate and anything which is impeached as unjust or unfair is impinging on adequacy. Therefore. just equivalent cannot be the criterion in finding out whether the principles are relevant to compensation or whether compensation is illusory. In Vajravelu Mudaliar's case(1) the Court noticed continuous rise in land price but accepted an average price of 5 years as a principle. An average price over 5 years in the teeth of a continued rise in price would not aim at just equivalent according to the petitioner's contention there. Again potential value of land which was excluded in the Act in Vajravelu Mudaliar's case(') was said there to pertain to the method of ascertaining compensation and its exclusion resulting in inadequacy of compensation. I am, therefore, of opinion that if the amount fixed is not obviously -and shockingly illusory or the principles are relevant to determination of compensation, namely, they are principles in relation to property acquired or are principles relevant to the time of acquisition of property there is no infraction of Article 31(2) and the owner cannot impeach it on the ground of 'just equivalent' of the property -acquired.

Counsel on behalf of the petitioner contended that section 6 of the 1969 Act was an infraction of Article 31(2) on these grounds. First, no time limit was mentioned with regard to payment of compensation in section 6(1); secondly, section 6(6) was

(1) [1965] 1 S.C.R. 614.

650

an unreasonable restriction; thirdly, the four disputed businesses are not subject matter of acquisition for public purpose; fourthly, debentures cannot be subject matter of acquisition; fifthly, currency notes, cash, coins cannot be subject matter of acquisition. It was said that securities and cash which are maintained under section 42 of the Reserve Bank Act, 1934 and section 24 of the 1949 Act can be taken but reserves and investments and shareholders' accumulated past profits cannot be subject matter of acquisition and finally undertaking is not property and each asset is to be paid for.

Section 6 (1) of the Act provides for payment of compensation if it can be fixed by agreement and if agreement cannot be reached there shall be reference to a tribunal. There is no question of time within which agreement is to be reached or determination is to be made by a tribunal.

Section 6(6) relates to interim payment of "one half of the amount of paid up share capital" and any existing bank may apply to the Central Government for such payment before the expiry of 3 months or within such further time not exceeding 3 months as the Central Government may by notification specify. If the bank will apply the Government will pay the money only if the bank agrees to pay to

shareholders. Section 6 (6) is a provision for the benefit of the bank and the shareholders. There is no unreasonableness in it.

I have already held that the four disputed businesses come within the legitimate business of banks and therefore they are valid subject matter of acquisition. No acquisition or requisition of the undertaking of the banking company is complete or comprehensive without all businesses which are incidental -and conducive to the entire business of the bank.

The entire undertaking is the subject matter of acquisition and compensation is to be paid for the undertaking and not for each of the 'assets of the undertaking. There is no uniform established principle for valuing an undertaking as a going concern but the usual principle is assets minus liabilities. If it be suggested that no compensation has 'been provided for any particular asset that will be questioning adequacy of -compensation because compensation has been provided for the entire undertaking' The compensation provided for the undertaking cannot be called illusory because in the present case principles have been laid down. The Second Schedule of the Act of 1969 deals with the principles of compensation for the undertaking. The Second Schedule is in two parts. Part 1 relates to assets and Part 1 relates to liabilities. The compensation to be paid shall be equal to the sum total of the value of assets calculated in accordance with the provisions of Part 1 less the sum total of liabilities computed and obligations of existing
651
banks calculated in accordance with the provisions of Part II. in Part 1 assets are enumerated.

Counsel for the petitioner contended that with regard to assets either there was no principle or the principle was irrelevant or the compensation was illusory or it was not just equivalent. As to securities, shares, debentures Part 1 (c) explanation (iv) was criticised on the ground that there was no principle because period was not fixed and was left to be determined 'by some other authority. Explanations (iv) and (v) to Part 1 (c) will be operative only when market value of shares, debentures is not considered reasonable by reason of its having been affected by abnormal factors or when market value of shares debentures is not ascertainable. In the -former case the basis of average market value over any reasonable period and in the latter case the dividend paid during 5 years and other relevant factors will be considered. In both cases principles have been laid down, namely, how valuation will be made taking into account various factors and these principles are relevant to determination of compensation for the property.

Part 1(c) Explanation I was criticised by counsel for the petitioner to be an instance of value being brought down from 'just equivalent'. Part 1(c) Explanation I states that value shall be deemed to be market value of land or buildings, but where such market value exceeds the ascertained values determined in the manner specified in Explanation 2, it shall be deemed to mean such ascertained value. This criticism suggests that compensation should be just equivalent meaning thereby that what is given is not just and, therefore, indirectly it is challenging the adequacy. In Vajravelu Mudaliar's case(') there was a provision for compensation on the basis of the market value on the date of the notification or on the basis of average market value during past 5 years ever ever was less. That

principle was not held to bad.The owner of the property is not entitled to just equivalent. Explanation I lays down the principle. Market value is not the only principle. That is why the Constitution has left the laying down of the principles to the legislature. Ascertained value is a relevant and sound principle based on capitalisation method which is accepted for valuation of land and properties.

It was next said by counsel for the petitioner that Explanation 2(1) in Part 1 was an irrelevant principle because it was -a concept borrowed from Income Tax Act for calculating income and not capital value. It was said that 12 times the annual rent was not a relevant principle and was not an absolute rule and compensation might be illusory. It was also said that Explanation 2(1) would be irrelevant where 2 plots were side by side, one with building

(1) [1965] 1 S.C.R. 614.

652

and the other vacant land because the latter would get more than the former and in the former standard rent was applied and the value of land was ignored and therefore it was an irrelevant principle. That will not be illusoriness.- Standard rent necessarily takes into account value of land on which the building is situated because no rent can be thought of without a building situated on a plot of land. Article 31(2) does not enjoin the payment of full or just equivalent or the payment of market value of land and buildings.- There should be a relevant principle for determining compensation for the property acquired. Capitalisation method is not available for land because land is not generally let out. If rental method be applied to land the value may be little. In any event, it is a principle relevant to determination of compensation. Furthermore, there was no case in the petition that there was land with building side by side with vacant land.

Another criticism with regard to Explanation 2 (1) (i) was that amount required for repairs which was to be deducted in finding ,out ascertained value should not be deducted against capital value. I am unable to accept the contention because this deduction on account of maintenance and repairs is essential in the capitalisation method. It was next said by counsel for the petitioner that Explanation 2(1) (ii) which speaks of deduction of insurance premium would reduce the value. Insurance would also be an essential deduction in the capitalisation method and it could not be assumed that the bank would insure for a value higher than what was necessary. Annual rent would also vary in different buildings. Amounts mentioned in Explanations 2(1) (iii) and (iv) were said on behalf of the petitioner not to be deductible against capital value because annual charge or ground rent would be paid from income. These relate to Municipal tax and ground rent which are also taken into consideration in capitalisation method. Payment of fax or ground rent may be out of income but these have to be provided for in ascertaining value of the building under the capitalisation method.

Explanation 2(1) (vi) which speaks of deduction of interest on borrowed capital with which any building was constructed was said to be included twice, namely, under Explanation 2 (1) (vi) and also under liabilities in Part 11. Explanation 2 in Part 1 which relates to finding out ascertained value of building enacts that where building is wholly occupied 12 times the annual rent or the rent at which the building may be expected to let out less deductions mentioned therein would be the ascertained value. These deductions are made to arrive at the value of the

building under the capitalisation method to find out how much will be paid in the shape of interest on mortgage or borrowed capital. Interest on mortgage or borrowed ,capital will be one of the deductions in calculating outgoings under
653
capitalisation method. In Part 11, the liabilities are those existing at the commencement of the Act and contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources on or after the commencement of the Act. Interest payable on mortgage or borrowed capital at or after the commencement of the Act will not be taken into account as outgoings deducted under capitalisation method.

Explanation 2(2) was criticised by counsel for the petitioner on the ground that plinth area related to the floor area and if a floor was not occupied the plinth area thereof was not taken into account. Explanation 2(1) relates to determination of compensation by finding out ascertained value in the case of building which is wholly occupied. Explanation 2(2) relates to the case of a building which is partially occupied. Explanation 2(3) refers to land on which no building is erected or which is not appurtenant to any building. In the case of partial occupation Explanation 2(2) sets out the principle of compensation of partially occupied building. Again in Explanation 2(3) the criticism on behalf Of the petitioner that if there is a garage or one storeyed structure the principle will not apply is explained on the ground that the expression 'appurtenant' means land belonging to the premises. If there is a small garage or a one storeyed building the land will not be appurtenant to the garage or building.

Counsel for the petitioner contended that Part 1(h) which spoke of market or resaleable value of other assets did not include goodwill, benefit of contract, agencies, claims in litigation, and, therefore, there was no compensation for these. Part 1 (h) is 'a residuary provision, Whatever appears in books would be included. Goodwill does not appear in the books. Goodwill may arise when an undertaking is sold as a going concern. The contention as to exclusion of goodwill goes to the question of adequacy and will not vitiate the principle of valuation which has been -laid down. Reference may be made to Schedule VI of the Companies Act which refers to goodwill under Fixed Assets but the Banking Regulation Act, 1949 does not contain goodwill under property and assets.

Goodwill in the words of Lord Elden in Cruttwell v. -Lye(') means "the probability that tile old customers will resort to the old place". The term 'goodwill' is generally used to denote the benefit arising from connection and reputation. Whether or not the, goodwill has a saleable value the question of fact is to be determined in each case. Upon sale of a business there may be restriction as to user of the name of the business sold. That is another aspect
(1) 17 Ves. 335.
654
of sale of goodwill of a business. The 14 banks carried on business under licence by reason of section 22 of the Act of 1949. The concept of sale in such a situation is unreal. Furthermore, the possibility of nationalisation of undertakings like banks cannot be ruled out. Possibility of nationalisation will affect the value of ,goodwill. In the case of compulsory acquisition it is of grave doubt whether goodwill passes to the acquiring authority. No facts have been pleaded in the petition to show as to what goodwill the

bank has. Goodwill is not shown in assets. In the present case the names of the 14 banks and the corresponding new banks are not the same and it cannot therefore be said that any goodwill has been transferred. The 14 banks will be able to carry on business ,other than banking in their names. Again under the Act compensation is being paid for the assets and secret reserves which are provided for by depreciating the value of assets will also be taken into account. Any challenge as to compensation for goodwill falls within the area of adequacy.

As to Part II of the Schedule counsel for the petitioner said that liabilities not appearing in the books would be deducted but in the case of assets only those appearing in the books will be taken into account. Nothing has 'been shown in the petition that there ,are assets apart from those appearing in the books. It would not be appropriate to speak of liabilities like current income tax liability, gratuity, bonus claims as liabilities appearing in the books.

It was said on behalf of the petitioner that interest from the date of acquisition was not provided for. That would again appertain to the adequacy of compensation. Furthermore, interest has been provided for under section 6(3) (a) (b) of the 1969 Act. It was also said that if there was a large scale sale of promissory notes or stock certificates the value would depreciate. Possibility of depreciation does not vitiate the principle or constitutionality of a -measure.

The principles which have been set out in the 1969 Act 'are relevant to the determination of compensation. When it is said that principles will have to be relevant to the compensation, the relevancy will not be as to adequacy of compensation but to the property acquired and the time of acquisition. It may be that adoption of one principle may confer lesser sum of money than another but that will not be, a ground for saying that the principle is not relevant. The criticism on behalf of the petitioner that compensation was illusory is utterly unmeritorious.

The Attorney General contended that even if Article 1 9 (1) (f) -or 19(1) (g) applied the 1969 Act would be upheld as a reasonable -restriction in the interest of the general public. It is said that

655

social control scheme is a constitutional way of fulfilling the Directive Principles of State Policy. The 14 banks paid a total of 4.35 crores of rupees as dividend in 1968. This amount is said in the affidavit of the respondent not to be of great significance and that the bank should expand and attract more deposits. The comparative position of India along with other countries is focussed in the study group Report referred to in the affidavit in opposition. Commercial bank deposits and credit as proportion of national income form hardly 14% and 10% respectively in India as against 84% and 19% in Japan, 56% and 36% in U.S.A., 49% and 29% in Canada whereas the average population served in India by banks is as high as 73000 as against 4000 in U.S.A. and Canada and 15,000 in Japan. Then it is said that more than 4/5th of the credit goes to industry and commerce, retail has about 2% and agriculture less than 1%. Small borrowers it is said have no facilities. It is said that institutional credit is virtually non-existent in relation to small borrowers. The suggestion is that there is flow of resources from smaller to larger population and from rural to urban centres. There are many places which have no Banks. In different States there is uneven spread

of banking offices. There is greater expansion in urban banking. 5 major cities are said to have 46 per cent deposit but 65 per cent credit. Banks are more developed in States which are economically and socially 'advanced but even in such developed States banks are sparsely located.

India is a predominantly agricultural country and one half of national income, viz. 53.2% is from agriculture. Out of 5,64,000 villages only 5000 are served by banks. Net even 1 % have bank facilities. Credit requirements for agriculture are of great importance. Agriculturists have 34 per cent credit from Co-operatives, 5 per cent from banks and the rest from money lenders. The requirements are said to be Rs. 2,000 crores for agriculturists. The small scale industries are said to employ one third of the total industrial population and 40% of the industrial workers are in small scale industries. Banks will have to meet their needs. Small artisans and retail trade have all need for credit. It is said that barely 1.8% of the total bank advances goes to small scale industries. It is said in the affidavit that the policy of the Government is to take up direct management of credit resources for massive expansion of branches, vigorous principles for mobilisation of deposits and wide range programme to fill the credit gaps of agriculture, small scale industries, small artisans, retail trade and consumer credit. This policy can be achieved only by direct management by State and not merely by social control. Almost all the banks are in favour of large scale industry. This direct control and expansion of bank credit is intended to make available deposit resources and expand the same to serve the country in the light of Directive Principles.

656

These are the various reasons which are rightly said by the Attorney General to be reasonable restrictions in the interest of the general public. I wish to make it clear that in my opinion Articles 19 (1) (f) and (g) do not at all enter the domain of Article 3 1 (2) because a legislation for acquisition and requisition of property for public purpose is not required to be tested again on the touchstone of reasonableness of restriction. Such reasonable restriction is inherent and implicit in public purpose. That is why purpose is dealt with separately in Article 31(2).

The validity of the Ordinance of 1969 was challenged by contending that the satisfaction of the President under Article 123 was open to challenge in a court of law. It was said that the satisfaction of the President was objective and not subjective. The power of the President under Article 123 of the Constitution to promulgate Ordinances is when both the Houses of Parliament are not in session, ,and this power is co-extensive with that of the legislature and the President exercises this power when he is, satisfied that circumstances exist which render it necessary for him to take immediate action. The power of promulgating Ordinance is of historical antiquity and it has undergone, change from. time to 'time. In the East India Company Act, 1773 under section 36 the Governor General could promulgate Ordinance. The Indian Councils Act, 1861 by section 23 thereof provided that the Governor General in case of emergency may promulgate an Ordinance for the peace and good Government of the territories. The Government of India Act, 1915 provided in section 72 that the Governor General could promulgate Ordinances for the peace and good Government. The Government of India Act, 1935 by sections 42, 43 -and 45 conferred power on the Governor General to promulgate

Ordinances and sections 88 and 89 conferred a similar power on the Governor. Article 123 of the Constitution, is really based on section 42 of the Government of India Act, 1935 and Article 213 which relates to the power of the Governor in the States is based on section 88 of the Government of India Act, 1935.

It has been held in several decisions like Bhagat Singh's case(') and Sibnath Banerjee's case(') that the Governor General is the sole judge as to whether an emergency exists or not. The Federal Court in Lakhi Narain Singh's case(3) took a similar view that the Governor General was the sole judge of the state of emergency for promulgating Ordinances.

The sole question is whether the power of the President in Article 123 is open to judicial scrutiny. It was said by counsel for the petitioner that the Court would go into the question as to

(1) 58 1. A. 169.
(3) [1949] F. C.R. 693.
(2) 72 1. A. 57.
657

whether the President was satisfied that circumstances existed which rendered it necessary for the President to promulgate an Ordinance. Liversidge's case(1) was relied upon by counsel for the petitioner. That case interpreted the words "reasonable cause to believe". It is obvious that when the words used are "reasonable cause to believe" it is to be found out whether the cause itself has reason to support it and the Court goes into the question of ascertaining reasons. In Liversidge's case(') it was said that the words "has reasons to believe" meant an objective belief whereas the words "if it appears" or "if satisfied" would be a subjective satisfaction.

The words 'if it appears' came up for consideration in two English cases of Ayr Collieries(2) and the Carltona(3) and the decision was that it was not within the province "of the Court to enquire into the reasonableness of the policy.

The interpretation of Article 123 is to 'be made first on the language of the Article and secondly the context in which that power is reposed in the President. When power is conferred on the President to promulgate Ordinances the satisfaction of the President is subjective for these reasons. The power in Article 123 is vested in the President who is the executive head and the circumstances contemplated in Article 123 are a guide to the President for exercise of such power. Parliament is not in session throughout the year and during the gaps between sessions the legislative power of promulgating Ordinance is reposed in the President in cases of urgency and emergency. The President is the sole judge whether he will make the Ordinance. The President under Article 74(1) of the Constitution acts on the advice of Ministers. Under Article 74(2) the advice of the Ministers is not to be enquired into by any Court. The Ministers under Article 75(3) are responsible to Parliament. Under Article 123 the Ordinances are limited in life and the Ordinance must be laid before Parliament and the life of the Ordinance may be further shortened. The President under Article 361 (1) is not answerable to any Court for acts done in the performance of his duties. The Ministers are under oath of secrecy under Article 75(4). Under Article 75(3) the Ministers -are collectively responsible to the House of the People. Under Article 78 it shall be the duty of the Prime Minister to furnish information to the President. The power under Article 123 relates to policy and to an emergency when

immediate action is considered necessary and if an objective test is applied the satisfaction of the President contemplated in Article 123 will be shorn of the power of the President himself and as the President will be acting on the advice of Ministers it may lead to disclosure of facts which under

(1) [1942] A C.206.
(2) [1943] 2 All. E. R. 546.
(3) [1943] 2 All E. R. 560.

8SupCI/70-12

658

Article 75 (4) are not to be disclosed. For these reasons it must be held that the satisfaction of the President is subjective.

Counsel for the petitioner relied on the decisions of this Court in the cases of Barium Chemicals(') and Rohtas Industries(2). In both the cases the words used in the Companies Act, 1956 section 23 7 (b) which came up for consideration before this Court are to the effect that the, Central Government may, if in the opinion of the Central Government there are circumstances suggesting, that the business of the company is not properly conducted, appoint competent persons to investigate the affairs of the company. The opinion which is to be formed by the Central Government under the Companies Act in that section is in relation to various facts and circumstances about the business of a company and that is why this Court came to the conclusion that the existence of circumstances but not the opinion was open to judicial scrutiny. This was the view of this Court in the cases of Barium Chemical's(1) and Rohtas Industries(').

The decisions in Barium Chemicals(') and Rohtas Industries Ltd.(') turned on the interpretation of section 237 of the Companies Act and executive acts thereunder. The language used in that section is 'in the opinion of', The Judicial Committee in the Hubli Electricity case(') interpreted the words "the Provincial Government may, if in its opinion the public interest so requires, revoke a licence in any of the following cases" to mean that the relevant matter was the opinion and not the ground on which the opinion was based. This Court in the Barium Chemical's, case(') however found that there were no materials upon which the authority could form the requisite opinion. That, is the ratio of the decision in Barium Chemicals case(-).

In order to entitle the Central Government to take action under section 237 of the Companies Act, 1956 there is to be the requisite opinion of the Central Government and the circumstances should exist to suggest that the company's business was being conducted as laid down in sub-clause (1) or that the persons mentioned in sub-clause (2) were guilty of fraud, misfeasance or misconduct. The opinion of the Central Government was subjective but it was said that the condition precedent to the formation of such opinion was that there should be circumstances in existence and the recitals of the existence of those circumstances did not preclude the court from going behind those recitals and determining whether in fact the circumstances existed and whether the Central Government in making the order had taken into consideration any extraneous consideration.

(1) [1966] Supp. S.C.R. 311.
(2) [1969] 2 S.C.R.
(3) 76 I.A. 57.

659

In the case of Rohtas Industries(') reference was made to English, Canadian and New Zealand decisions. The

Canadian decision related to power of the Liquor Commission to cancel the liquor licence and it was held to be an exercise of discretion. The New Zealand decision related to the power of the Governor General under the Education Act to make Regulation as "he thinks necessary to secure the due administration". It was held that the opinion of the Governor General as to the necessity for such regulation was not reasonably tenable. These decisions do not deal with questions as to whether the satisfaction is subjective or objective. Of the two English decisions one related to the power of the Commissioner to make regulations providing for any matter for which provisions appear to them to be necessary for the purpose of giving effect to the provisions of the Act. The nature of legislation was taxation of subjects. It was held that the authority was not the sole judge of what its powers were, nor of the way in which that power was exercised. The words "reasonable cause to believe", ,'reasonable grounds to believe" occurring in the -case of Liversidge(2) were relied on to illustrate the power of the, Court to, find out as to whether the regulation was intravires in the English case.

The decision of the House of Lords in Padfield v: Minister of, Agriculture Fisheries and Food(') on which counsel for the petitioner relied turned on interpretation of section 19(3) of the Agricultural Marketing Act which contemplated a committee of investigation, if the Minister so directed, to consider and report to the Minister on any report made by the consumer' committee and any complaint made to the Minister as to the operation of any scheme which in the opinion of the Minister could not be considered, by a consumers' committee under one of the sub-sections in that. section. The House of Lords held that the Minister had full or unfettered discretion but he was bound to exercise it lawfully that. is to say not to misdirect himself in law, nor to take into account irrelevant matters-nor to omit relevant matters from consideration That was an instance of a writ of mandamus directing exercising of' discretion to act on the ground that it was a power coupled with. duty.

The only way-in which the exercise of power by the President can be challenged is by establishing bad faith or mala fide and corrupt motive. Bad faith will destroy any action. Such bad faith, will be a matter to be established by a party propounding bad faith. He should affirm the state of facts. He is not only to allege the same but also to prove it. In the present case there is no allegation of Mala fide.

(1) [1969] 3 S.C.R. 108.
(3) [1968] 1 All E.R. 604.
(2) [1942] A. C. 206.

660

It was said on behalf of the petitioner that the fact that Parliament would be in session on 21 July, 1969 and that the Ordinance was promulgated on Saturday, 19 July, 1969 was indicative of the fact that the Ordinance was not promulgated legitimately but in a hasty manner and the President should have waited. If the President has power when the House is not in session he can exercise that power when he is satisfied that there is an emergency to take immediate action. That emergency may take place even a short time before Parliament goes into session. It will depend upon the circumstances which were before the President. The fact that the Ordinance was passed shortly before the Parliament session began does not show any mala fide. It was said that circumstances were not set out in the affidavit and therefore the Court was deprived of

examining the same. The Attorney General rightly contended that it was not for the Union to furnish facts and information which were before President because first such information might be a State secret, secondly, it was for the party who alleged non-existence of circumstances to prove the same and thirdly the respondent was not called upon to meet any case of mala fide.

It was said that no reason was shown as to what mischief could have happened if the Ordinance would not have been promulgated on the date in question but no reason was required to be shown. The statement of objects and reasons shows that there was considerable speculation in the country regarding Government's intention with regard to nationalisation' of banks during few days immediately before the Ordinance. In the case of Barium Chemical's(1) it was said by this Court that if circumstances lead to tentative conclusion, that the Court would not have drawn a similar inference would be irrelevant. The reason is obvious that in matters of policy just as Parliament is the master of its province similarly the President is the supreme and sole judge of his satisfaction on such policy matters on the advice of the Government.

The locus standi of the petitioners was challenged by the Attorney General. The petitions were heard on merits. I have -dealt with all the arguments advanced. It is, therefore, not at all necessary to deal with this objection. For the reasons mentioned above, the petitions fail 'and are dismissed. There will be no order as to costs.

ORDER

In accordance with the opinion of the majority Petitions Nos.
300 and 298 are allowed, and it is declared that the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of

(1) [1966] Supp. S.C.R. 311.

661

1969 is invalid and the action taken or deemed to be, taken in exercise of the powers under the Act is declared unauthorised. Petition No. 222 is dismissed. There will be no order as to costs. in these three petitions.

K.B.N.

662